

No. 24-6578

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DENIS RICHARD McDONOUGH, et al.,

Defendants-Appellants

On Appeal from the United States District Court
for the Central District of California

**APPELLEES-PLAINTIFFS' OPPOSITION to APPELLANT-
INTERVENOR BRIDGELAND RESOURCES LLC's OPENING BRIEF**

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INTRODUCTION

Plaintiffs argued at trial that a 2017 ten-year revocable license between the VA and Bridgeland Resources, LLC,¹ an oil company, does not “principally benefit” veterans as required under the West Los Angeles Leasing Act of 2016 (“WLALA”) and therefore should be held void and terminated. The license permits Bridgeland to slant-drill from a drill site located on the West Los Angeles VA Grounds (the “Grounds”) to private oil leases (not federal oil) bottom holed outside of the Grounds. In exchange for these drilling rights, Bridgeland agreed with the VA to donate 2.5 percent of the gross revenue from oil it extracts on the Grounds to the Los Angeles chapter of the Disabled American Veterans (“DAV-LA”). The rest of the gross revenues (97.5 percent) goes to Bridgeland for distribution to itself and its investors, its partner in the oil drilling enterprise, and private property owners on whose land the oil is found. The VA’s Office of Inspector General (“OIG”) twice found the license to violate WLALA. 2-SER-162; 2-SER-282.

The District Court reached the same determination as OIG. *Powers v. McDonough*, 2024 WL 4100866, at *41 (C.D. Cal. Sept. 6, 2024), *as amended* (Oct. 11, 2024). Finding that the 2.5 percent royalty to veterans “has hovered in the \$75,000-\$125,000 range,” while “[t]he remaining 97.5% of the royalties is split among the remaining interest

¹ Bridgeland Resources, LLC is the successor in interest to Breitburn Operating L.P., having acquired its properties in 2021.

owners,” it held that “[t]he principal purpose of the revocable license agreement is to slant-drill oil, not to benefit veterans and their families.” *Id.* at *55. This is because it is a “drilling license for an oil company that requires the company to make an almost insignificant donation to charity” while “retain[ing] the lion’s share of the money generated from its slant-drilling[.]” *Id.* at *37.

STATEMENT OF ISSUES

1. Does consideration in a land sharing agreement on the Grounds amounting to 2.5 percent of revenue grossed from oil drilling comply with WLALA’s mandate that all such land use agreements must “principally benefit” veterans and their families?

2. Having found Bridgeland’s revocable license illegal and void, did the District Court abuse its discretion in ordering Bridgeland to stop slant-drilling on the West LA Grounds?

STATUTORY PROVISIONS

Pertinent statutory provisions are reproduced in the addendum.

STATEMENT OF THE CASE

I. Factual Background

A. **Bridgeland’s Revocable License**

The District Court set out the background of the revocable license at pages 36–37 of its Post-Trial Opinion and page 55 of its Findings of Fact. *Powers*, 2024 WL 4100866, at *36–37, *55. Bridgeland does not contest the following facts.

Bridgeland holds several leases with private parties that permit it to extract oil from private property close to the Grounds. *Id.* at *37. Several decades ago, the VA entered into a revocable license agreement with Bridgeland’s predecessors-in-interest that permitted the company to slant-drill oil wells that pass through the subsurface of the Grounds to extract non-federal oil from the privately-owned land neighboring the Grounds. *Id.* In 2002, the oil company’s license permitting slant-drilling expired. *Id.* However, the slant-drilling continued for fifteen years from the drill site on VA property absent any authorization. This drill site on the Grounds occupies approximately three acres. *Id.*

In 2017, the VA discovered that unauthorized slant-drilling by Bridgeland’s processors had been taking place for over a decade. *Id.* The VA then “finally executed a new revocable license” that permitted the slant-drilling from a well on the VA grounds, referred to as the Sawtelle-2 well. *Id.* In return, Bridgeland agreed to “donate a 2.5 percent royalty on the proceeds that it generate[d] from slant-drilling to the Los Angeles Chapter of the Disabled American Veterans.” *Id.* DAV-LA would then use the royalties “solely for the purpose of providing transportation to veterans on and around the VA Greater Los Angeles Healthcare System Campus.” *Id.* Bridgeland claimed at trial that the 2.5 percent royalty is a “generous gift.” *Id.*

