

ESTATE OF JOHN P. WAGNER  
AND  
THE SUPERIOR OIL COMPANY

IBLA 76-336

Decided July 26, 1976

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, dismissing protests and denying reconsideration of the cancellation of oil and gas lease NM 13995 for failure to pay a required bond.

Set aside and remanded.

1. Oil and Gas Leases: Cancellation

The statute, 30 U.S.C. § 188(b) (1970), and regulation, 43 CFR 3108.2-3, concerning the cancellation of oil and gas leases are discretionary, not mandatory.

2. Oil and Gas Leases: Bonds -- Oil and Gas Leases: Cancellation

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interests of the United States.

APPEARANCES: Arthur H. Bayern, Esq., Remy, Schiller and Bayern, San Antonio, Texas, for John P. Boynton, independent executor of the Estate of John P. Wagner, deceased. R. T. Robberson, Esq., for Superior Oil Company, Houston, Texas.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Superior Oil Company (Superior) and the Estate of John P. Wagner (Estate) have appealed separate decisions of the New Mexico

State Office, Bureau of Land Management (BLM), which denied reconsideration of and dismissed protests of the cancellation of oil and gas lease NM 13995 for failure to supply a required bond. 1/

Lease NM 13995 was issued to Mazie F. Wagner, the successful drawee in a simultaneous noncompetitive oil and gas lease drawing. The effective date of the lease was August 1, 1971. The lease was for 560 acres in Eddy County, New Mexico.

On September 1, 1971, BLM approved Mrs. Wagner's assignment of 100 percent of her interest in lease NM 13995 to her husband, John P. Wagner.

On January 27, 1972, BLM approved an operating agreement entered into by Mr. Wagner and Superior Oil Company whereby Superior was granted all operating rights as to all zones and formations lying below the depth of 6,000 feet within all the lands embraced in oil and gas lease NM 13995.

By memorandum dated April 18, 1975, the New Mexico State Director, BLM, was informed by the Director, Geological Survey, that certain lands were within an undefined addition to the Russell Field defined geologic structure. Such lands included a part of those encompassed by lease NM 13995.

BLM issued a decision on July 21, 1975, giving notice that since part of lease NM 13995 was within a known geologic structure there would be an increase in the rental rate in accordance with 43 CFR 3103.3-2(b)(1). And, in addition, pursuant to 43 CFR 3104.1(b), the lessee was required to "furnish a corporate surety bond, where adequate bond is not already being maintained," in the amount of \$ 2,240 within 30 days of receipt of the decision. The decision contained the caveat that should the bond fail to be forthcoming within the allotted time, the lease would be canceled without further notice from BLM.

The bond was not filed and on September 25, 1975, BLM sent a letter to the lessee with a copy to Superior stating that the lease had been canceled for failure to provide the required bond.

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1/ Two separate appeals were originally docketed: IBLA 76-336, Superior Oil Company, and IBLA 76-341, John P. Boynton, independent executor of the Estate of John P. Wagner, deceased. The attorneys for Superior and Boynton have requested that the appeals be consolidated. Because the facts and issues in the two appeals are the same, IBLA 76-341 was closed out on December 8, 1975, and the appeals are consolidated for consideration under the designation IBLA 76-336.

Superior by letter dated October 13, 1975, protested and requested reconsideration of the cancellation. BLM dismissed the protest and denied reconsideration by decision dated October 23, 1975. On November 6, 1975, Arthur H. Bayern, Esq., representing John P. Boynton, independent executor of the Estate of John P. Wagner, deceased, filed a protest and requested reconsideration of the cancellation. That protest was also dismissed and reconsideration denied by BLM on November 21, 1975.

The statutory provision under which BLM operated in canceling the lease was 30 U.S.C. § 188(b) (1970). Such section provides in pertinent part:

(b) Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. \* \* \* [Emphasis supplied.]

The applicable regulation, 43 CFR 3108.2-3, reads:

Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. [Emphasis supplied.]

[1] It is clear from the statute and the regulation that the cancellation of a lease is discretionary, not mandatory. The statute reads that a lease is "subject to cancellation" and the regulation states that the lease "may be canceled."

The bond was required by regulation 43 CFR 3104.1(b); however, the failure to provide the bond did not automatically require the

cancellation of the lease. The bonding regulation which was the basis for the cancellation of the lease has been the subject of proposed rulemaking, 40 F.R. 54585 (November 25, 1975). Under the proposed rules the requirement of a bond for a lease such as the one here at issue would be eliminated, at least to the extent that the bond is required when all or part of a lease is designated as being within a known geologic structure. Under the proposed regulations a bond would be required only prior to entry onto leased lands.

[2] In the present case the lessee was deceased at the time of the decision which gave notice of the increased rental and bonding requirement. While decedent's estate failed to provide BLM with notification of a change of record address, we need not discuss the ramifications of such a failure. This is not the type of case in which the laws relating to the cancellation of oil and gas leases need be strictly enforced. The flexibility in the cancellation laws was designed for just such a situation as is presented herein. The failure to provide the bond is not such an egregious error as to require the cancellation of the lease.

Herein, the lessee was deceased and there is no reason to doubt that had lessee's estate or the operator received actual notice of the bonding requirement, such bond would have been filed timely. In addition, there are no intervening rights of third parties involved which might militate against a cancellation of the lease. And the interests of the United States would not be adversely affected by allowing the lease to continue. Therefore, the action of BLM in canceling the lease was, under the circumstances, improper.

Lessee's estate should be given the opportunity to submit the necessary bond and upon such submission BLM should act to reinstate the lease.

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 set aside and remanded.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

