KINGS VALLEY MINERALS, LLC

IBLA 2015-243 & 2016-8

Appeal from BLM decisions rejecting applications for potassium prospecting permits. NVN-087012, et al.

Affirmed.

1. Administrative Procedure: Adjudication;
   Administrative Procedure: Burden of Proof;
   Potassium Leases and Permits

   Under 43 C.F.R. § 3505.50(a), a decision whether to approve a solid mineral prospecting permit for potassium on Federal lands is at BLM’s complete discretion. Nonetheless, BLM must ensure that the decision is supported by a rational basis and that such basis is stated in the written decision and supported by the administrative record accompanying the decision.

2. Administrative Procedure: Burden of Proof;
   Potassium Leases and Permits

   In challenging a BLM decision to reject a prospecting permit application, the applicant bears the burden of proof to show by a preponderance of the evidence that BLM committed a material error in its factual analysis or that its decision is not supported by a record showing it gave due consideration to all relevant factors and acted based on a rational connection between the facts found and the choice made. This burden is not met simply by expressions of disagreement with BLM’s analysis or conclusions.
3. Federal Land Policy and Management Act of 1976: 
Valid Existing Rights; 
Potassium Leases and Permits

Actions taken under the Federal Land Policy and 
Management Act of 1976 are subject to valid existing rights. 
While existing leases, permits, patents, rights-of-way, and 
other land use authorizations can give rise to valid existing 
rights, a permit application does not as it provides only a 
hope, expectation, or priority right to obtain a permit if 
permitting is allowed.

APPEARANCES: Paul T. Barnes, Manager, Kings Valley Minerals LLC, Las Vegas, 
Nevada, pro se; John W. Steiger, Esq., Office of the Regional Solicitor, U.S. Department 
of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Kings Valley Minerals LLC (KVM) appeals from decisions dated August 6 and 
September 22, 2015, by the Winnemucca (Nevada) District Office, Bureau of Land 
Management (BLM). The August 6, 2015, decision rejected applications serialized as 
NVN-087012, NVN-087013, NVN-087014, NVN-087015, NVN-087021, NVN-087022, 
NVN-087023, and NVN-087024 (BLM Decision 1), which was docketed as IBLA 2015- 
243. The September 22, 2015, decision rejected application NVN-092123 (BLM Decision 
2), which was for the same lands applied-for in NVN-087015 and docketed as IBLA 
2016-8. These BLM decisions rejected potassium prospecting permit applications (PPAs) 
for lands that were closed to mineral leasing by the applicable land use plan. Due to 
their similar issues of fact and law, we consolidate the appeals.¹

Summary

KVM’s PPAs were rejected because the applicable Resource Management Plan 
(RMP) and its Record of Decision (ROD) closed the lands at issue to mineral leasing. 
KVM cannot challenge the RMP’s decision to close these lands in this appeal. Nor has it 
carried its burden to show BLM committed a material error of fact or law or failed to give 
due consideration to all relevant factors, or that its decision lacked a rational connection 
between the facts found and the choices made. We therefore affirm the BLM decisions 
here appealed.

¹ 43 C.F.R. § 4.404.
Background

At issue in this appeal are eight potassium PPAs originally filed by Clayton Valley Minerals, LLC (CVM), on November 4 and 13, 2009, that encompassed roughly 15,995 acres of Federal land in northern Humboldt County, Nevada, within the administrative jurisdiction of the Winnemucca District (WD), BLM. CVM submitted a preliminary plan on September 10, 2010. CVM later submitted amended and revised exploration plans for these PPAs on April 11 and May 9, 2012. Shortly thereafter, Western Lithium Corporation (WLC) raised objections to BLM’s potential approval of these potassium prospecting permits because of potential conflicts with overlapping unpatented mining claims held by it. The WD Manager approved a Mineral Evaluation Report by a BLM geologist of these overlapping claims on February 15, 2013, concluding that the Sonoma-Geralach and Paradise-Danio Management Framework Plan did not address solid mineral leasing, there is not a reasonable expectation of there being a valuable potassium deposit in NVN-087015 and NVN-087012, which overlapped WLC’s mining claim, NVN-087166, and a real potential exists for a conflict between potassium prospecting and proposed lithium and hectorite mining on these Federal lands.

By decision dated April 12, 2013, the Nevada State Office (NSO), BLM, partially rejected CVM’s prospecting application in NVN-087015 due to potential interference of roughly 1,000 of its applied-for acres with WLC’s approved lithium exploratory plan and proposed mining plan for hectorite clay in NVN-087166. CVM appealed that rejection, which was docketed as IBLA 2013-163, and filed another potassium PPA, NVN-092123, for lands applied for in NVN-087015, which BLM suspended “pending resolution of the appeal of the appeal of the decision before IBLA on NVN-087015.” CVM was working

See BLM Decision 1.