Bridgeland’s testimony at trial was that the royalty amounted to between about \$80,000 and \$115,000 annually. *Id.* As such, private parties gross close to 50 times more: greater than \$6 million per year. *Id.* In every year, the ratio between the share of the

gross revenue donated to veterans and the total gross revenue from Bridgeland's oil drilling was constant: .025 to 1.

B. WLALA and VA OIG Findings

In 2016, Congress enacted WLALA. Pub. L. 114–226 (Sept. 29, 2016). The statute authorizes the VA to enter into third-party leases “to provide services that principally benefit veterans and their families and that are limited to [purposes enumerated in the Act].” WLALA § 2(b)(2). Services that “principally benefit” veterans are those “provided exclusively to veterans and their families” or “that are designed for the particular needs of veterans and their families, as opposed to the general public,” and “excludes services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.” WLALA § 2(l). The allowable purposes for those services are: the promotion of health and wellness; education; vocational training, skills building, or other training related to employment, peer activities, socialization, or physical recreation, assistance with legal issues and Federal benefits, volunteerism, family support services, transportation, and services in support of one or more of the purposes specified. WLALA § 2(b)(2)(A)-(H).

VA's OIG, pursuant to congressional mandate, twice reviewed (in 2018 and 2022) the revocable license to determine whether the VA was complying with WLALA. *See* 2-SER-196; 2-SER-312–313. Each time the OIG concluded it was not. *Id.* Specifically, OIG determined upon its audit that the oil drilling land use agreement did not “compl[y] with the intent of the Draft Master Plan's goal of being veteran focused.”

Id. Notwithstanding these findings, the VA and Bridgeland took no steps either time to renegotiate the license agreement to bring it into compliance with WLALA.

II. Procedural Background

Plaintiffs filed this lawsuit in November 2022. 1-SER-48. After the District Court ordered the Government to notify Bridgeland, among other leaseholders, that its land-use agreement was implicated in this lawsuit, Bridgeland moved to intervene on March 4, 2024. 1-SER-16. Plaintiffs did not oppose Bridgeland’s intervention, *see* 1-SER-13, and the District Court granted Bridgeland’s motion on April 5, 2024, 1-SER-7.

On July 14, 2024, the District Court granted Plaintiffs’ motion for partial summary judgment, holding that “government has assumed an enforceable fiduciary duty on the West LA VA Grounds” and leaving the question of breach for trial. 1-ER-164–65.

After a four week-trial, the District Court held that Bridgeland’s revocable license did not comply with WLALA, and violated both the Administrative Procedure Act and the VA’s fiduciary duty to veterans. *Powers*, 2024 WL 4100866, at *36–38. The Court voided the Bridgeland license and enjoined VA from entering into new leases with Bridgeland, among other leaseholders, stating that it would “decide the specifics of the injunction . . . following a hearing on injunctive relief.” *Id.* at *41–42.

On September 26, 2024, the District Court ordered Bridgeland to cap the Sawtelle-2 well “so that Bridgeland may no longer slant drill private oil leases from the West LA VA campus.” 2-ER-445. On October 1, 2024, Bridgeland moved to stay the

District Court’s injunction. 2-ER-388. “After hearing oral arguments on the matter,” the District Court denied the motion to stay but amended its previous order. 1-ER-3. The amended order—which was incorporated into the District Court’s Final Judgment and Permanent Injunction, *see* 1-ER-134—“requires Bridgeland to stop slant drilling private oil leases from the West LA VA campus” but does not require Bridgeland to permanently cap the Sawtelle 2 well. *Id.* Bridgeland timely appealed. 1-SER-3.

