



UOS ENERGY, LLC

177 IBLA 341

Decided June 19, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

UOS ENERGY, LLC

IBLA 2007-116 and 2007-118

Decided June 19, 2009

Appeal from decisions of the Utah State Office, Bureau of Land Management, vacating prior decisions; vacating prior successor-in-interest notices; granting suspensions; determining rentals due; and requiring additional information. UTU-60568 and UTU-60570.

Affirmed as modified.

1. Mineral Leasing Act: Generally--Mineral Leasing Act: Combined Hydrocarbon Leases

The Mineral Leasing Act provides that the Secretary may disapprove an assignment of a separate zone or deposit under any lease, a part of a legal subdivision, or less than 640 acres outside Alaska. 30 U.S.C. § 187a (2006). In promulgating 43 C.F.R. § 3106.1, the Secretary has exercised that discretionary authority to provide that assignments of separate zones or deposits, or of parts of a legal subdivision, shall be disapproved. The provisions of 43 C.F.R. § 3106.1 are, with the exception of paragraph (c) thereof, which prohibits the approval of transfer of an offer to lease or interest in a lease prior to lease issuance, expressly applicable to the issuance and administration of combined hydrocarbon leases (CHLs) issued under Part 3140. 43 C.F.R. § 3141.0-8(a)(vii).

2. Mineral Leasing Act: Generally--Mineral Leasing Act: Combined Hydrocarbon Leases

No reversible error is shown by requiring record title owners of underlying oil and gas leases included in a joint CHL application to cross-assign their interests so that each owner has a uniform interest in the new leasehold as a whole. The burden of, and responsibility for, achieving uniform title in the new CHL rests with the record title

holders of the oil and gas leases. If they deem that burden to be too onerous for any reason, they may sever their leases from the pending CHL application and pursue individual CHLs, they may choose to pursue unitization, or they may withdraw their lease from the application.

APPEARANCES: Howard L. Boignon, Esq., Jennifer L. Biever, Esq., and Danielle DiMauro, Esq., Denver, Colorado, for UOS Energy, LLC; John S. Kirkham, Esq., and Richard R. Hall, Esq., Salt Lake City, Utah, and W. E. Rasmussen, Esq., Houston, Texas, for Exxon Mobil Corporation; Richard McNeer, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

UOS Energy, LLC (UOS) has appealed from two decisions of the Utah State Office, Bureau of Land Management (BLM), dated January 29, 2007, relating to Combined Hydrocarbon Lease (CHL) conversion applications UTU-60568 and UTU-60570 (applications) pursuant to the Combined Hydrocarbon Leasing Act (CHLA), 30 U.S.C. § 226(n) (2006).¹ BLM's decision regarding UTU-60568 was addressed to Exxon Mobil Corporation (ExxonMobil), Questar Exploration & Production Company (Questar), Pioneer Natural Resources USA Inc. (Pioneer), and PG&E Resources Company (PG&E). The decision regarding UTU-60570 was addressed to Exxon, Questar, Pioneer, and Natural Gas Corporation of Utah, Inc. (NGC). Both decisions informed the recipients of the status of their applications. The decisions further stated that certain oil and gas leases had been suspended as of the date of filing a complete plan of operations, while others were in producing status. Among other actions taken in the decisions, BLM directed payment of substantial sums for back rental for the suspended leases. In each case, relying on an assignment of a 1983 agreement between Enercor, an involuntarily dissolved Utah corporation, and Exxon, ExxonMobil's predecessor, UOS appealed the decisions and with its Notice of Appeal filed a petition requesting that the requirement to pay rentals be stayed, which BLM did not oppose.

¹ Under the CHLA, owners of previously issued oil and gas leases situated within a Special Tar Sand Area could convert the lease to a CHL, "upon the filing of an *application* within two years from the date of enactment . . . *containing an acceptable plan of operations* which assures reasonable protection of the environment and diligent development of those resources." Pub. L. No. 97-78, § 1(8), 95 Stat. 1070, 1071 (1981), *now codified at* 30 U.S.C. § 226(n)(1)(A) (2006) (emphasis added). *See UOS Energy, LLC*, 176 IBLA 286, 288-89 (2009), for a more complete discussion of the CHLA.

