

PIUTE ENERGY CO.

IBLA 88-166

Decided August 23, 1990

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying request for approval of suspension of automatic elimination provisions of unit agreement. 14-08-0001-19467.

Affirmed.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Suspensions--Oil and Gas Leases: Unit and Cooperative Agreements

BLM properly denies an oil and gas lease operator's request for the suspension of the automatic elimination provisions of a unit agreement where more than 10 percent of working interest owners has not consented to the suspension at the time of the request.

To determine whether there has been the necessary consent, BLM properly takes into account any assignments it has approved effective as of the date of the request, despite the operator's contention that such assignments were not effective because the parties thereto had not notified the operator at the time the request for suspension was made in accordance with the unit operating agreement.

APPEARANCES: Dante L. Zarlengo, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Piute Energy Company (Piute) has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 30, 1987, denying its request for approval of the suspension of the automatic elimination provisions set forth at section 2(e) of the Ragged Mountain Unit Agreement (No. 14-08-0001-19467). <sup>1/</sup>

On June 25, 1980, the owners of various working, royalty, and other oil and gas interests within an area of 40,270.83 acres designated the Ragged Mountain Unit entered into the Ragged Mountain Unit Agreement. The Conservation Division, Geological Survey, U.S. Department of the Interior,

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<sup>1/</sup> Subsequent to the initiation of this appeal, Piute changed its name to the Tamarack Energy Company. For ease of reference, we shall refer to the appellant as "Piute."

approved the unit agreement on September 24, 1980. <sup>2/</sup> At all relevant times, Piute was the unit operator under the agreement.

Section 2(e) of the unit agreement provides for the automatic elimination from the agreement of any lands that are not within a participating area, on or before the fifth anniversary of the effective date of the first initial participating area established under the agreement, unless diligent drilling operations are in progress on such non-participating unitized lands on that date. In the event that diligent drilling operations are in progress on such lands, section 2(e) further provides that they will remain subject to the unit agreement for so long as the drilling operations are continued diligently. The record indicates that the fifth anniversary of the effective date of the first initial participating area was December 10, 1986.

Section 2(e) of the unit agreement provided for suspension only if 90 percent of committed working interest owners and 60 percent of the basic royalty interest owners (exclusive of the United States) in the currently non-participating acreage consented to the suspension. These percentage consent requirements are echoed in BLM Instruction Memorandum (IM) No. 85-537 (July 9, 1985). <sup>3/</sup> Piute has not challenged the determination that 90 percent of the working owners should consent to any suspension to be ordered in the exercise by the Department of the authority delegated by Congress to suspend operations pursuant to 30 U.S.C. § 209 (1982).

On September 17, 1986, prior to the fifth anniversary of the effective date of the first initial participating area, Piute, in order to avoid the contraction of the unit, requested BLM to approve suspension of the automatic elimination provisions of section 2(e) of the Ragged Mountain Unit Agreement. Piute asserted that, in accordance with section 25 of the agreement, it was prevented from drilling on the non-participating unitized lands because of its inability to economically develop the natural gas resources of these lands due to the high cost of restrictions placed on development and the depressed market for natural gas production. Piute also stated that it had obtained the required 90 percent consent of the working interest owners in the Ragged Mountain Unit.

By decision dated November 10, 1986, BLM denied Piute's suspension request, concluding that, while Piute had demonstrated compliance with

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<sup>2/</sup> The Conservation Division, Geological Survey, was BLM's predecessor as the agency charged with supervision of onshore oil and gas lease operations.

<sup>3/</sup> According to IM No. 88-75, dated Nov. 3, 1987, the guidelines set forth in IM No. 85-537 continued in effect past the expiration of the IM's extended term on Sept. 30, 1987. These guidelines were considered in Koch Exploration Co., 100 IBLA 352 (1988), where we found that 30 U.S.C. § 209 (1982) provided "no authority for suspension of obligations imposed by a unit agreement." Id. at 363-64. Because of the preliminary nature of our holding here, we do not reach the issues discussed in Koch. Cf. Colorado Open Space Council, 109 IBLA 274 (1989).

section 25 of the unit agreement, it had failed to submit proof of the consent of 90 percent of the working interest owners and 60 percent of the royalty interest owners of the current nonparticipating unitized lands:

Based on our records, you did not obtain consent from Amoco \* \* \*, as a working interest owner in the unit area, and McIntyre Livestock Corporation, as a basic royalty interest owner in the unit area. It appears that Amoco \* \* \* controls 12.38603 per cent of the working interest and McIntyre \* \* \* controls 100 per cent of the basic royalty interest in the current nonparticipating unitized lands.