SUMMARY OF ARGUMENT

This Court should affirm the District Court’s judgment with respect to Bridgeland’s revocable license.

First, the District Court properly interpreted WLALA, which authorizes the VA to enter into land-use agreements with third parties “to provide services that principally benefit veterans and their families.” WLALA § 2(b)(2). VA granted Bridgeland a revocable license to drill oil, which is not a service to veterans. That Bridgeland donates a tiny fraction of its revenue to fund services for veterans does not make its revocable license compliant with WLALA. And the hypothetical *possibility* that Bridgeland could continue producing oil from Sawtelle-2 without the VA’s authorization does not somehow make the license legal.

Second, the District Court did not abuse its discretion in enjoining Bridgeland’s production of oil at the Sawtelle-2 well. Rather, the District Court ordered relief tailored to effectuate WLALA’s purpose, that is, to prevent use of the West Los Angeles

property that is not authorized by statute and thereby assure that all land use agreements “principally benefit veterans and their families” at all times.

ARGUMENT

I. The Oil Drilling 10-Year Revocable License Does Not Comply with WLALA.

A. The District Court Properly Applied the West Los Angeles Leasing Act.

On the face of it, Bridgeland’s revocable license does not comply with WLALA. The statute is explicit in the duties it assigns to the Secretary of the VA with respect to the character of leases permissible under the law. It limits the Secretary to carrying out “[a]ny *lease to provide services* that principally benefit veterans and their families and that are limited to one or more of the following purposes,” including, as relevant here, transportation. WLALA § 2(b)(2) (emphasis added). Bridgeland concedes this limitation. *See* Bridgeland Br. at 36 (“The Leasing Act requires that land-use agreements at the WLA Grounds must be for a term of less than 50 years and *must be limited to a specified purpose*, including ‘transportation.’”) (emphasis added). The plain meaning of the Act is dispositive here: a license to drill oil is not “a lease to provide services that principally benefit veterans.” WLALA § 2(b)(2). *See Metro One Telecomms., Inc. v. Comm’r*, 704 F.3d 1057, 1063 (9th Cir. 2012) (“where the plain meaning rule has provided a clear answer, we do not need to look to other canons of statutory construction.”).

Bridgeland’s interpretation of WLALA is irreconcilable with the text because it ignores the whole of the lease, precisely opposite to what the statute mandates. Whereas

the revocable license here principally provides oil drilling and production services, *Powers*, 2024 WL 4100866, at *55, Bridgeland’s argument is that those commercial activities should not be acknowledged, let alone considered in the determination of whether the agreement satisfies the law. Under Bridgeland’s interpretation, *any* lease for *any* purpose would be legal under WLALA if there are *any* services provided that principally benefit veterans. *See* Bridgeland Br. at 38–45. This reading would make the WLALA meaningless. Indeed, while Bridgeland contends that the District Court’s judgment produces an “absurd outcome,” Bridgeland Br. at 38–40, it is *Bridgeland’s* interpretation of the statute that leads to an absurd result that should be avoided. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 670 (9th Cir. 2021) (“We avoid absurd results when interpreting statutes.”). Congress surely did not intend to permit agreements principally benefitting non-veterans overall that included minor tack-ons that benefit veterans.

The error in Bridgeland’s construction of WLALA is well illustrated by this case. As applied here, and as the District Court found, the revocable license enables Bridgeland to take a “de minimis” amount of the revenue it generates to “pay[] a royalty to a private charity to provide transportation” for veterans on the Grounds. *Powers*, 2024 WL 4100866, at *37. The position urged by Bridgeland would then, as a matter of law, countenance the slant-oil drilling irrespective of the percentage of gross revenues going to the “donation” so long as it is some number above zero: 1.5%, 1%, .5%, or even .001% would all suffice. Stated most directly, Bridgeland’s stance is that the statute

directs a reviewing court to pay no attention to the nature and extent of benefits the non-veterans party receives, and to turn a blind eye to how one-sided the agreement is in reality. Only in this context could a miniscule 2.5 percent cut of the gross receipts from oil drilling be called “generous.” Bridgeland Br. at 46.