By order dated August 6, 2007, the Board granted the petitions for stay filed by UOS in the two appeals; granted intervenor status to ExxonMobil; and directed that BLM arrange a meeting with UOS, ExxonMobil, and other lessees, in order to discuss and resolve the issues raised by these appeals.

Thereafter, BLM filed a timely Motion for Reconsideration of that part of the August 6, 2007, order that directed it to engage in settlement discussions with UOS and others. In a Motion to Dismiss the appeals, BLM asserted that UOS lacked standing to appeal the decisions. ExxonMobil filed a separate Motion to Dismiss the appeals on the same basis. UOS filed a Consolidated Response to Motion for Reconsideration and Motion to Dismiss in opposition to dismissal.

In an order dated January 9, 2009, the Board determined that the assignment of NGC's interest in oil and gas lease U-27413 (part of CHL application UTU-60568) and the assignment of PG&E's interest in lease U-38076 (part of CHL application UTU-60570) conferred standing on UOS to appeal the decisions docketed as IBLA 2007-116 and IBLA 2007-118, and to that extent we denied the motions to dismiss in part. However, we also found that UOS lacked standing to appeal the decisions in IBLA 2007-114, -115, -117, and -119, and to that extent granted the motions to dismiss in part.² We granted BLM's motion for reconsideration, and established a briefing schedule. *UOS Energy, LLC*, 176 IBLA 286. UOS timely filed its Statement of Reasons (SOR), BLM filed its Answer and, after requesting an extension of time to respond to the SOR, ExxonMobil filed a pleading stating that, in light of UOS' and BLM's briefs, it did not intend to submit a substantive response. Accordingly, the matter is now ripe for disposition.

The Parties' Arguments

UOS urges two errors in BLM's decisions. First, relying on the Board's decision in *William C. Kirkwood*, 175 IBLA 292, 313 (2008), UOS argues that BLM's decisions requiring the payment of past rentals must be reversed. Second, UOS challenges the requirement that "record title holders of multiple leases covered by each CHL application cross-assign their leasehold interests to generate uniform ownership of a single CHL lease to be issued upon approval of each such application." SOR at 2.

BLM also identifies two principal issues in these appeals. It challenges the breadth of the ruling in *William C. Kirkwood*, 175 IBLA 292, estopping the Government from collecting back rentals or taking adverse action against any

² In its Answer, BLM advises that on Apr. 9, 2009, in an action styled *UOS Energy, LLC v. Dept. of the Interior*, No. 1:09cv671 (D.D.C.), UOS appealed the Board's decision finding that it lacked standing to appeal those four other decisions. Answer at 7.

pending CHL applications. Second, BLM contends that it has reasonably interpreted the CHLA and regulations to require uniform ownership as a condition to issuing new CHLs. Answer at 1.

Analysis

The Demand for Accrued Rentals and Estoppel

As stated, UOS relies on the decision in *William C. Kirkwood*, 175 IBLA 292, to argue that BLM's decisions requiring the payment of 7 years of accrued rentals must be reversed.

BLM, in contrast, questions whether the ruling in *William C. Kirkwood* estopping the Government from collecting back rentals or taking adverse action against the pending CHL applications in those cases³ “change[s] the law requiring payment of rentals or necessarily estop[s] BLM from collecting the rentals from UOS, when UOS has not shown that it was in privity with Kirkwood and when BLM addressed only one such written statement to UOS’ predecessor in interest.” Answer at 1. BLM states that “UOS essentially argues that there is a transitive property to the estoppel found in the *Kirkwood* appeal that prohibits BLM from applying the law to UOS,” based on the Board’s statement in the January 9, 2009, order in these appeals that “no CHL applicant is liable for ‘accrued’ annual or ‘delay’ rentals that should have been collected for the underlying leases during the suspension of operations that followed the filing of complete plans of operation, because the Government is estopped from collecting them. *William C. Kirkwood*, 175 IBLA at 313.” Answer at 9, quoting *UOS Energy, LLC*, 176 IBLA at 297.

