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## Solenex LLC v. Jewell

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***Solenex LLC v. Jewell*, No. 13-0993, \_\_\_ F. Supp. 3d \_\_\_, 2018 U.S.  
Dist. LEXIS 163296 (D.D.C. Sept. 24, 2018)**

**F. Aaron Rains**

In *Solenex LLC v. Jewell*, the Secretary of the Interior cancelled a highly contentious oil and gas lease in Montana’s Badger-Two Medicine area, an environmentally sensitive and culturally significant area to the Blackfoot Tribe, nearly thirty years after the lease had been issued. Solenex, a Louisiana based oil and gas company and holder of the lease, brought this action to enjoin the cancellation. The District Court for the District of Columbia agreed with Solenex and found that the Secretary’s decision took an unreasonable amount of time and violated good-faith contractual obligations. On these grounds, the court found the Secretary’s decision arbitrary and capricious and reinstated the lease.

I. INTRODUCTION

In *Solenex LLC v. Jewell*, Solenex sought declaratory and injunctive relief under the Administrative Procedure Act (“APA”) against the Secretary of the Department of the Interior (“the Secretary”), the Secretary of Agriculture, the Bureau of Land Management (“BLM”), the Chief of the Forest Service, and other federal agencies, to enjoin the cancellation of their oil and gas lease.<sup>1</sup> Solenex alleged the Secretary exceeded her authority because cancellation of the lease was: (1) arbitrary and capricious; (2) barred by a statute of limitations; (3) should be estopped by the agency’s longstanding treatment of the lease as valid; and (4) the lease was issued in compliance with the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”).<sup>2</sup> The court agreed with Solenex and found the Secretary’s decision was arbitrary and capricious due to the unreasonable amount of time it took to cancel the lease.<sup>3</sup> Therefore, the court granted Solenex’s motion for summary judgment, denied the Secretary’s cross-motion, and effectively reinstated the lease.<sup>4</sup>

II. FACTUAL AND PROCEDURAL BACKGROUND

In May of 1982, the BLM granted “Lease M-53323” to Solenex’s forbearer, Sidney M. Longwell.<sup>5</sup> The BLM and the United States Forest Service (“Forest Service”) issued the lease after conducting an environmental assessment (“1981 EA”) that covered approximately 200

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1. *Solenex LLC v. Jewell*, No. 13-0993, \_\_\_ F. Supp. 3d \_\_\_, 2018 U.S. Dist. LEXIS 163296, (D.D.C. Sept. 24, 2018).

2. *Id.* at \*3-4.

3. *Id.*

4. *Id.* at \*3.

5. *Id.* at \*8.

oil and gas leases in the Badger-Two Medicine.<sup>6</sup> The 1981 EA considered the environmental impacts of issuing the lease and the potential impacts of several proposed alternatives to outright lease issuance.<sup>7</sup> During this time, the Forest Service also consulted with members of the Blackfeet Nation (the “Tribe”) about the proposed leases, as required by the American Indian Religious Freedom Act.<sup>8</sup> Upon completion of the 1981 EA, the Forest Service issued a Decision Notice stating that the 1981 EA resulted in a Finding of No Significant Impact and that “Alternative 3” had been selected.<sup>9</sup> Alternative 3 “conditionally granted leases with surface occupancy. . . only for accessible areas that could be protected and provided that after lease issuance, any proposed oil and gas activities would be fully analyzed under NEPA.”<sup>10</sup>

In 1983, Longwell assigned his lease to Fina, Inc., and in late 1983 Fina applied for a permit to drill (“APD”).<sup>11</sup> In response, the Forest Service conducted another EA (“1985 EA”) specifically examining potential impacts of the APD.<sup>12</sup> The 1985 EA “expressly incorporated” the findings from the 1981 EA, which had previously resulted in the issuance of the lease itself, and included consultation with other agencies and the Tribe as mandated by NEPA and the NHPA.<sup>13</sup> Based on the 1985 EA, the Forest Service approved Fina’s APD, again finding no significant cultural or environmental impacts would result and specifically that the Tribe’s reserved rights in the Badger-Two Medicine would not be impeded.<sup>14</sup> This decision was appealed to the Interior Board of Land Appeals (“the Board”) based on perceived inadequate tribal consultation, but the Board upheld the approval of the APD and remanded the consultation issue to the agency for further consideration.<sup>15</sup> Despite the approval of the APD, the BLM suspended the lease for further assessment.<sup>16</sup> This suspension continued for the next twenty years.<sup>17</sup>

In 2013, Solenex, now holder of the original Longwell lease, filed suit against the Secretary alleging administrative violations of the APA related to the suspension of their oil and gas lease.<sup>18</sup> The District Court for the District of Columbia partially granted Solenex’s motion for summary judgment and ordered the Secretary to produce an accelerated schedule of

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5. *Id.*

7. *Id.*

8. *Id.* \*8-9.

9. *Id.* at \*9.

10. *Id.* (citing Statement of Material Facts in Support of Pls.’ Mot. for Summary Judgment).

11. *Id.* Fina submitted an Application for a Permit to Drill (APD).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at \*10.