The revocable license between the VA and Bridgeland violates the statute for an additional reason. As the OIG found, the land use agreement is not itself providing any of the enumerated services in the statute. *See* 2-SER-312 (Bridgeland’s “revocable license did not conform to the draft master plan requirement that it be veteran focused as the only benefits are monetary. It does not provide any additional healthcare benefits, services, or resources directly to veterans or their families.”). Rather, as Bridgeland concedes, those services come about derivatively from the revenues resulting from the drilling that are then turned over to the DAV-LA. Bridgeland Br. at 17 (“the Revocable License requires Bridgeland to donate [to DAV-LA].”). WLALA expressly states that services that principally benefit veterans and their families “*excludes* services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.” WLALA § 2(l)(2). Here, though, that is exactly what happens: the oil drilling permitted by the agreement between the VA and Bridgeland generates revenues that effectively pass through the VA to the non-profit to provide transportation on the Grounds for veterans. As both the OIG and District Court concluded, this transparent attempted end-around is not allowed under the statute.

Bridgeland argues that the District Court applied the wrong standard in adjudicating the lawfulness of the license under WLALA. Bridgeland Br. at 35–40. But the District Court’s application of WLALA to Bridgeland’s license is entirely in keeping with the plain meaning of the statute, *see supra*. The District Court explicitly held “that the VA’s revocable license with Bridgeland violates the VA’s duty to veterans because the revocable license does not *principally benefit* veterans.” *Powers*, 2024 WL 4100866, at *37 (emphasis added); *see also id.* at *68. (“Federal Defendants’ agreement with Bridgeland Resources, LLC . . . does not *principally benefit* veterans and their families, and thus, constitutes a breach of their fiduciary duty.”) (emphasis added). If anything, the District Court’s factual finding that “the principal purpose of the revocable license agreement with Bridgeland is to slant-drill oil, not to benefit veterans and their families” reinforces its stated basis for the ruling. *Id.* at *55.

It is noteworthy that the Government did not appeal the court’s ruling that the revocable license between the VA and Bridgeland violated WLALA.

The District Court’s ruling should be affirmed.

B. Bridgeland’s Net Revenues are Irrelevant to the Application of WLALA Because the License Distributes Gross, not Net, Revenues.

At trial and in its papers here, Bridgeland seeks to make much of the fact that in some years, depending on oil prices, Bridgeland itself does not turn a profit. *See, e.g.*, Bridgeland Br. at 11 (“Bridgeland pays the veterans’ royalty even when it loses money when oil prices are low.”). That, of course, is altogether beside the point of the

law that land use agreements shall “principally benefit” veterans. Whatever Bridgeland’s yearly profit margins, whether they fluctuate or not, is a matter of *its* business practices to maximize *its* net revenues. Those numbers cannot make legally immaterial, as Bridgeland hopes, the fact of the huge percentage differential between gross revenues going to Bridgeland and the de minimis donation for veterans’ services.

And while legally irrelevant for purposes here, as a matter of common sense, if Bridgeland genuinely thought the agreement was perpetually a financial loser for the interests of the company and its investors, it would not have entered into the agreement in the first place or be fighting so hard now to keep the agreement in effect. Bridgeland is not a non-profit.

Moreover, although this fact is omitted from its papers, Bridgeland is not the sole entity receiving gross revenues from the Sawtelle-2 well. As Bridgeland’s expert Vijay Kulkarni testified:

So there is a bunch of royalty owners in the field, just like in any other oil and gas operation. And Sawtelle, specifically—I don’t have the exact number—but the royalty owners here, between all the different leases, is somewhere between 400 to 500. And 20 percent—20 or 21 percent off the revenue that is by the oil here is first allocated to all of these royalty owners. And then out of the remaining 79 percent, it’s split between Bridgeland and [its partner] PCEC.