In BLM’s view, the Board “over-generalized the effect of its decision that was based on the extraordinary facts in *Kirkwood*.” Answer at 9. BLM correctly notes that estoppel is determined on a case-by-case basis, but contends that “precedent from other appeals cannot substitute,” and in a footnote chides the Board because one “might conclude that the extraordinary number of signed erroneous statements in the record of the *Kirkwood* appeal rendered unnecessary the formal or explicit application of the test for, and considerations governing, estoppel.” Answer at 9.⁴ BLM further

³ The appeal docketed as IBLA 2007-122 was filed by Kirkwood Oil and Gas, LLC, and was consolidated with William C. Kirkwood’s appeal in IBLA 2007-121 for disposition.

⁴ We are frankly baffled by this remark. Because estoppel is an extraordinary remedy that is not to be lightly invoked in public lands cases, and because it must be applied on a case-by-case basis, we cannot agree that it could suffice or would be

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contends that even if UOS' argument was characterized as an assertion of collateral estoppel or *res judicata*, it could not prevail because UOS was not in privity with Kirkwood. Answer at 9.

BLM concludes by stating that it

does not concede that a single written mis-application of law estops the Bureau from subsequently applying the law correctly unless the above-quoted test [for invoking estoppel] for, and considerations governing, estoppel are met. Nonetheless, in view of all the circumstances in this appeal, BLM consents to an order of the Board modifying the Decisions to remove the requirement that the applicants pay the last seven years' rentals as a condition to further processing the CHL conversion applications.

Answer at 9. That concession effectively moots BLM's objections. Consequently, we need not require the parties to marshal and brief the evidence of the communications between BLM and the oil and gas lessees involved in these CHL applications, or address the question of whether there might be any plausible factual or legal basis for treating similarly situated CHL applicants differently.

As UOS does not oppose BLM's request, BLM's January 27, 2009, decisions are accordingly modified by deleting the demand for "accrued" annual or "delay" rentals that should have been collected during the suspension of operations that followed the filing of complete plans of operation as a condition precedent to continuing the processing of the CHL applications.

The Requirement of Uniform Title to the New CHL Leasehold

UOS argues that the requirement of uniform title to the new CHL leasehold is premature because BLM cannot issue the new CHLs until the plans of operation and related environmental documents are prepared, and unnecessary because ownership can be established without cross-assignments. SOR at 2-3. Of greater importance, UOS contends the requirement is arbitrary and contrary to law because it constitutes "an unjustified interference with the property rights of the parties." SOR at 3. In support of the latter argument, UOS notes that BLM only first raised this issue in a letter to Exxon from Robert Lopez, then Chief of the Minerals Adjudication Section in

⁴ (...continued)

appropriate merely to set forth the facts of a case without relating them to the legal standards and framework of the remedy sought.

the Utah State Office, BLM, dated December 6, 1990,⁵ and has since reiterated the requirement only in the decisions before us. UOS maintains that nothing in the CHLA or its implementing regulations authorizes the imposition of such a requirement, which is a “significant and unreasonable burden” that is contrary to Congress’ intent in enacting the CHLA, because the requirement will not facilitate production from tar sands and other hydrocarbon deposits. SOR at 14-16. UOS argues that there are other and better alternatives so that cross-assignments are not needed to achieve uniform ownership of the new leasehold.