In its application, Piute had reported that the Amoco Production Company (Amoco) had only 8.39939 percent ownership of the working interest in the nonparticipating unitized lands, and that the SOCO 1980 S.E. Piceance Joint Project (SOCO 1980) had 7.95886 percent thereof. BLM held that Piute had incorrectly reported the working interest ownership of unit tract Nos. 22D and 23, and that less than the required 90 percent of the working interest had in fact consented. The record confirms that, by virtue of assignments from SOCO 1980 to Amoco, which BLM had approved effective February 1 and September 1, 1986, SOCO 1980 was left with only a 3.98049 working interest in nonparticipating unitized lands, while Amoco's working interest in such lands rose to 12.38603 percent.

In its November 1986 decision, BLM set out two options not requiring the consent of working and royalty interest owners that Piute might pursue to obtain a temporary suspension of the automatic elimination provisions of section 2(e) of the unit agreement. The two options offered to Piute were to request a 1-year suspension until December 10, 1987, or a suspension until June 1, 1987.

On December 2, 1986, Piute again requested a suspension of the automatic elimination provisions of section 2(e) of the subject unit agreement until December 10, 1987. In support of its request, Piute again asserted that it was precluded from complying with the section 2(e) drilling requirements by its inability to economically develop the natural gas resource. To the extent that BLM's November 1986 decision had denied Piute's suspension request because Piute had not submitted the consent of the required percentages of working and royalty interest owners, Piute pointed out that the decision might have been "based upon erroneous information concerning ownership of or the effect of certain conveyances of leases committed to the unit area" and noted that it might obtain "additional consents" to its suspension request. Piute stated that it reserved the right to request reconsideration of that decision "based upon additional facts or arguments or subsequent approvals obtained."

By decision dated December 3, 1986, BLM, noting that Piute had satisfied the unavoidable delay requirements of section 25 of the subject unit agreement, approved a 1-year suspension of the automatic elimination provisions of section 2(e) of the agreement. Accordingly, BLM stated that Piute would have until December 10, 1987, to either commence diligent drilling operations or to "obtain the necessary consent to satisfy the requirements

of [IM] No. 85-537," whereupon BLM "would be in a position to reconsider a second request for a suspension of the automatic elimination provisions under section 2(e) of the unit agreement."

On November 5, 1987, as anticipated by BLM in December 1986, Piute submitted another request for suspension of the automatic elimination provisions of section 2(e) of the subject unit agreement. Piute again asserted that it had the consent of at least 90 percent of the working interest owners and 60 percent of the royalty interest owners.

In support of its request, Piute submitted a document signed by McIntyre Livestock Corp., the owner of 100 percent of the basic royalty interest, on December 2, 1986, agreeing to Piute's suspension request. This was found to satisfy the requirement of showing consent of the royalty interest owners.

However, Amoco, to which BLM attributed ownership of 12.38603 percent of the working interest, still had not consented to Piute's request. Nevertheless, Piute maintained that it had the consent of 90 percent of the working interest owners because the critical transfers of Federal leases C-30463 (unit tract No. 22D) and C-30461 (unit tract No. 23) from SOCO 1980 to Amoco, although approved by BLM, were ineffective for voting purposes because they had not been submitted to Piute, as required by section 26.4 of the unit operating agreement. <sup>4/</sup> As noted above, if these transfers were ineffective, Amoco would have had only 8.39939 percent ownership of the working interest, so that its failure to consent would not be significant.

