

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**SILVER STATE LAND LLC, c/o 10001 Park Run
Drive Las Vegas, NV 89145,**

Plaintiff,

v.

**TOMMY P. BEAUDREAU, in his official capacity
as Acting Assistant Secretary, Land and Minerals
Management, U.S. Department of the Interior,
1849 C Street, N.W. Washington, DC 20240,**

**NEIL KORNZE, in his official capacity as
Principal Deputy Director, BUREAU OF LAND
MANAGEMENT, U.S. Department of the Interior,
1849 C Street, N.W., Washington, DC 20240,**

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This case involves the sale of a tract of public land within the City of Henderson, Nevada that has not been completed because of the illegal acts of the Defendants. Plaintiff Silver State Land LLC (“Silver State”) entered into a contract with the Bureau of Land Management (“BLM”) to purchase a 480-acre parcel of public land. On May 10, 2013, three days prior to the designated closing date for the sale, the Acting Assistant Secretary, Land and Minerals Management, issued a Decision Memorandum withdrawing the sale. As a result, the Bureau of Land Management did not deliver to Silver State the patent to the land as required by the purchase agreement and the BLM regulations. This action seeks: (1) to set aside the determination of the Assistant Secretary to withdraw the sale of the land; and (2) to allow the sale to proceed as required by law.

JURISDICTION

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331, 2201, 2202, and 5 U.S.C. §§ 702, 706.
3. Venue lies in this district under 28 U.S.C. § 1391(b) and (e)(2). A substantial portion of the events or omissions giving rise to the claims stated herein occurred in this district.
4. The United States waived sovereign immunity from suit under 5 U.S.C. § 702. There is an actual controversy between the parties that invokes the jurisdiction of this Court regarding decisions by, and actions of, the Defendants that are subject to judicial review. There has been a final agency action that is reviewable by this Court. 5 U.S.C. § 704; 25 C.F.R. §§ 2.6(c), 151.12(b).

PARTIES

5. Plaintiff Silver State Land LLC is a Delaware limited liability company (Silver State) and is the purchaser of the tract of public land at issue in this matter.
6. Defendant Tommy Beaudreau is the Acting Assistant Secretary, Land and Minerals Management, and is sued in his official capacity.
7. Defendant Neil Kornze is the Principal Deputy Director of the Bureau of Land Management (BLM), an administrative agency within the Department of the Interior, charged with management of the public lands of the United States, and is sued in his official capacity.

FACTUAL ALLEGATIONS

8. On September 7, 2011, the City of Henderson, Nevada (“Henderson”) nominated for sale, pursuant to Southern Nevada Public Land Management Act (“SNPLMA”), an approximately 480-acre parcel of public land (the Land) in southern Nevada under the

administration of the BLM. Henderson requested that the BLM convey the nominated parcel by direct sale to Las Vegas National Sports Center LLC (“LVNSC”).

Henderson justified its request for a direct sale by citing its desire to avoid speculative bidding and open competition with respect to the acquisition of the Land. Silver State was substituted as the sale nominee early in 2012 with the consent of both Henderson and the BLM. Both LVNSC and Silver State are wholly owned by Las Vegas National Sports Center (Holding) LLC. Under the Development Agreement, LVNSC would develop a regional mixed use project including professional sports venues on the Land.

9. On October 4, 2011, the BLM notified Henderson that the Project did not rise to the level of a “public project” required by the BLM regulations to support a direct sale, but that a modified competitive bid process was appropriate.
10. On April 4, 2012, the BLM published a Notice of Realty Action (“NORA”) authorizing a modified competitive bidding process and setting June 4, 2012 as the date for the sale. Henderson identified Silver State as the “designated bidder,” thereby allowing Silver State to match the high bid.
11. On June 4, 2012, Silver State submitted a sealed bid in the amount of \$10,560,000 to the BLM for the purchase of the Land. As required by the terms of the sale, Silver State also included certified checks totaling \$2,132,000. No other bids were submitted, and Silver State offered the fair market value as previously determined by the BLM under an appraisal prepared by a third party and reviewed and approved by the Office of Valuation Services, U.S. Department of the Interior (appraised value \$10,560,000.00).
12. On June 12, 2012, the BLM confirmed that Silver State was the successful bidder for the Land.

