

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-001887-PAB

WILLSOURCE ENTERPRISE, LLC,

Plaintiff,

v.

INTERIOR BOARD OF LAND APPEALS,
RYAN ZINKE, in his official capacity as the
Secretary of the Interior, and UNITED STATES
DEPARTMENT OF THE INTERIOR,

Defendants,

WILDERNESS WORKSHOP,

Defendant-Intervenor.

WILLSOURCE ENTERPRISE, LLC'S SUPPLEMENTAL REPLY BRIEF

INTRODUCTION

Nothing displays the contradictory nature of Defendant-Intervenor Wilderness Workshop's ("WW") position better than its argument that "WillSource was allowed to *speculatively sit* on these leases without providing any public benefit." ECF No. 33 at 3 (emphasis added). No less than nine additional times, WW accuses WillSource of failing to diligently develop its leases or follow through on its obligations. See, e.g., ECF No. 33 at 1, 9, 11, 21, 22, 29, 30. This gross mischaracterization of WillSource's conduct is completely divorced from reality and at odds with the factual record. See, e.g., ECF No. 26 at 8-14 (detailing the history of the Challenged Leases and drilling

extensions). WW ignores that many of the reasons WillSource was unable to drill were due to the same environmental and economic concerns that WW claims to be protecting. *Compare* BLM000248-252 (BLM records noting WillSource held off drilling due to changing NEPA requirements, Elk calving, U.S. Forest Service (“USFS”) road closures for snowmobile trail use, and cross-country skiing concerns); BLM001965-67 (BLM draft SDR Report noting the same) *with* ECF No. 33 at 5 (WW noting “Thompson Divide provides . . . crucial big game range for elk and deer.”); ECF No. 33 at 3 (area is a popular recreation destination); ECF No. 33 at 2-3 (noting value of “roadless areas” in Thompson Divide); ECF No. 12 at 2-3 (WW touting its role in the relevant NEPA processes).

The reality is that WW has sought to prevent all oil and gas development in the area and has focused its attention on WillSource. *See, e.g.*, ECF No. 12 at 2 (“Wilderness Workshop also devoted years to ensure that BLM, which initially issued these and other leases in the White River National Forest in violation of [NEPA], undertook the analysis required under NEPA.”); ECF No. 12 at 2 (“Wilderness Workshop has worked for years to ensure that these specific leases . . . properly expire”). This bolsters the already compelling case for why this Court should set aside the IBLA’s decisions and invoke equitable estoppel against the BLM. At a minimum, the IBLA should have held an evidentiary hearing to resolve the obvious material facts in dispute through witness testimony and other evidence.

WILDERNESS WORKSHOP'S INVOLVEMENT IN THIS SAGA DEMONSTRATES THAT THE IBLA SHOULD HAVE HELD AN EVIDENTIARY HEARING

The IBLA ignored conspicuous disputes of material fact involving the BLM's conduct. To satisfy due process, the IBLA should have held an evidentiary hearing. See *KernCo Drilling Co.*, 71 I.B.L.A. 53, 56 (1983) (hearing is necessary where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence); see also *Codd v. Velger*, 429 U.S. 624, 627 (1977) (per curiam) (holding that if a hearing "mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute"); *Conoco Inc. v. FERC*, 90 F.3d 536, 543 n.15 (D.C.Cir.1996) (concluding that the APA requires agencies "to hold hearings only when the disputed issues may not be resolved through an examination of written submissions").

WW admits it actively lobbied the BLM for the cancellation of WillSource's leases. See ECF 12 at 2-3 ("During the NEPA proceedings, Wilderness Workshop consistently advocated for the cancellation of WillSource's leases and other leases that were improperly issued."). WW further admits it "worked for years to ensure that these specific leases . . . properly expire" by "enag[ing] with [BLM] staff, including State Director Review proceedings." ECF No. 12 at 2.

The BLM's affirmative misconduct began in approximately September 2009, when WillSource met with BLM staff to discuss another drilling extension and not a single person at the meeting gave WillSource any indication that another extension would be denied. See BLM001128 ¶ 20. In the December 14, 2009 letter denying

WillSource's extension request, the BLM erroneously stated that WillSource had been told in the September 2009 meeting that an extension would be inappropriate.

BLM000276. The denial letter also explicitly promised WillSource, "[y]ou will be notified when we have finished processing the [paying well determination and participating area] applications as to the status of the Willow Creek Unit and leases within the Unit."

BLM000276.

The record demonstrates that WW and other groups were pressuring the BLM to deny WillSource any further extensions during this time frame. See BLM000244–246 (November 8, 2009 letter from WW to BLM). The BLM's own records show that it knew a contraction had occurred in September 2010 and June 2011. BLM000299 (BLM internal clearance sheet); BLM000329 (BLM employee internal email). The BLM, however, did not inform WillSource that the Challenged Leases had contracted until June 22, 2012. BLM000377; BLM000380. On June 8, 2012, WW and others again formally pressured the BLM to cancel WillSource's leases. BLM000359–370.

In light of the multitude of red flags in the record regarding the BLM's conduct, the IBLA should have referred the case for an evidentiary hearing to ensure basic fairness and due process. *Cf. Noble Energy, Inc. v. Salazar*, 691 F. Supp. 2d 14, 23 (D.D.C. 2010) ("Therefore, by referring the case to an unbiased ALJ for an independent evidentiary hearing, the IBLA severed whatever nexus existed between the improper political pressure and the agency's final decision to exclude the leases.").

CONCLUSION

For all these reasons, this Court should set aside the IBLA's decisions, or, at a minimum, order an evidentiary hearing on remand to satisfy due process.

DATED this 2nd day of October 2018.

Respectfully submitted,

/s/ Christian B. Corrigan

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 2018, I electronically filed the foregoing with the Clerk of Court using this Court's CM/ECF system, which will cause the following counsel of record to be notified:

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