

RETURN RECEIPT REQUESTED

AUG 30 1991

SDR-922-91-13  
3165.3 (922.H)

CERTIFIED-RETURN RECEIPT REQUESTED

DECISION

Jack Tuholske  
Attorney at Law  
P.O. Box 7458  
Missoula, Montana 59807

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)  
)

SDR No. 922-91-13

REVERSED

Mr. Tuholske, attorney representing the Pikuni Traditionalists Association, a Montana non-profit corporation, and George G. Kipp, and Buster Yellow Kidney, individuals (Appellants) filed a Notice of Appeal with the Interior Board of Land Appeals (IBLA), of the Great Falls Resource Area (GFRA) Manager's decision approving the Fina Oil and Chemical Company (Fina) application for permit to drill (APD). In reviewing the Notice of Appeal, the Appellants filed the appeal pursuant to 43 CFR 3165.3. The regulations specify that any adversely affected party that contests a decision of the authorized officer issued under the regulations in this part, may request an administrative review before the State Director (SD). Any party who is adversely affected by the SD's decision may appeal that decision to the IBLA as provided in 43 CFR 3165.4 of this part. Because the administrative review before the SD is required prior to a hearing by the IBLA, this office considered the Notice of Appeal filed with the IBLA as a request for a State Director Review (SDR). The request was dated April 23, 1991, and was timely received by this office on April 24, 1991.

On April 30, 1991, this office dismissed the SDR because the request did not specifically address any issues related to the Drilling or Hydrogen Sulfide Contingency Plan (Enclosure 1).

In a request dated May 29, 1991, Appellants filed an appeal with the Interior Board of Land Appeals (IBLA) over the April 30, 1991, SDR decision.

On July 18, 1991, Counsel for the BLM requested the case be remanded to the BLM for further review (Enclosure 2). On July 31, 1991, the BLM notified Fina that the decision to approve the APD was stayed until further notice (Enclosure 3). The IBLA approved the BLM request for remand on August 5, 1991 (Enclosure 4).

We have determined that your appeal to the SD dated April 23, 1991, and the May 29, 1991, appeal to the IBLA needs to be addressed by the GFRA.

Therefore, we are reversing the Area Manager's (AM) record of decision (ROD) which approved the Fina APD. The APD has been rescinded. We are directing the AM to conduct an independent review of the surface-related issues in the EIS. If this independent review concludes that the surface resources in the EIS have been adequately addressed, the AM will issue a new BLM ROD. This ROD would then be appealable for up to 20 business days to the SD.

/s/ Thomas P. Lonnie

Thomas P. Lonnie

4 Enclosures

- 1-SDR decision dated April 30, 1991 (2 pp)
- 2-Request for remand dated July 18, 1991 (2 pp)
- 3-Letter to Fina dated July 31, 1991 (1 p)
- 4-IBLA approval of remand request dated August 5, 1991 (3 pp)

cc: (w/o encls.)

Mr. John W. Mamma, U.S. Forest Service, P.O. Box 7669, Missoula,  
Montana 59807  
DM, Lewistown

cc: (w/encls.)

AM, GFRA  
Regional Solicitor

bc: (w/o encls.)

Mr. Keith Sandifer, U.S. Forest Service, P.O. Box 869, Great Falls,  
Montana 59403

WO(610), PRE Rm. 601

DM, Dickinson

DM, Miles City

MSO (922)

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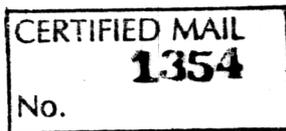
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APR 30 1991



RETURN RECEIPT REQUESTED

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Mr. Jack R. Tuholske	)	
Attorney at Law	)	SDR No. 922-91-13
P.O. Box 7458	)	
Missoula, Montana 59807	)	

DISMISSED

Mr. Jack Tuholske, attorney representing the Pikuni Traditionalists Association, a Montana non-profit corporation, and George G. Kipp, and Buster Yellow Kidney, individuals (Appellants) have filed a Notice of Appeal with the Interior Board of Land Appeals (IBLA). In reviewing the Notice of Appeal, the appellants filed the appeal pursuant to 43 CFR 3165.3. The regulations specify that any adversely affected party that contest a decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director. Any party who is adversely affected by the State Director's decision may appeal that decision to the IBLA as provided in 43 CFR 3165.4 of this part. Because the administrative review before the State Director is required prior to a hearing by the IBLA, this office hereby considers the Notice of Appeal filed with the IBLA as a request for a State Director Review (SDR).

The Appellants have requested an SDR on the Record of Decision (ROD) issued February 19, 1991, on the Fina Oil and Chemical Company (Fina) Federal South Glacier No. 1-26 well and the Final Environmental Impact Statement (FEIS) for proposed oil and gas drilling near Badger Creek and Hall Creek in the Badger-Two Medicine area of the Lewis and Clark National Forest in Montana. This appeal has also been filed with the U.S. Forest Service, Region 1, Missoula, Montana. The request was dated April 23, 1991, and was timely received by this office on April 24, 1991 (Enclosure 1).

The Appellants have also requested a stay of any activities pursuant to this decision including but not limited to, any and all ground disturbing activities or motorized use in any way connected with the proposed action until this appeal is decided.

The Area Manager of the Great Falls Resource Area (GFRA) approved the Fina application for permit to drill (APD) on March 8, 1991. The site for the proposed Federal South Glacier No. 1-26 well is located in the SE~~NE~~ Section 26, T. 30 N., R. 13 W., PMM, Glacier County, Montana. The FEIS was prepared to assess the probable environmental impacts of drilling this well and the Chevron well, located in the SW~~NE~~ of Section 35, T. 29 N., R.12 W., PMM, Pondera County, Montana, which is approximately 10 miles to the southeast. The FEIS was completed in November 27, 1990, and the ROD on the Fina well was issued February 19, 1991.

A review of the Statements of Reasons indicate that there are no issues which can be specifically addressed by the Bureau of Land Management (BLM) in this SDR request. As stated in the ROD, Part XI, Appeal Procedures, Page 25, the decisions made by the BLM related to the approval of the Drilling Plan and the Hydrogen Sulfide Contingency Plan are appealable to the State Director, Montana State Office, pursuant to 43 CFR 3165.3.

Because the SDR request does not specifically address any issues related to the Drilling Plan and the Hydrogen Sulfide Contingency Plan, we hereby dismiss the SDR request filed by the Appellants. Also, your request for a stay and remand of the ROD, FEIS, and APD are denied.

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the enclosed Form 1842-1 (Enclosure 2). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the decision appealed from is in error.

/s/ George D. Mowat  
George D. Mowat  
Acting Deputy State Director  
Division of Mineral Resources

2 Enclosures

- 1-Appellants Appeal dated April 23, 1991 (76 pp)
- 2-Form 1842-1 (1 p)

cc: (w/o encls.)

Mr. John W. Mumma, U. S. Forest Service, Region 1, P.O. Box 7669  
Missoula, Montana 59807  
DM, Lewistown  
AM, GFRA