13. On August 16, 2012, the BLM and Silver State entered into Escrow Instructions related to the sale of the Land. Specifically, the BLM required Silver State to deposit with Nevada Title \$8,428,000 on or before December 3, 2012. Under the Escrow Instructions, the BLM was obligated to issue the patent for the Land within 30 days of the deposit by Silver State.
14. On November 28, 2012, Silver State, as required by the Escrow Instructions, paid the remaining purchase price balance (\$8,428,000) into escrow. With this payment Silver State had performed all the requirements to complete the purchase of the Land from the BLM, thereby requiring the BLM to issue the patent for the Land within 30 days.
15. Also on November 28, 2012, LVNSC, an affiliate of Silver State, terminated the Development Agreement (the "Development Agreement") with Henderson. Both Henderson and LVNSC had reciprocal and unilateral rights to terminate the Development Agreement if either party believed the terms of the Development Agreement made the project non-viable. The termination of the Development Agreement affected the potential issuance by Henderson of revenue bonds for the project but it did not affect the zoning of the Land. The Land was then and remains now zoned to be used for the development of a mixed use project with sports venues and that designation cannot be changed by any party other than Henderson.
16. On November 29, 2012, Henderson sent a letter to the BLM asking the BLM to postpone issuance of the patent to Silver State.
17. On December 2, 2012, to facilitate discussions between Henderson and Silver State, the BLM and Silver State agreed to extend the escrow closing date until the first week of February 2013.

18. On January 28, 2013, Henderson filed suit in Nevada state court against Silver State and other parties alleging fraud related claims and contract claims. Silver State denied the allegations.
19. Based on the pending state court litigation, Silver State and the BLM agreed to a second escrow extension until March 29, 2013.
20. On March 5, 2013, only four weeks after the initial filing of Henderson's suit, the Nevada state court granted Silver State's motion to dismiss all the non-contract claims, as the state court determined there was no evidence whatsoever of fraud, and that those claims were completely unjustified.
21. On March 14, 2013, Henderson and Silver State fully and completely settled the state court litigation. Henderson provided the Solicitor's Office of the Department of the Interior with a copy of the settlement agreement. In it, both parties agreed that the settlement agreement was not to be considered an admission or acknowledgment as to liability or damages related to claims by either party.
22. On April 5 2013, Henderson sent a letter to the BLM stating that Henderson no longer opposed the issuance of a patent to Silver State. Because the settlement agreement required time to implement, Silver State and the BLM agreed to a third escrow extension to May 13, 2013.
23. On May 9, 2013, the BLM's Nevada State Office sent a draft patent to Silver State for its review.
24. On May 10, 2013, three days before the last date to close under the escrow agreement, the Defendant, Tommy Beaudreau, Acting Assistant Secretary for Lands and Minerals Management, issued a Decision Memorandum that purported to take jurisdiction over the matter identified as "Termination of Patent Issuance to Silver State Land LLC, for

Land Nominated for Sale by the City of Henderson, Nevada for Arena Development Project."

25. The Decision Memorandum directs the BLM to: (i) not issue the patent to Silver State; (ii) terminate the sale process; and (iii) take the steps necessary to return the purchase deposit and bid guarantee to Silver State, as expeditiously as practicable.
26. The Decision Memorandum cites no authority for the ability to terminate the sale process. It purports to approve a BLM recommendation relating to the matter. Despite Silver State's requests on May 10, 11, 12 and 13, 2013, for a copy of the BLM recommendation upon which the Defendant Tommy Beaudreau relied, the recommendation was not provided until May 13, 2013, at 5:08 PM.
27. On May 13, 2013, the BLM failed to deliver the patent as required by law.

FIRST CLAIM FOR RELIEF

The Assistant Secretary's Authority to Withdraw the Sale Expired Thirty Days After the BLM Accepted the Offer to Purchase and his Decision is Therefore in Violation of the FLPMA and the APA

28. The paragraphs set forth above are realleged and incorporated herein by reference.
29. Section 203(g) of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1713(g), allows the Secretary to withdraw a sale only within a certain statutorily prescribed timeline and only for certain reasons.
30. Section 203(g) provides that "the Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding . . . no later than thirty days after the receipt of such offer. . . . Prior to the expiration of such [30-day] period [] the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law."

31. The BLM land sale regulations implementing Section 203(g) contain the same 30-day limitation as the statute relating to withdrawal of land from sale and provide additionally that "[p]rior to the expiration of such [30-day]period[] the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that: (1) Consummation of the sale would be inconsistent with the provisions of any existing law; or (2) Collusive or other activities have hindered or restrained free and open bidding; or (3) Consummation of the sale would encourage or promote speculation in public lands." 43 CFR § 2711.3-1(f).
32. The BLM's authority to withdraw any tract from sale is limited by both statute and regulation to 30 days after receipt of the purchaser's offer. The sale here occurred on June 4, 2012, when the BLM declared Silver State to be the purchaser as the high bidder. Thus, the 30-day sale withdrawal authority expired on July 3, 2012.
33. Consequently, the Acting Assistant Secretary, exercising the BLM's authority by virtue of 43 CFR § 4.5(a), which reserves to the Secretary "[t]he authority to take jurisdiction at any stage of any case before any employee or employees of the Department . . .," was without authority on May 10, 2013, to withdraw the tract from sale.
34. The decision of the Assistant Secretary to withdraw the sale, as alleged herein, is injuring Plaintiffs in the manner described above, and is subject to judicial review under 5 U.S.C. § 706; and the decision to withdraw the sale must be reversed, set aside, and remanded under these laws and the APA, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law.