3-ER-540 (93:4–13). In other words, Bridgeland *plus* its partner PCEC *plus* 400-500 royalty owners all enjoy vastly superior interests to veterans and their families from the oil drilling license between Bridgeland’s predecessor and the VA. That fact is sufficient itself to find that the license agreement violates WLALA and is therefore void.

Bridgeland makes several incorrect assertions regarding the District Court’s rulings. As one example, it states: “The district court also faulted Bridgeland for the VA’s failure to build housing, stating that ‘[a] veteran is better served by housing than a drilling license for an oil company[.]’” Bridgeland Br. at 11. While a difficult proposition to dispute when the veteran is homeless, the District Court’s musing did not fault Bridgeland for anything having to do with the availability of supportive housing on the West LA Grounds.² The District Court’s analysis of whether the license between the VA and Bridgeland complies with WLALA stands or falls on its own. Nor, as Bridgeland wrongly asserts, see Bridgeland Br. at 11–12, did the District Court ground its holding on the possible “health aspect of Bridgeland’s operations.” The District Court merely mused on health implications during the two days of hearings on the issue of the legality of the license. Bridgeland offers nothing from the record to show that comment played a part in the District Court’s ruling.

C. Any Possible Lease with BLM regarding Sawtelle-2 is Irrelevant to the Legality of the Revocable License Under WLALA.

Despite acknowledging on one hand that the Bureau of Land Management (BLM) “is not a party to the case, and Bridgeland’s leases with BLM are not at issue,” Bridgeland Br. at 16 n.2), Bridgeland argues that the revocable license between it and

² Bridgeland appears to agree with the District Court with respect to the land use agreements with *all other* entities besides itself. See Bridgeland Br. at 9 (characterizing as “admirable” claims that the “VA has misused the WLA Grounds by unlawfully leasing a baseball field, athletic facilities for a private school, and parking lots to private parties, depriving the VA of valuable land for veteran housing.”).

the VA should somehow be upheld because it might otherwise be able to secure permission from BLM to drill from VA land. Bridgeland Br. at 26. Bridgeland's attempt to avoid compliance with WLALA is without any support. WLALA governs here. Still, it is nonetheless significant for three reasons.

First, as conceded by Bridgeland, the revocable license has considerable value to its interests. As noted in its papers, its expert Robert Rainbolt testified, “[b]y obtaining approval of the VA, even if not legally required ‘the producer is covered’ from any disputes that might arise.” Bridgeland Br. at 25. So, Bridgeland continues, “[m]aintaining the Revocable License . . . is merely the practice of a ‘prudent operator.’” *Id.* Enabling the practice of a prudent operator is a cognizable benefit for Bridgeland, one it is striving here and at trial to maintain. In other words, the revocable license is not irrelevant fluff for Bridgeland. To the contrary, it is of considerable value to Bridgeland.

Second, approval from BLM to continue the drilling from VA property is not a foregone certainty. Bridgeland correctly states in its papers that “BLM *may* allow Bridgeland to operate wells passing beneath the WLA Grounds.” *Id.* (emphasis added). Obviously, “may” is not the same as “must.” Reinholt testified only that it was “possible for Sawtelle-2 to produce through “obtaining consent of BLM.” 2-ER-499–500 (52:19–53:4). He agreed with his counsel that there was “the *potential* for Sawtelle-2 to continue to produce through either an agreement with BLM or through unitization with BLM.”

2-ER-503–504 (56:20–57:3) (emphasis added). Reinholt did not testify that obtaining consent of BLM was a sure thing.

And third, it further reveals that Bridgeland’s (untenable) position is that the revocable license would satisfy WLALA regardless of the size of the donation to the DAV-LA, so long as the transportation afforded was mainly utilized by veterans. As discussed above, Bridgeland’s argument suggests Congress intended to permit (indeed, encourage) entities like Bridgeland to negotiate overwhelmingly favorable land use agreements for themselves in comparison to what veterans receive in return, as is the case here. This interpretation is not only irreconcilable with the text of the statute, it also attributes to Congress the perverse intent to authorize land deals on VA land whereby veterans can lawfully be on the conspicuously wrong end of any agreement made. To the contrary, Congress’s intent was just the opposite.