16. *Id.*

17. *Id.*

18. *Id.*

administrative tasks aimed at resolving the ongoing suspension issue.<sup>19</sup> The Secretary timely produced the schedule but the court found the schedule deficient and consequently rejected it.<sup>20</sup> Following the court's rejection of the proposed schedule, the Secretary notified the court that it intended to terminate the Solenex lease and had initiated the lease cancellation process.<sup>21</sup>

In March of 2016, the Secretary issued a Notice of Cancellation finalizing the termination of the Solenex lease, amongst several others in the Badger-Two Medicine, concluding the leases were issued despite agency violations of NEPA and the NHPA that had occurred during the 1981 and 1985 EAs.<sup>22</sup> In response, Solenex brought this action challenging the cancellation.<sup>23</sup>

### III. ANALYSIS

The court found that the Secretary's cancellation of the Solenex lease was arbitrary and capricious and thus a violation of the APA.<sup>24</sup> The cancellation constituted a 'final agency action' as defined by the APA;<sup>25</sup> therefore, in order to determine if summary judgment was warranted, the court reviewed whether the Secretary acted "within the scope of [her] legal authority, explained [her] decision, 'relied on record-based facts', and considered relevant factors."<sup>26</sup>

The parties' initial disagreement hinged on whether the Secretary had the administrative authority to cancel oil and gas leases.<sup>27</sup> However, the court did not review the Secretary's authority because it found that the case turned instead on its "unique facts."<sup>28</sup> The court found the Secretary's failure to consider Solenex's contractual reliance interest when deciding to cancel the lease after nearly thirty years was arbitrary and capricious, and "an abuse of discretion, or otherwise not in accordance with law."<sup>29</sup>

The court examined whether the decision was "reasonable or reasonably explained."<sup>30</sup> The primary factor in the court's analysis and holding was the nearly thirty years that had elapsed between the issuance

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19. *Id.* at \*10-11.

20. *Id.* at \*11.

21. *Id.*

22. *Id.* at \*12.

23. *Id.*

24. *Id.* at \*21.

25. *Id.* at \*12.

26. *Id.* (citing *Fund for Animals v. Babbitt*, 903 F. Supp. 96, 105 (D.D.C. 1995)).

27. *Id.* at \*13-14.

28. *Id.* at \*15.

29. *Id.* (citing 5 U.S.C. § 706(2)(A); *Rempfer v. Sharfstein*, 583 F.3d 860, 865, 388 U.S. App. D.C. 226 (D.C. Cir. 2009)).

30. *Id.* at \*16 (citing *Ams. for Clean Energy v. EPA*, 864 F.3d 691, 726 (D.C. Cir. 2017)).

of the lease and its cancellation.<sup>31</sup> Stating that the Secretary's last-minute decision to cancel was owed "no great degree of deference," the court held that thirty years was an unreasonable amount of time to correct the agency's NEPA and NHPA violations, and thus the cancellation violated the APA.<sup>32</sup>

The court made this determination by relying in part on the legal theory of contract reliance interests and the reconsideration of prior agency decisions.<sup>33</sup> That is, if an agency grants a party certain interests, any agency reconsideration of that decision "must be timely."<sup>34</sup> The court found the thirty years the agency spent trying to determine the lawfulness of their own actions "[wreaked] havoc on the interests of individual leaseholders"<sup>35</sup> and strongly dismissed the Secretary's argument that no time period is too long in light of "new legal theories."<sup>36</sup> Therefore, the Secretary's failure to consider Solenex's reliance interest in the lease was deemed "an arbitrary and capricious agency action."<sup>37</sup>

Next, the court held that the Secretary's failure to give cancellation notice to Solenex violated "basic contractual principles" which the federal government is obliged to honor when it executes an oil and gas lease with a private party pursuant to the Mineral Leasing Act of 1920 ("MLA").<sup>38</sup> Specifically, the court found that the Secretary's failure to provide notice of cancellation to Solenex violated its contractual duty to act in "good faith."<sup>39</sup>

Solenex's additional arguments, which included equitable estoppel and a statute of limitations claim, were not addressed by the court.<sup>40</sup> Additionally, the court did not find it necessary to determine whether Solenex was a bona fide purchaser as required for "protection purposes" pursuant to the MLA, because these arguments were precluded by the Court's finding that the cancellation was a violation of the APA.<sup>41</sup>

#### IV. CONCLUSION

It is probable that Solenex relied on the validity of the original issuance when acquiring the lease, but it is not apparent if the Court analyzed the magnitude of the financial or resource-based detriment caused by Solenex's reliance on the lease. Further, the court declined to address the very sensitive cultural and ecological concerns that were the

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31. *Id.*

32. *Id.* at \*17 (citing *Texas Oil and Gas Corp. v. Watt*, 683 F.2d 427, 431, 221 U.S. App. D.C. 108 (D.C. Cir. 1982)).

33. *Id.* at \*18.

34. *Id.* at \*18-19.

35. *Id.*

36. *Id.* at \*19-20.

37. *Id.* at \*20.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at \*21.

underpinning of the initial lease suspension and led in part to the Secretary's decision to cancel the lease.

This ruling is a drawback to the protections provided by NEPA and the NHPA and has diminished the Secretary's ability to cancel oil and gas leases issued despite agency error, including any error made by his or her predecessor.

Following the court's reasoning, agency violations of NEPA and the NHPA impliedly have an expiration date and the amount of time the Secretary takes to reconsider oil and gas leases issued in violation of those statutes will be viewed through an arguably arbitrary lens of reasonableness.