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Solenex LLC v. Bernhardt—Secretary of the Interior did not act arbitrarily or capriciously when it terminated oil and gas lease in the Badger-Two Medicine Area

The Department of the Interior entered into a lease with Sidney Longwell to extract oil and gas from the Badger-Two Medicine Area in 1982. Bounded by Glacier National Park, two wilderness areas and the Blackfeet Indian Reservation, the Two Medicine Area "offers relative isolation and a supply of high-quality plants, animals, and minerals, all of which are central to the Blackfeet people's religious, spiritual, and cultural practices" and "functions as a habitat for a number of species, including bald eagles, peregrine falcons, grizzly bears, elk, wolves, lynx, and wolverines, and it serves as a 'critical wildlife movement corridor[.]'" The lease was conditioned on the lessee's "obtain[ing] permission from the Bureau [of Land Management] and the [United States] Forest Service before drilling could occur." It also was subject to present and future Interior regulations "'not inconsistent with any express and specific terms herein[.]'" A series of lease transfers led to Solenex LLC, an entity controlled by Longwell, reacquiring it in 2004. During that period and through today, a series of administrative proceedings and a lawsuit by the Blackfeet Tribe occurred during which drilling was suspended and the lease period tolled. The lawsuit, filed in 1993, was stayed pending possible Congressional action that would have been surface-disturbing activity in the Two Medicine Area. The Forest Service subsequently designated land as the Badger-Two Medicine Blackfeet Traditional Cultural District, which included the leased property, eligible for listing on the National Register of Historic Places given its traditional use by the Tribe. Congress withdrew the Two Medicine Area in 2006 "from 'disposition under all laws relating to mineral ... leasing,' subject to valid existing rights." Tax Relief and Health Care Act, Pub. L. No. 109-432, div. C, § 403(b)(1)(B), 120 Stat. 2922, 3050–3051 (2006).

In 2013, Solenex sued the federal defendants alleging that they "unreasonably delayed and withheld permission for drilling." The district court agreed with Solenex and ordered the agencies to file "a schedule for resolution of the Lease's suspension." *Solenex LLC v. Jewell*, 156 F. Supp. 3d 83 (D.D.C. 2015). The Secretary of the Interior eventually informed the court that lease "cancellation was necessary because drilling would violate both [the National Environmental Policy Act] and the Historic Preservation Act." After the cancellation, Solenex filed a supplemental complaint alleging that "the Secretary lacked the legal authority to cancel the Lease; Solenex was protected as a *bona fide* purchaser; and the cancellation decision was arbitrary and capricious. Solenex also argued that the decision was barred by estoppel, laches, and the statute of limitations." The district court granted the lessee's summary judgment motion, pointing to the case's "'unique'" facts and holding that "'[e]ven assuming the authority to administratively cancel leases," the Secretary's 'failure to consider the reliance interests at stake in cancelling [the Lease] and the accompanying [drilling application approval] after three decades' violated the [Administrative Procedure Act]." *Solenex LLC v. Jewell*, 334 F. Supp. 3d 174 (D.D.C. 2018).

The D.C. Circuit reversed. *Solenex LLC v. Bernhardt*, No. 18-5343, 2020 WL 3244004 (D.C. Cir. June 16, 2020). The panel reasoned that while "[t]he district court rested its summary judgment decision in significant part on what it concluded was undue delay in the decision to cancel the Lease[,] ... the law is well settled that '[d]elay alone is not enough' to strip the agency of its ability to act or to justify setting aside agency action." Instead, "[w]hat matters for the arbitrary-and-capricious analysis are the identified consequences or harms that flow from the agency delay."

Here, neither the district court nor Solenex identified "any actual adverse consequences arising from the delay itself." Their failure was "unsurprising because the Secretary kept the running of the Lease term suspended during each round of administrative and judicial review and tolled the leaseholders' obligation to pay rents and royalties to the agency." Recapitulating the "backdrop of administrative, judicial, and legislative proceedings and without any valid drilling permit in place"—all of which Longwell was aware when Solenex acquired the lease—the panel stated that

> from the Lease's inception, the various leaseholders, including Solenex, were aware that the NEPA and Historic Preservation Act analyses would be necessary prior to any surface-disturbing activity and that drilling permits were not guaranteed. The Secretary's painstaking efforts to ensure that the agency's statutory duties were met distinguishes this case from a long period of unexplained agency inaction. A failure to cancel the Lease earlier in the process, with less information, could not have been the sounder or legally compelled course of action.

The panel concluded by rejecting any claim that the Secretary failed to consider Solenex's reliance interests, finding that they were "specifically considered and addressed by [him]" and that the Secretary "even offered to refund to Solenex the rent paid by Solenex's predecessors in the amount of $31,235, which approximates the 'estimate' provided by Longwell to the district court." Indeed, "Solenex itself—the only party suing here—incurred no expenses at all in developing the Lease. Solenex did not even acquire the Lease until July 2004, and it claims no financial investment of its own in the Lease." The panel added that "Congress too offered relief in the form of tax incentives for those affected by its legislative prohibition on drilling and mineral development in the area." It noted, finally, "that an agency decision to cancel a lease does not preclude the owner from raising breach of contract claims in the Court of Federal Claims."

Decision link:
https://www.cadc.uscourts.gov/internet/opinions.nsf/0C0288C455EF509885258589005370CD/$file/18-5343-1847366.pdf