See Administrative Record (AR) NVN-087015, Vol. 1, Doc. 7 (BLM letter to CVM, dated May 25, 2010, Additional Information Required); 43 C.F.R. § 3505.40 (“After we initially review your permit application, but before we issue the prospecting permit, we will require you to submit three copies of an exploration plan under [43 C.F.R.] § 3505.45.”).


AR NVN-087015, Vol. 2, Docs. 23, 41, 42.


See AR NVN-092123, Doc. 4 (BLM Decision dated July 1, 2013), at 1; see id. Docs 1 and 2; Appeal docketed as IBLA 2013-165.
with BLM to prepare a revised exploration plan when it relinquished ownership of these and other prospecting permit applications to KVM on December 17, 2013.10

Meanwhile, BLM began the process of replacing the Sonoma-Geralach and Paradise-Danieo Management Framework Plan and 1999 Lands Amendment, which culminated in RMP and ROD for the Winnemucca District Planning Area on May 21, 2015. BLM chose the preferred alternative detailed in its Final Environmental Impact Statement (FEIS)11 and for solid mineral leasing, it chose to “maintain” the closed status of lands “not suitable to leasing” (e.g., priority wildlife habitat, associated population management units, and priority watersheds supporting threatened and endangered species (T&E) habitat).12 It was these closed-to-solid-mineral-leasing lands that CVM earlier applied for and for which it was awaiting a BLM decision to issue.

The Board then set aside and remanded BLM’s rejection of the CVM (now KVM) potassium PPA in IBLA 2013-163 on June 30, 2015, because the record did not support BLM’s finding that exploration by CVM was highly likely to materially interfere with lithium exploration and hectorite mining in the same area.13 We remanded for BLM to consider whether it could choose a less stringent alternative to permit rejection.14 Rather than take action on remand, BLM rejected all of KVM’s potassium PPAs because their applied-for lands were now closed to solid mineral leasing under the governing RMP.15 These appeals timely followed.

DISCUSSION

[1] The Mineral Leasing Act authorizes BLM to grant potassium prospecting permits to any qualified applicant, who will then have the exclusive right to prospect for “nitrates of potassium in lands belonging to the United States.”16 The implementing rule

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11 BLM Decision 1 at 2-3.
14 Id. at 23-24.
15 BLM Decision 1 at 3 (citing RMP at 2-57 to 2-58, and RMP Appendix A, Figure 2-14); see BLM Decision 2 at 2.
at 43 C.F.R. § 3505.50(a) requires BLM to review prospecting permit applications “to determine compliance with land use plans, environmental requirements, unsuitability criteria and whether the lands are within a known [solid mineral] leasing area.” And while the rule at 43 C.F.R. § 3505.50(a) states that approving or rejecting a prospecting permit application is at “BLM’s complete discretion,” we do not read or apply that rule literally as insulating these BLM decisions from Board review. Instead, we follow the long-standing, general rule that whenever BLM rejects an application for a land use authorization (including a prospecting permit), the rejection must be “supported by a rational basis that is stated in the decision, as well as being demonstrated in the administrative record accompanying the decision.”


[2] In challenging a decision rejecting a PPA, the “burden is on an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.” This burden is not met “simply by expressions of disagreement with BLM’s analysis or conclusion.”

2. KVM Has Not Carried its Burden to Demonstrate Error in the BLM Decisions

KVM principally claims that, but for BLM's unjust and unjustified delay in acting on its permit applications, they would have been approved before the RMP closed this

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18 Clayton Valley Minerals, 186 IBLA 1, 15 (2015); accord Paul T. Barnes, Jr., 191 IBLA 277, (2017); Shooters-Edge, Inc., 178 IBLA 366, 370 (2010); Mark Patrick Heath, 175 IBLA 167, 176 (2008); Wiley F. & L‘Marie Beaux, 171 IBLA 58, 66 (2007); see Western Industrial Minerals, 182 IBLA at 21 (“Among the relevant factors to be considered [in rejecting a prospecting permit application] is whether there are less stringent alternatives to the decision made by BLM.”).

19 Clayton Valley Minerals, 186 IBLA at 15; accord Hi-Country Estates, 190 IBLA at 127; Western Industrial Minerals, 182 IBLA at 21.
area to solid mineral prospecting and leasing on May 21, 2015.\textsuperscript{20} It also claims these delays were part of WD “conspiring with WLC” to directly benefit WLC.\textsuperscript{21}

KVM challenges the RMP and its closure of these lands to prospecting and leasing.\textsuperscript{22} But as we explained in \textit{Rainer Huck}, challenges to an RMP are not subject to our review: “Because an RMP guides and controls future management actions and establishes management policy, its approval is subject only to protest to the Director of BLM, whose decision is final for the Department.”\textsuperscript{23} KVM also challenges BLM’s management of lithium development and its sale of common clay to WLC,\textsuperscript{24} but we fail to see the relevance of these claims to this appeal. We will therefore limit our review to Appellant’s claim of valid existing rights, improper delay, and conspiracy.

