IBLA Reverses BLM Attempt to Retroactively Change Lease Terms

By: Bill Sparks

In a recent Order, the Interior Board of Land Appeals (IBLA or Board) rejected the Colorado Bureau of Land Management's (BLM) effort to add no surface occupancy (NSO) lease stipulations to a federal oil and gas lease in Garfield County, Colorado. A copy of the Order can be found here [Order]. In the eighth year of the ten-year lease term, BLM declared that nearly the entire lease should have been burdened by NSO stipulations. BLM claimed that "administrative inadvertence" led to the stipulations being omitted from the lease. The lessee disagreed and appealed to the IBLA because BLM's imposition of the NSO stipulations would have caused a significant decrease in the value of the lease.

In the appeal, the lessee argued that there was no basis in the applicable Resource Management Plan (RMP), nor any other evidence to validate BLM's claim that the NSO stipulations had be inadvertently omitted. The IBLA agreed. "Even on appeal, BLM fails to fully explain the cause of the 'administrative inadvertence,' and, more importantly, in attempting to correct its mistakes, the Decision may create new ones." Order at 16. As to BLM's argument that the applicable RMP supported its conclusion that the lease should be restricted by NSO stipulations, the Board concluded that "the Decision itself lacks a reasoned explanation, well-supported in the record." Order at 14.

BLM further attempted to justify its decision with "metadata," never-before-seen maps, and new BLM affidavits in support of its attempt to add NSO lease stipulations. Finding BLM's rationale unpersuasive, the Board stated "[w]e find it astonishing that BLM argues in essence that [the lessee] is chargeable with knowledge of records that cannot be intelligibly explained by its career attorneys or career professionals to a Board of judges who have spent their

legal careers working with public land issues." Order at 12, fn 15. In the end, the Board found no evidence in BLM's record that could support its decision and thus, set aside and remanded BLM's decision.[1]

In unusual fashion, the Board was critical of BLM for its lack of record support for its decision. Order at 15 ("After so many years and with so much at stake, appellants understandably expect more, and so does this Board."). This IBLA Order comes on the heels of other Forest Service and BLM attempts to change or withdraw federal leases that oil and gas operators obtain from BLM. As long as Secretary Salazar's Interior Department attempts to take unlawful actions in regards to valid existing lease rights, these types of challenges to BLM decisions will continue.

For more information, please contact Bill Sparks.

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[1] The lessee had also argued that it was *bona fide* purchaser of the lease. The IBLA did not need to address this issue but noted that the appellant "debunked 'BLM's proposed new standard[, which] adds a confusing new element not in the application of the bona fide purchase standard.'" Order at 11, fn 14.