In its November 1987 decision, which is under appeal, BLM denied Piute's request for suspension of the automatic elimination provisions of section 2(e) of the subject unit agreement. BLM reaffirmed its November 1986 decision, which ruled in effect that Piute had not demonstrated the consent of more than 90 percent of the working interest owners on September 17, 1986. <sup>5/</sup> BLM rejected Piute's contention that the failure to submit the transfers to Piute for approval rendered the assignment to Amoco ineffective, ruling that BLM is not bound by the articles of the unit operating agreement, which it does not approve. Rather, BLM stated, it is bound by the unit agreement, which it does approve, and that agreement does

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<sup>4/</sup> Section 26.4 of the unit operating agreement provides that a "transfer of Committed Working Interests shall not be effective as between the Parties until the first day of the month next following the delivery to Unit Operator of the original or a certified copy of the instrument of transfer."

<sup>5/</sup> BLM indicated in its November 1987 decision that the November 1986 decision was final, since no request for review by the State Director or appeal to the Board had been made. On appeal, Piute strenuously disagrees. We need not address this question, as BLM plainly fully readjudicated the matter in its November 1987 decision, which was timely appealed. By issuing a second adverse opinion, BLM rendered its findings subject to appeal. Petroleum, Inc., 115 IBLA 188, 191 (1990).

not alter the effective date of an assignment of a Federal lease as determined by 43 CFR 3106.7. BLM concluded: "Pursuant to this regulation, the effective dates of the subject assignments to Amoco \* \* \* were \* \* \* prior to September 16, 1986, the date of your suspension request. As such, in terms of the unit agreement, Amoco \* \* \* did control 12.38603 percent of the nonparticipating working interest at the time of your request."

In sum, BLM concluded that, although Piute had obtained the consent of 100 percent of the basic royalty interest owners, it had not obtained the consent of the required percentage of working interest owners at the times it submitted its September 1986 and November 1987 requests for suspension, because Amoco owned more than 10 percent of the working interest in non-participating unitized lands. <sup>6/</sup> Accordingly, BLM denied approval of Piute's second suspension request. Piute has appealed from BLM's November 1987 decision.

[1] To determine whether there had been consent to suspension by the working interest ownership, BLM was required to determine for its own purposes what parties constituted "committed working interest owners" and the respective percentage of their ownership. In making that determination, BLM followed 43 CFR 3106.7-4, governing the effective date of BLM's approval of an assignment of a Federal oil and gas lease:

[The] signature of the authorized officer on the official form shall constitute approval of the transfer of record title [to a Federal oil and gas lease] \* \* \* which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

We have long held that BLM properly refuses to recognize an assignee as the record titleholder of a Federal oil and gas lease until after approval of an assignment. See James Darby, 92 IBLA 231 (1986); PRM Exploration Co., 91 IBLA 165 (1986); Frederick J. Schlicher, 54 IBLA 61, 64 (1981); Amoco Production Co., 16 IBLA 215, 220 (1974); Champlin Oil & Refining Co., 66 I.D. 26, 30-31 (1959). Conversely, after approval, BLM properly recognizes the assignee as the record titleholder. See Karis Oil Co., 58 IBLA 123 (1981).

It is undisputed that BLM approved the assignment of the record title interest in Federal oil and gas leases C-30461 and C-30463 effective, respectively, on February 1 and September 1, 1986, so that, at the time of submission of both of Piute's requests for suspension of the automatic

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<sup>6/</sup> As to the percentages of ownership on Nov. 5, 1987, the date the second request was filed, BLM stated that it had approved the assignment of record title in Federal lease C-30462 from the SOCO 1981 S.E. Piceance Joint Project (SOCO 1981) to Michael L. Cass, effective Oct. 1, 1986, and that Cass had not consented to Piute's suspension request, thereby bringing the total percentage of non-consenting non-participating working interest owners to 16.36652.

elimination provisions, BLM had already approved the transfer to Amoco of such a portion of SOCO 1980's working interest that Amoco held more than 10 percent of the working interest in non-participating unitized lands.