SECOND CLAIM FOR RELIEF

The Assistant Secretary's Decision is not Based on the Relevant Factors Set Forth in the BLM's Regulations

35. The paragraphs set forth above are realleged and incorporated by reference.

36. Even assuming authority to withdraw the sale (which there is none), the BLM regulations at 43 CFR § 2711.3-1(f)(1)-(3) establish the limited basis for withdrawing a tract. The Assistant Secretary's decision does not address any of these.
37. The BLM letter accompanying the Assistant Secretary's decision states: "This decision was based on the serious questions that arose subsequent to the BLM's acceptance of Silver State's purchase offer regarding the validity and veracity of the sports arena development agreement" Yet BLM cites no findings regarding legal inconsistency, collusion or encouragement of speculation upon which the decision to withdraw was made.
38. Moreover, no such claims were made against Silver State by anyone, including Henderson, the BLM, the Department of the Interior, some other interested purchaser, or otherwise until the termination of the Development Agreement nearly half a year after the auction. Further, the dispute that arose between Silver State and Henderson was mostly disposed of by the state court that found no basis for it, and was shortly thereafter fully settled in less than 90 days and related to local land use matters, not the conduct of the sale. Immediately upon reaching a settlement, Henderson delivered a letter to the BLM indicating the disagreement had been settled and that it supported issuance of the patent to Silver State.
39. The BLM specifically states in the NORA that the land is being sold without any guarantee of use and it has consistently taken the policy position that it does not become involved in local land use matters, those being the domain of local units of government. No attempt to explain the BLM's departure from this policy for this land sale is in the administrative record.
40. The decision of the Assistant Secretary to withdraw the sale, as alleged herein, is injuring Plaintiffs in the manner described above, and is subject to judicial review

under 5 U.S.C. § 706; and the decision to withdraw the sale must be reversed, set aside, and remanded under these laws and the APA, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law.

THIRD CLAIM FOR RELIEF

The BLM's Failure to Deliver the Patent is the Unlawful Withholding of a Mandatory Duty Owed to Plaintiff

41. The paragraphs set forth above are realleged and incorporated by reference.
42. As established in paragraphs 30 and 31 of this complaint, the Assistant Secretary and the BLM have 30-days to withdraw a sale, and if a sale is not withdrawn within this time frame, the BLM is obligated by law to issue a patent.
43. As a result of the Assistant Secretary's illegal decision, the BLM did not deliver the patent to Silver State on May 13, 2013, in violation of law.
44. The BLM's violation of law in failing to comply with Section 203 of FLPMA and its implementing regulations, as alleged herein, is injuring the Plaintiff in the manner described above and is subject to judicial review under 5 U.S.C. § 706; and a judicial order under 5 U.S.C. § 706(1) to comply with its legal obligations.

FOURTH CLAIM FOR RELIEF

The Assistant Secretary's Decision Authorizing the BLM to Reoffer the Land is Unlawful and Violates Plaintiff's Legal Rights

45. The paragraphs set forth above are realleged and incorporated by reference.
46. The Assistant Secretary's decision states that it does not preclude the BLM from reoffering the tract for sale. Given that there is no legal basis for withdrawing the sale with Silver State, the decision to reoffer the Land to another is arbitrary and capricious.
47. The decision of the Assistant Secretary to reoffer the Land for sale, as alleged herein, is injuring Plaintiff in the manner described above, and is subject to judicial review

under 5 U.S.C. § 706; and the decision to reoffer the Land must be reversed, set aside, and remanded under these laws and the APA, as being arbitrary, capricious, an abuse of discretion, and/or contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. That the Court declare that the Assistant Secretary's decision to withdraw the subject tract from sale was beyond his authority under Section 203 of FLPMA and set it aside;

B. That the Court declare that the Assistant Secretary acted in an arbitrary and capricious fashion by unilaterally cancelling a completed sale and by causing the BLM to default on its mandatory duties to Plaintiff without any evidence to support the finding that the sale was the result of unlawfulness, collusion or encouragement of speculation;

C. That the Court immediately order the BLM to issue the patent to the subject land in accordance with the BLM regulations;

D. That the Court issue injunctive relief and any other orders necessary to prevent Defendants from reoffering the subject tract for sale;

F. That the Court enter judgment and an order awarding Plaintiff's costs and reasonable attorneys' fees under the Equal Access to Justice Act; and

G. That the Court award such other relief as it deems proper to effectuate the purposes of this action.

DATE: May 15, 2013

Respectfully submitted,

PERKINS COIE LLP

By: /s/ John F. Henault

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to counsel of record.

/s/ John F. Henault
John F. Henault, Bar No. 472590