Implicitly recognizing that geographically divided ownership (in which, for example, A owns the west half of a lease and B owns the east half) of the new CHLs presents serious administrative issues, UOS suggests that instead of cross-assignments, CHLs could be issued for each oil and gas lease rather than issuing one CHL for several leases or BLM could issue CHLs for those oil and gas leases where record title is identical. SOR at 21. UOS also argues, however, that BLM could “subdivide record title by legal subdivisions corresponding to the ownership of the underlying leases (the ‘Geographic Approach’)” so that “record title in acreage covered by a single CHL would match the record title in the underlying leases converted to the CHL” and BLM “could continue to look to record title holders for performance of lease obligations as to their respective acreage of the CHL.” SOR at 22. UOS finally argues that BLM could “allocate record title ownership of the single new CHL based on aggregate net acres attributable to record title ownership of each of the lessees in the underlying leases (‘the Net Aggregate approach’),” whereby

the number of net acres held by a lessee in all the leases covered by a CHL application (percentage of record title in each lease multiplied by the number of acres in the lease) would entitle that lessee to its proportionate share of record title in the resulting CHL (*i.e.*, the

⁵ That letter explained BLM’s expectations as follows:

Record title interest in all of the lands in the leases being converted must be held in the same percentage. Therefore, assignments are required for the oil and gas leases where the percentage of interest is not held in the same manner. If it is the intent of the companies involved to maintain the interest in the new combined hydrocarbon lease in the same percentage as it was originally held in the previous oil and gas lease, assignments under the new CHL number may be filed simultaneously. The first assignment would be under the oil and gas lease serial number and the subsequent assignment reconveying the interest would be filed under the CHL serial number.

SOR, Ex. N.

proportion of its total net acres in the underlying leases to the total net acres covered by the single CHL).

SOR at 23.

UOS' concluding argument is that BLM has no authority to require owners of working interests to relinquish or modify their interests. It begins by noting that "operating (or 'working') interests in the new CHLs would have to remain associated with the specific acreage and deposits to which they originally attached." SOR at 24. Further noting that BLM did not mention working interest owners in the 1990 letter to Exxon, UOS asserts that BLM "implicitly acknowledged the infeasibility of *requiring* that working interests be made identical across all of the underlying leases." SOR at 24 (original emphasis). UOS attempts to support this assertion by pointing to the precatory language in BLM's decisions, suggesting that "[i]deally, the working interest should also be identical, or at least the working interest owners should concur with this action." SOR at 24.

BLM maintains that it reasonably interprets the statute and regulations to require that CHLs will be issued "only where the ownership of the oil and gas leases is uniform," contending that issuing CHLs "with ownership divided geographically"⁶

⁶ The following comparison of record title interests in the two applications in 1990 and in 2007 illustrates the difficulty BLM seeks to avoid. CHL application UTU-60568 embraces 5,113 acres in E½ sec. 9, all of sec. 10, W½ sec. 11, and all of secs. 14 and 15, T. 14 S., R. 23 E., Salt Lake Meridian. It includes:

Lease U-9063:	(1990) Exxon 100%; (2007) Exxon 100%
Lease U-10180:	(1990) Unknown; (2007) Exxon 62.5%, Questar 37.5%
Lease U-10274:	(1990) Exxon 62.5%, Universal Resources Corp. (Universal) 37.5%; (2007) Exxon 62.5%, Questar 37.5%
Lease U-10827:	(1990) Exxon 62.5%, Universal 37.5%; (2007) Exxon 62.5%, Questar 37.5%
Lease U-38076:	(1990) Exxon 62.5%, PG&E 37.5%; (2007) Exxon 62.5%, PG&E 37.5%

Application UTU-60570 includes 4,558.23 acres in all of secs. 26 and 27, NE¼, N½NW¼, N½SE¼ sec. 28, NE¼, E½NW¼, S½ sec. 34, and all of sec. 35, T. 14 S., R. 22 E., Salt Lake Meridian, and all of secs. 1 and 3, lots 2-4, SW¼NE¼, S½NW¼, SW¼, W½SE¼ sec. 4, T. 15 S., R. 22 E., Salt Lake Meridian. It includes:

Lease U-27413:	(1990) NW¼ sec. 26: Exxon 62.5%, PG&E 37.5%; NE¼ and S½ sec. 26: Exxon 62.5%, Universal 37.5%; (2007) NW¼ sec. 26: NGC 62.5%, Pioneer 37.5%;
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would be inconsistent with decades of practice under the MLA [Mineral Leasing Act of 1920, section 17(a), which provides for leasing “deposits of oil or gas,” 30 U.S.C. § 226(a) (2006)],” and that “the oil and gas lessees have alternatives that would protect their interests.” Answer at 1. BLM dismisses UOS’ assertion that requiring uniform ownership is premature by responding that nothing in the CHLA mandates that plans of operation shall be updated before uniform ownership is required, noting that “where no rights of an applicant turn on the order of processing, the choice of the sequence of determinations should be committed to the discretion of the bureau.” Answer at 10.

As to the requirement of uniform ownership and the alternatives proffered by UOS, BLM responds that there is no requirement to pursue a joint CHL application, but by choosing to do so, the applicants “accepted the burdens and complications that they could have avoided by submitting individual conversion applications,” which they may nonetheless now avoid by petitioning BLM to sever their leases from the pending joint application, stating that “BLM would process the conversion of the individual or identically owned and contiguous oil and gas leases under a new application number.” Answer at 10. BLM further argues that no right under the oil and gas leases is breached by requiring uniformity of ownership, and that nothing in the CHLA imposes on the agency the responsibility for resolving problems arising from the oil and gas conveyances. Answer at 11. BLM rejects the notion of issuing leases with geographically divided ownership as contrary to consistent practice under the MLA over many decades. BLM notes that individual CHLs may instead form a unit. Answer at 12.

BLM responds summarily to UOS’ argument that BLM lacks the authority to require working interest owners to relinquish or modify their interests, stating that it has neither claimed any such authority nor ordered any such action, so that the matter is properly not before us. Answer at 12.

⁶ (...continued)

NE¼ and S½ sec. 26: NGC 62.5%, Questar 37.5%;

Lease U-10199: (1990) Exxon 62.5%, PG&E 37.5%;
(2007) Pioneer 100%

Lease U-10834: (1990) Exxon 62.5%, Universal 37.5%;
(2007) Exxon 62.5%, Questar 37.5%

Lease U-28562: (1990) Exxon 100%; (2007) Exxon 100%

Lease U-31743: (1990) Unknown; (2007) Exxon 100%

SOR, Ex. N; *see also* SOR at 9 n.8.

[1] The MLA provides that the Secretary may disapprove an assignment of a separate zone or deposit under any lease, a part of a legal subdivision, or less than 640 acres (outside Alaska). 30 U.S.C. § 187a (2006). In promulgating 43 C.F.R. § 3106.1, the Secretary has exercised that discretionary authority to provide that assignments of separate zones or deposits, or of parts of a legal subdivision, shall be disapproved. The provisions of 43 C.F.R. § 3106.1 are, with the exception of paragraph (c) thereof, which prohibits the approval of transfer of an offer to lease or interest in a lease prior to issuance of the lease, expressly applicable to the issuance and administration of combined hydrocarbon leases (CHLs) issued under Part 3140. 43 C.F.R. § 3141.0-8(a)(vii).

Although there are different ways to avoid or resolve geographically divided ownership of the new CHL to comply with the MLA, how to do so is fundamentally discretionary in nature. To successfully challenge a discretionary decision,

[t]he burden is upon an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

International Sand & Gravel Corp., 153 IBLA 293, 299 (2000); *Utah Trail Machine Association*, 147 IBLA 142, 144 (1999).

Mark Patrick Heath, 175 IBLA 167, 176 (2008), quoting *Wiley F. & L'Marie Beaux*, 171 IBLA 58, 66 (2007).

A decision made by BLM in the exercise of that discretion will not be overturned by the Board unless it can justifiably be said to be arbitrary and capricious, and thus without any rational basis. See *California Association of Four-Wheel Drive Clubs*, 38 IBLA 361, 371 (1978), *aff'd*, *California Association of Four-Wheel Drive Clubs, Inc. v. Andrus*, No. 79-1797-N (S.D. Cal. Aug. 5, 1980), *aff'd*, (10th Cir. Jan. 22, 1982). Thus, the Board has affirmed discretionary decisions when the record demonstrates that the relevant factors were considered and the decision is in accord with statutory directives. See *Deschutes River Public Outfitters*, 135 IBLA 233, 240 (1996) and cases cited.

