

COQUINA OIL CORP.

IBLA 79-12

Decided June 27, 1979

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying approval of bond filed by oil and gas lessee to protect owner of surface estate. C-20226, et al.

Affirmed as modified.

1. Oil and Gas Leases: Bonds

A bond filed by an oil and gas lessee pursuant to 43 CFR 3814.1 may extend only to lands in which such lessee has record lease title interest and which lands were patented under the Stock-Raising Homestead Act, 43 U.S.C. § 291-301 (1970). Where a lessee has on file with a Bureau of Land Management State Office an approved Nationwide bond, a separate bond for the protection of surface owners is no longer required. 43 CFR 3104.2 and 3104.3.

APPEARANCES: Richard H. Bate, Esq., Schultz & Bate, P.C., Denver, Colorado, for appellant; Rebecca Love Kourlis, Esq., Craig, Colorado, for the Harry Kourlis Ranch.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Coquina Oil Corporation (Coquina) has appealed from a decision dated September 1, 1978, by the Colorado State Office, Bureau of Land Management (BLM). The decision denied approval of bond No. 708E525-9, filed by Coquina (appellant) pursuant to 43 CFR 3814.1, on the ground that BLM lacked jurisdiction to approve such bond.

The bond, in the amount of \$15,000, was filed to cover damages to the following described lands:

T. 2 N., R. 93 W., sixth principal meridian
sec. 3, SW 1/4
sec. 4, lots 24 through 29, SE 1/4 SW 1/4, S 1/2 SE 1/4.

The following facts are not in dispute. Federal oil and gas leases C-20226, C-21413, C-23527, C-24052, and C-26813 are encompassed within these lands, and the owner of the surface estate is the Harry Kourlis Ranch. All of the section 3 lands and lots 24, 25, SE 1/4 SE 1/4, section 4 were patented under the Stock-Raising Homestead Act of December 29, 1916, 43 U.S.C. § 291-301 (1970). The remaining lands were patented under the basic homestead laws, 43 U.S.C. § 161 et seq. (1970), repealed by section 702 of the Act of October 21, 1976, 90 Stat. 2743, 2787, with an oil and gas reservation pursuant to the Act of July 17, 1914, as amended, 30 U.S.C. §§ 121-124 (1976).

Appellant has record title interest in the first four of these leases but not in C-26813.

The Harry Kourlis Ranch filed a protest to the approval of the bond on August 15, 1978. The protest was directed primarily to the amount of the bond.

The dispositive paragraphs of the decision appealed from state:

This office has determined that the bond submitted (on Form 3814-1) may be used to cover only lands on which the principal [sic] proposes to drill (mine) and remove minerals (including oil or gas under lease from the United States). The bond coverage may not exceed the limits of a particular leasehold and may extend only to lands patented under the provisions of the Act of December 29, 1916. The complete file makes it apparent that Coquina Oil Corporation desires to use the bond to assure access to lands in lease C-20226. Access to a particular leasehold is not guaranteed by the Bureau and is a matter to be resolved by interested parties under appropriate applicable law.

Accordingly, this office will not approve the bond (No. 708E525-9), because the Department lacks authority to do so. No determination has been made concerning the merits of the protest.

BLM's determination that the Department lacks authority to approve a stock-raising homestead bond is incorrect. 43 CFR 3814.1(d) 1/ specifically allows the "authorized officer" to approve

1/ 43 CFR 3814.1(d) provides in its entirety:

"(d) If at the expiration of 30 days after the receipt of the

or disapprove a bond filed under the Stock-Raising Homestead Act subject to objections raised by the owner of the surface estate. Cf. A. J. Maurer, 15 IBLA 151, 81 I.D. 139 (1974), L. W. Hansen, A-31029 (Dec. 30, 1968). The statute lists, as criterion for approval, that the bond be "good and sufficient," and the regulation sets out in considerable detail the procedural steps which may be taken. There can be no question then, that BLM had jurisdiction to consider the bond at issue.

The decision is correct in stating that bond coverage (where the bond is filed under 43 CFR 3814.1) may extend only to lands

fn. 1 (continued)

aforesaid copy of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

patented under the Stock-Raising Homestead Act. The question of value aside, the reason the bond proffered by appellant herein is not "good and sufficient" (i.e. improper) is that it seeks to cover (1) lands in which appellant has no interest, and (2) lands which were not patented under the Stock-Raising Homestead Act. It is for these reasons that BLM should have withheld approval of the bond. The matter of access to land, also mentioned in the decision, is immaterial to the determination.

Appellant asserts in its statement of reasons that it had on file with the Colorado State Office an approved \$150,000 Nationwide oil and gas bond, that such bond was approved by decision of March 27, 1978, and was further approved as extended to drilling activities by decision dated May 12, 1978. Appellant, for the first time on appeal raises the question whether such bond, filed under 43 CFR Subpart 3104, eliminates the necessity of filing a bond under 43 CFR 3814.1.

43 CFR 3104.3(b) provides:

Nationwide bond. In lieu of general lease and drilling bonds, operator's bonds, or statewide bonds, holders of leases or approved operating agreements may furnish a bond in the amount of at least \$150,000 covering all leases or operations nationwide under both the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947.

[41 FR 45566, Oct. 15, 1976]

The Harry Kourlis Ranch asserts that appellant has waived its right to refer to the Nationwide bond because it has raised this matter for the first time on appeal. The Harry Kourlis Ranch further suggests that since 43 CFR 3814.1 was specifically not repealed, the Nationwide bond could not be furnished to cover lands patented under the Stock-Raising Homestead Act. We disagree.

[1] Pursuant to section 3104.3(b), supra, the conditions for bond coverage are not the statutes under which the surface estates were patented but the leasing statutes pursuant to which the oil and gas lessee will conduct his operations. Appellant's leases are non-competitive public domain leases authorized by the Act of February 25, 1920 (30 U.S.C. § 181 et seq. (1976)). Moreover, 43 CFR 3104.2(d) eliminates the requirement for separate bonds for the protection of surface owners. We are persuaded therefore, assuming that appellant has an approved Nationwide oil and gas bond on file and all else being regular, the Harry Kourlis Ranch is adequately protected (43 CFR 3104.2(d)).

Therefore, 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 as modified herein.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