It is equally undisputed Amoco did not consent to Piute's request for suspension, and that it actually actively opposed it. 7/

In determining whether a request is supported by the required percentage of working interest owners, BLM is properly governed by 43 CFR 3106.7-4 where such interests have been transferred. It is well established that Departmental regulations are binding on BLM. 8/ Veola & Aaron Rasmussen, 109 IBLA 106, 110 (1989). There is nothing in 43 CFR 3106.7, other Departmental regulations, or the subject unit agreement preventing the assignment of a Federal oil and gas lease from being deemed effective to grant an assignee its rights pending proper notification of the unit operator. 9/ Accordingly, we hold that, for the purposes of determining committed working interest ownership percentages, BLM properly regards ownership of interests as determined by the effective date BLM's authorized officer approves the transfer of record title as provided by 43 CFR 3106.7.

Piute contends that the transfers to Amoco, although approved by BLM, were not effective to vest Amoco with the authority to consent to Piute's suspension request. It points to section 26.4 of the unit operating agreement making such transfers ineffective in the absence of notice to the unit operator. BLM is not bound by the unit operating agreement because it is a private contract between one or more working interest owners and the unit operator. Chevron U.S.A. Inc., 111 IBLA 96, 105 (1989). 10/

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7/ On Sept. 23, 1986, Piute notified BLM of its "unfavorable attitude" toward BLM's approval of a suspension of the automatic elimination provisions of section 2(e) of the unit agreement.

8/ Appellant fears that the conclusion that BLM is entitled to rely on its own records for purposes of determining whether a unit operator has the consent of the required percentage of working interest owners to a request for suspension of the automatic elimination provisions of section 2(e) of a unit agreement will pose an unreasonable administrative burden: "It would require the Unit Operator to perform a complete review of all BLM case files prior to conducting any vote on \* \* \* any operations requiring the approval of the Authorized Officer" (SOR at 17). We cannot agree that requiring a unit operator to check BLM records in order to see that they conform to its own records regarding working interest ownership poses an unreasonable burden. BLM records are, after all, available to the public.

9/ Section 19 of the unit agreement provides that "[no] assignment or transfer of any working interest \* \* \* shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer" (emphasis added). However, this provision seems to be limited to defining the Unit Operator's liability to any transferee, and does not appear to define the point at which any transferee's rights commence.

10/ There is also the practical concern that BLM would not necessarily be aware at the time it adjudicated a suspension request by a unit operator whether or not the operator had been properly notified of the

Other than the fact that it did not receive notice of the assignment, Piute has offered no reasons that the assignment to Amoco cannot be deemed effective to transfer title from SOCO 1980 to Amoco. Piute learned from BLM's November 1986 decision that BLM had approved the assignments from SOCO 1980 to Amoco. Between the time of that notification and its November 5, 1987, application for suspension, Piute had ample time to challenge the effectiveness of the assignments by whatever means were available to it. <sup>11/</sup> As it failed to do so, we can find no basis to conclude that BLM's determinations in November 1986 and November 1987 of the respective percentages of title were incorrect. See W. J. Goldston, A-30504 (May 19, 1966); Law of Federal Oil & Gas Leases § 10.04[2] (1989), at 10-58.1-59.

Thus, the refusal of Amoco (which held more than 10 percent of the working interest) to consent to Piute's suspension request meant that Piute did not have the support of the required percentage of working interest owners. BLM properly decided in its November 1987 decision that Piute's November 1986 suspension request was not, at the time of its submission, supported by 90 percent of the working interest owners of current non-participating unitized lands and, thus, could not be approved.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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David L. Hughes  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge

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fn. 10 (continued)

assignment of a unitized Federal lease where the operator is not obligated to inform BLM of this fact. While BLM could inquire into such matters, the question of whether an assignment is effective between the parties because of lack of notice to the unit operator or other deficiencies is generally not considered a proper area for inquiry by BLM. See Robert Walli, 99 IBLA 128, 130 (1987); Joseph Alstad, 19 IBLA 104, 112-13 (1975); David L. Mills, A-26949 (Sept. 27, 1954) at 5.

<sup>11/</sup> We question whether any challenge by appellant to the effectiveness of the assignments from SOCO 1980 to Amoco would have been successful, as appellant had effectively been notified by BLM's November 1986 decision that these assignments had occurred and, thus, had notice of the existence of the instruments of transfer, consistent with the spirit of section 26.4 of the unit operating agreement.