\textsuperscript{20} Statement of Reasons (SOR) at 3; \textit{see id.} at 3 ("The conclusions that were reached and the decisions that were issued by WD and NSO--which have ultimately been determined by the IBLA to be improper [in \textit{Clayton Valley}]--are not decisions that should have taken years to reach."); 4 ("KVM spent inordinate amounts of time and money to work through issues with WD and NSO which would have and should have been previously decided in KVM’s favor.").

\textsuperscript{21} Supplemental Statement of Reasons (SSOR) at 8 (citing AR NVN-087015, Vol. 2, Doc. 1 (informal, unsigned, undated BLM document from Oct. 17, 2012)); \textit{see id.} at 8 ("[M]ultiple employees within WD have sought out ways to prevent KVM from obtaining potassium prospecting permits."); 12 ("[WD delays are a] stalling tactic of BLM in conspiracy with WLC to prevent KVM from prospecting." (citing AR NVN-087015, Vol. 2, Doc. 28 (email statements attributed to WLC by WD on Apr. 18, 2012))).

\textsuperscript{22} SOR at 4 (BLM did not take into consideration the RMP’s stated objective for this closure), 5 (RMP prepared by a contractor with a conflict of interest), 6 (RMP closure “fails to protect” potassium reserved to the United States, “ignores” the Multiple Minerals Development Act, and eliminates royalties to the United States, which is “contrary to the public interest”).

\textsuperscript{23} 168 IBLA 365, 396 (2006) (citing 43 C.F.R. § 1610.5-20); \textit{accord Randy L. Witham}, 187 IBLA 298, 301 (2016); \textit{see also} BLM Decision 1 at 3 ("Clayton Valley Minerals was aware of the ongoing RMP process, and on October 25, 2010, submitted comments on the Draft Environmental Impact Statement (DEIS). The final RMP and ROD considered and addressed the substantive comments.").

\textsuperscript{24} \textit{Id.} at 5 ("KVM was never afforded the opportunity for competitive bid for common clays[.]") ("WLC is attempting to . . . establish lithium as locatable[.]"); \textit{id.} at 5-6 ("WD and NSO chose, without justification, to defend the WLC position to the point of issuing the decision that was set aside [in \textit{Clayton Valley Minerals}].").
a. Prospecting Permit Applications Do Not Give Rise to Valid Existing Rights

KVM does not dispute the RMP finding the lands it applied for are “not suitable for solid saleable minerals development and therefore closed” or that its applied-for lands were designated as containing priority wildlife habitat and priority watersheds suitable for T&E species habitat. Instead, KVM claims it had “valid existing rights” to explore for potassium when BLM approved the RMP closing this area to mineral leasing and prospecting on May 21, 2015.

[3] BLM issued the RMP under the Federal Land Policy and Management Act of 1976 (FLPMA), which expressly states it shall not be “construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act” and that all BLM actions under FLPMA “shall be subject to valid existing rights.” The closing of these lands to solid mineral leasing/permitting by the RMP is therefore subject to valid existing rights. However, while a valid permit can give rise to valid existing rights, a permit application does not. We have repeatedly held a permit application does not give the applicant any right to a permit, only a “priority right to a permit should a permit subsequently be issued.” As succinctly stated in Lee Roy Newsom: “A prospecting permit application lends the applicant a hope or expectation and not a valid existing right.” We therefore reject KVM’s claim that its prospecting permit applications gave it valid existing rights to a permit or to prospect in the applied-for area.

b. BLM Delay in Acting on the KVM Applications Does Not Provide a Basis for Reversal

KVM does not have a prospecting permit but claims it would have had one, but for BLM’s unjustified delays and alleged conspiracy with WLC to protect WLC’s interests. KVM states that “the intentional time delays of years imposed by the WD and the NSO without justification . . . have unjustly placed KVM in the position of not being able to

\[25\] RMP at 2-57.
\[26\] 43 U.S.C. § 1701 notes (a) and (h) (2012); see Colorado Environmental Coalition, 165 IBLA 221, 227 (2005).
\[29\] 117 IBLA at 389 (citing Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971)).
receive permits . . . " As we have explained under similar circumstances, the Mineral Leasing Act and its implementing rules do not establish any deadline for BLM to act on PPAs or impose any sanction for its failure to act promptly or in a timely manner. KVM identifies no such authority, and our research has found none. We therefore reject Appellant’s claim that its permit applications give rise to valid existing rights based on BLM’s 6-year delay in acting on the PPAs.

c. KVM Has Not Shown BLM Conspired with WLC

KVM accuses BLM of conspiring or working in concert with WLC to prevent KVM from obtaining potassium prospecting permits and quotes from several e-mails between and within BLM offices in 2011 and 2012 as supporting its accusation. However, its accusations are based on conjecture and speculation. We have read each document cited by KVM but find they show no more than that BLM was engaged in internal discussions on how best to process KVM’s prospecting permits in light of their potential conflicts with mineral claim development by WLC in the same general area.

