

Editor's note: Reconsideration and request for hearing denied by order dated Sept. 23, 1981

THEO R. GASSIN

IBLA 81-377

Decided June 22, 1981

Appeal from decision of the Casper, Wyoming, District Manager, Bureau of Land Management, which concluded that the amount of bond filed by oil and gas lessee was adequate to protect the surface estate. W 33300.

Affirmed.

1. Oil and Gas Leases: Bonds

Where an oil or gas lessee has on file with a Bureau of Land Management State Office an approved statewide bond, a separate bond for the protection of surface owners is no longer required. 43 CFR 3104.2 and 3104.3.

APPEARANCES: Michael A. Maycock, Esq., Gillette, Wyoming, for appellant; Andrew L. Breffeilh, Esq., Casper, Wyoming, for True Oil Company.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated December 16, 1980, by the Casper, Wyoming, District Office, Bureau of Land Management (BLM). The decision determined that a \$10,000 surety bond proffered by True Oil Company (True Oil) to cover damages associated with the exploration and development of oil and gas lease W 33300 was adequate. 1/

The lands involved are 160 acres in Campbell County, Wyoming, described as the SW 1/4 sec. 15, T. 49 N., R. 70 W., sixth principal meridian. The owner of the surface estate is one Edwin N. Moran. Theo R. Gassin (appellant herein) is identified in the record as "lessee" and as the "agent" of Edwin Moran.

1/ The May 20, 1981, request by True Oil that the BLM decision be given full force and effect during the appeal pursuant to 43 CFR 4.21(a) is moot.

True Oil filed its surety bond in addition to a \$25,000 statewide bond it already had on file with BLM. The surety bond was filed pursuant to the Stock-Raising Homestead Act of December 29, 1916, 43 U.S.C. §§ 291-301 (1976), and 43 CFR 3814.1, subsection (d), which allows the "authorized officer" to approve or disapprove a bond filed under the Act subject to objections raised by the owner of the surface estate. By letter dated October 22, 1980, the district manager advised Edwin N. Moran of his right to file objections to the amount within 30 days of receipt of the letter. Moran did not object. However, in a letter filed with BLM on November 17, 1980, appellant presented several objections to the amount of the bond. BLM accepted this letter as a formal notice of objection and considered it timely filed.

In response to appellant's initial concerns, the district manager requested a soil scientist, a range conservationist, a hydrologist, and a civil engineer to conduct field studies. Based on their reports, he concluded that an additional amount was not warranted. The decision concludes:

Additional facts in the case are that [True Oil] has more than complied with the requirements under the federal oil and gas leasing program. He has shown good faith by submitting a bond in addition and in excess of that required of him. He will be required under the terms of the lease to compensate the landowner annually for the value of the forage lost. He has on file with BLM a statewide bond (#19-S-11532) in the sum of \$25,000. He has, in addition, filed a bond for mineral claimants (#445 1657) in the sum of \$10,000.

Appellant's statement of reasons is a recitation of his concerns regarding potential damages which might ensue upon True Oil's development of the lease. He objects to the amount of bond, and the designated access route. 2/ True Oil has responded contending that appellant, who is not the owner of the surface estate, has no standing to object to the bond and that in any event, the bond is not required under the regulations and precedent.

[1] Leaving aside the question of appellant's standing, this case may be adjudicated on the basis of the applicable regulations. True Oil's lease is a noncompetitive public domain lease authorized by the Act of February 25, 1920 (30 U.S.C. § 181 (1976)). 43 CFR 3104.3(a) provides:

2/ The access issue is a matter to be resolved by the interested parties. If the route on the application is objectionable, the burden is upon the parties to support their designated route with appropriate evidence, so that BLM can determine the least offensive route.

(a) Statewide bond. In lieu of general lease and drilling bonds and operator's bonds, holders of leases or approved operating agreements, may furnish a bond in the amount of at least \$25,000 covering all leases and operations in any one State under either the Mineral Leasing Act of 1920 or the Mineral Leasing Act for Acquired Land of 1947. Operators functioning under both Acts will be required to furnish separate bonds.

As we observed in Coquina Oil Corp., 41 IBLA 248 (1979):

[T]he 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 noncompetitive 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.

Accordingly, we conclude that the surface estate is adequately protected, that True Oil is not required to file a bond for protection of the surface owner in addition to the statewide bond on file, and if it chooses to do so the amount need not be considered by BLM.

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.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