Rocky Mountain Helium, LLC, 148 IBLA 317, 319 (1999).

An appellant's burden is not carried simply by expressions of disagreement with BLM's analysis and conclusions. *Larry Griffin*, 126 IBLA 304, 308 (1993).

As UOS acknowledges, a CHL may be issued for each oil and gas lease, as well as in cases where record title in the oil and gas leases and in the CHL is identical. BLM agrees. It therefore appears that BLM's primary concern is simply avoiding geographically divided title in the new CHLs and, although it has twice stated that cross-assignments are necessary (initially under the oil and gas serial numbers and subsequently to reconvey interests under the new CHL serial numbers) to resolve the issue, it is clear from BLM's statements in this proceeding that it is prepared to accept other responses that avoid the problem altogether. What BLM is not willing to accept, however, is alternatives such as UOS' Geographic and Net Aggregate Approaches that create additional administrative burdens, complicate lease administration, shift the responsibility for negotiating and settling title in the new CHLs from the applicants to the agency, or are contrary to the MLA. We find nothing in the CHLA or the MLA that constrains BLM's discretion in this aspect of lease administration or otherwise compels BLM to resolve the ownership issue by using the Geographic and Net Aggregate Approaches advocated by UOS. UOS has cited no authority that compels a contrary conclusion.

[2] BLM has not required that oil and gas lessees file joint conversion applications; the lessees have elected to proceed jointly, and that election gives rise to the problem of a geographically divided leasehold. No reversible error in BLM's decisions is shown by the requirement that oil and gas lessees must cross-assign their interests to achieve uniform record title in the entirety of the new CHL leasehold, which may then be reassigned as the parties wish, provided such reassignments are consistent with the MLA and 43 C.F.R. § 3106.1. We agree with BLM that the burden of, and responsibility for, resolving title to the new leasehold properly rests with the record title holders of the underlying leases; if they deem that burden too onerous for any reason, they may, as UOS acknowledges, sever their leases from the pending CHL applications and pursue individual CHLs,⁷ they may choose to pursue unitization,⁸ or

⁷ Although BLM did not address the matter directly, *see* Answer at 1, 12, 13, we understand its position to be that a record title holder who at this time elects to sever its lease from a pending CHL application and proceed on an individual basis as a way of complying with BLM's uniform ownership requirement will not be prejudiced in any way by initiating a separate conversion application, or BLM presumably would not have offered that as a possibility in responding to and refuting UOS' contentions.

⁸ *See* 43 C.F.R. § 3140.1-4(d)(1) ("Existing oil and gas leases . . . may be unitized prior to or after the lease has been converted to a [CHL].") and § 3140.2-3(c) ("The plan of operations may be for a single existing oil and gas lease . . . or for an area of

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they may withdraw their lease from the conversion application.⁹ Given the options for avoiding the problem of geographically divided title to the CHL that results from the joint application, we reject the assertion that the requirement of unified title is an unjustified interference with property rights that constitutes arbitrary and capricious action on BLM's part.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions are affirmed as modified.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
R. Bryan M^cDaniel
Administrative Judge

⁸ (...continued)
proposed unit operation.”). It appears that unitization was envisioned. When the CHL applications were submitted, one plan of operations was submitted for each application. See SOR, Ex. N in UTU-60568 and UTU-60570; see also June 21, 2001, Letter from Carbon Energy Corporation and Bonneville Fuels Corporation to ExxonMobil Production Company, in both CHL application case files, at 1.

⁹ BLM states that a lessee who is no longer interested in obtaining a CHL may petition to withdraw its lease from a joint application the lease, and when granted, the oil and gas lease will in that case resume its initial term or extended term if it is producing in paying quantities. Answer at 12 n.15.