Appellant takes snippets from the record and adds conjecture and speculation to suggest there was a conspiracy against its interests. For example, based on notes from a telephone call between a WD geologist and BLM’s Field Office manager on March 7, 2011, stating they were trying to “to assure that we take the same actions for the same reasons and avoid giving conflicting messages to [KVM and WLC],” it alleges there was then a “conspiracy between the NSO and [the Tonopah Field Office] to coordinate the denial of prospecting permits to KVM” and “stall appellant’s application indefinitely.” KVM interprets frank internal discussions of various approaches to the issues as evidence that BLM was engaged in an “illegal rationalization to stifle KVM permits by whatever means necessary including total disregard of Multiple Minerals Development Act

30 SOR at 3.
32 See supra note 22; generally, SSOR at 2-9, 10-
33 SSOR at 3 (quoting Telephone Conversation Record, AR NVN-087015, Vol. 1, Doc. 39); see id. at 4 (BLM questioning the WLC being able to get a State water permit reflects “the concealed mechanism by which [BLM] could attempt to ensure that the monopolistic position of Albemarle”).
To the same effect, KVM relies on an unidentified, undated, unsigned, 3-page document in the record that is entitled: “Ken’s attempt at consolidating thoughts on Multiple Minerals Development, locatables versus leasables, Prospecting Permits, and Preference Right Leases.”

It claims “Ken’s note” shows: “multiple employees within WD have sought out ways to prevent KVM from obtaining potassium prospecting permits”; “WD has pre-determined they would deny a [preference right lease to KVM] no matter what the outcome of prospecting is”; “WD is receiving legal advice from WLC to support a decision in WLC’s favor, specifically detrimental to KVM”; WD and WLC “need to prevent KVM from obtaining [prospecting permits and preference-right leases] to ensure that WLC receives all of the mineral values to the detriment of KVM”; the “nightmare” feared by BLM was that “WLC would lose their rights to the potassium”; and BLM would use a “chiefly valuable determination . . . to prevent KVM from obtaining a [preference right lease].”

KVM also claims an internal BLM email shows the Regional Solicitor “gave BLM and WLC the perfect opportunity to stall having to make a determination of whether or not potassium exists in commercial quantities until KVM could be eliminated from the process” and that BLM’s request for a copy of Solicitor Opinion M-36893 shows an “attempt by WD and NSO to find a way to prevent KVM from moving forward.” But BLM is entitled to coordinate its permitting actions within, between and among its several offices and those who use or seek to use the public lands. Read without preconceived notions or biases, we do not find from our review of the record that it supports KVM’s conjecture and speculation of wrong-doing or that KVM showed by a preponderance of the evidence that any conspiracy existed to thwart its plans and intentions.

Regardless of why BLM failed to act for nearly 6 years (from first application until final rejection), we are powerless to provide relief under the circumstances alleged by KVM. We know of no sanctions this Board can levy on BLM for an unjustified or improper delay in deciding these matters, particularly since we have no supervisory authority over BLM or its employees. In any event, since the lands applied for in this case were closed to solid mineral leasing and prospecting at the time BLM acted on these

35 AR NVN-087015, Vol. 2, Doc. 1 (Ken’s note) at 1.
36 Id. at 8, 9 (citing Ken’s note).
37 Id. at 13 (citing BLM emails dated April 4 and May 2, 2012, AR NVN-087015, Vol. 2, Docs. 21 and 36).
39 See, e.g., AMCA Coal Leasing, Inc. (On Reconsideration), 190 IBLA 271, 276-79 (2017) (7-year delay in acting on proposed mining plan modifications).
PPAs, it had no discretion to exercise because their rejection was required by the RMP and section 302(a) of FLPMA.\textsuperscript{40}

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{41} we affirm BLM’s August 6 and September 22, 2015, decisions.

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\textit{/s/}

James K. Jackson  
Administrative Judge

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I concur:

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\textit{/s/}

Amy B. Sosin  
Administrive Judge

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\textsuperscript{40} \textsuperscript{40} 43 U.S.C. § 1732(a) (2012); see 43 C.F.R. § 1610.5-3(a) (all land-use authorizations must conform to the applicable, approved land use plan).

\textsuperscript{41} 43 C.F.R. § 4.1.