Having found that Bridgeland’s revocable license does not comply with WLALA, the Court did not err in holding that the license violated the APA and VA’s fiduciary duty to veterans.³ *See Powers*, 2024 WL 4100866, at *38; *40–41, *68; *see also* Bridgeland Br. at 61 (“Under the APA, a court may set aside agency actions that are ‘not in accordance with law.’”) (citation omitted).

³ Bridgeland repeats arguments made by the Government in its papers as to whether Plaintiffs have standing to enforce charitable trust obligations on federal defendants, and whether federal defendants owe enforceable fiduciary duties as consequence of the 1888 deed and subsequent congressional legislation. *See* Bridgeland Br. at 55–61. Plaintiffs-Appellees’ response to this assertion is fully briefed in their Opposition to the Government’s Brief. Those arguments are therefore not repeated here.

II. The District Court Properly Entered an Injunction to Stop the Drilling and Production of Oil at Sawtelle-2.

Having correctly determined that the revocable license violated WLALA, the District Court properly exercised its discretion to enjoin Bridgeland's drilling and production of oil at the Sawtelle-2 well. *See* 2-ER-444, 1-ER-131, 1-ER-3. "[D]istrict courts whose equity powers have been properly invoked . . . have discretion in fashioning injunctive relief (in the absence of a statutory restriction) . . . [W]hen district courts are properly acting as courts of equity, they have discretion unless a statute provides otherwise." *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 495-96 (2001). WLALA does not prohibit an injunction; it includes no such textual restraint and none can be reasonably imputed to the law. *See also Reebok Int'l, Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 561-62 (9th Cir. 1992).

Contrary to what Bridgeland may argue, the District Court's injunction *does* remedy harm alleged. Had the court permitted the drilling and production to continue, it would have thereby sanctioned significant depletion of revenues by and for private interests at the expense of veterans. It would be leaving in place an illegal agreement that overwhelmingly benefitted non-veterans and reduced the available future volume of oil available.

Having concluded that the license violated WLALA in that it did not principally benefit veterans and their families, the District Court properly acted to stanch the injury veterans were suffering by virtue of the one-sided agreement. *See Biodiversity Legal Found.*

v. Badgley, 309 F.3d 1166, 1177 (9th Cir. 2002) (“when federal statutes are violated, the test for determining if equitable relief is appropriate is whether an injunction is necessary to effectuate the congressional purpose behind the statute.”) (citation omitted). Here, the OIG has twice found the lease in conflict with WLALA. Such a “pattern of repetitive violations” is a “factor[] weighing heavily in favor of granting a prospective injunction.” *Brock v. Big Bear Mkt. No. 3*, 825 F.2d 1381, 1383 (9th Cir. 1987).

Bridgeland’s remaining arguments that the District Court abused its discretion are unavailing. The fact that “[n]o party sued Bridgeland,” Bridgeland Br. at 52, does not proscribe an injunction that affects Bridgeland. Longstanding common law jurisprudence establishes that an “injunction not only binds the parties defendant but also those identified with them in interest, in ‘privity’ with them, represented by them or subject to their control.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). Nor is the District Court’s *sua sponte* relief grounds for reversal. *See* Bridgeland Br. at 52–54. It is black letter law that “a district court may *sua sponte* order or modify injunctive relief.” *Armstrong v. Brown*, 768 F.3d 975, 980 (9th Cir. 2014).

CONCLUSION

Plaintiffs-Appellees respectfully request that this Court affirm the District Court’s judgment.

Dated: February 18, 2025

Respectfully submitted,

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STATEMENT OF RELATED CASES

This case is related to the four other appeals that have been filed in the same case: Case Nos. 24-6576, 24-6338, 24-6603, and 24-6888.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this brief complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 4,067 words, according to Microsoft Word.

/s/ Carter G. Phillips
Carter G. Phillips