

## PICEANCE PARTNERS

IBLA 83-582

Decided July 24, 1984

Appeal from decisions of the Colorado State Office, Bureau of Land Management, increasing rentals for oil and gas leases C-13601, C-13602, and C-16187.

Affirmed in part; reversed in part and remanded.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Unit and Cooperative Agreements

Where the Minerals Management Service determines part of noncompetitive oil and gas leases issued in 1971 and 1972 to be within an undefined known geologic structure, a decision to increase rental for all acreage to \$2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production and a general provision for allocation of production. Where the terms of the leases specifically direct that the rental rate remain at \$0.50 per acre for acreage outside a participating area, an increased rental rate is not appropriate for that acreage.

APPEARANCES: Jim L. Mitchell, Secretary, Dernick Resources, Inc., for Piceance Partners.

### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jim L. Mitchell of Dernick Resources, Inc., partner, Piceance Partners, appeals from three decisions of the Colorado State Office, Bureau of Land Management (BLM), dated March 16, 1983, increasing the rentals for noncompetitive oil and gas leases C-13601, C-13602, and C-16187 to \$2 per acre or fraction thereof because part of the land in each lease was classified as being within an undefined addition to an undefined known geologic structure (KGS). Because of the similarity of issues involved, the appeals are consolidated for consideration on appeal. These three Gunnison County, Colorado, leases issued effective October 1, 1971, November 1, 1971, and July 1, 1972, for 10-year terms, and were extended. Effective September 24, 1980, leases C-13601 and C-13602 were fully committed to the Ragged Mountain unit. On that date also, 1,914.85 acres of lease C-16187 were committed to the unit and uncommitted acreage was segregated and assigned a new lease serial number.

By Minerals Management Service (MMS) memoranda dated August 12, 1982, portions of leases C-13601 and C-13602 were incorporated into the 680-acre Initial Mancos Formation Participation Area "A" and a portion of C-16187 into the 680-acre Initial Mancos Formation Participation Area "B" of Ragged Mountain unit area.

Appellants argue that the decisions controvert provisions 2(d)(a) and 2(d)(i) and (ii) of their leases and therefore violate the provisions of the Ragged Mountain unit agreement. Appellants assert they were not informed of the lease account transfer from BLM to MMS. They also state that prior to the rental increase decision, they were neither informed of the reclassification of this lease into an undefined KGS nor provided a reason for the classification. Appellants paid the increased rental under protest pending resolution of the appeal.

[1] The BLM decisions rely on the lease terms in increasing the rental rate to \$2 per acre. Each lease provides at section 2(d)(1):

Rentals. To pay the lessor in advance an annual rental at the following rates:

(a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:

(i) For each lease year a rental of 50 cents per acre or fraction of an acre.

(b) If the lands are wholly or partly within the known geologic structure of a producing oil or gas field:

(i) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased, \$2 per acre or fraction of an acre.

(ii) If this lease is committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in subparagraph (a) of this section, shall apply to the acreage not within a participating area.

Although the BLM decisions cite "Sec. 2(d)(b)" as the controlling provision, BLM in fact relied on lease section 2(d)(1)(b)(i) in each case. The unit agreement to which the leases are committed contains a general provision for allocation of production. Under these circumstances, the lease language provides in section 2(d)(1)(b)(ii), that the rental should continue as stated in section 2(d)(1)(a) for acreage not within participating areas. Section 2(d)(1)(a) of each lease specifies a rental of \$0.50 per acre. The leases also provide that the terms of each lease shall control in case of conflict between the lease language and regulations of the Department. Each

lease agreement states, in part 1 of the offer to lease, that it is subject to regulations of the Secretary "when not inconsistent with any express and specific provisions herein" (Form 3120-3, 11th ed., Sept. 1968).

According to Departmental regulation 43 CFR 3103.3-2(b)(2) (1982), on leases wholly or partly within the KGS of a producing oil or gas field, advance rental payments are payable on such leases

(2) If issued noncompetitively under section 17 of the Act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area. [Emphasis added.]

Thus, both the pertinent regulation and lease terms contemplate that payment of rental shall depend upon the acreage included in, or excluded from, a participating area.

The reasoning of a nearly identical case, Dyco Petroleum Corp., 81 IBLA 65, 67-68 (1984), which construes the same lease provision used in these three leases, is controlling here. This Board in Dyco found that the regulation at 43 CFR 3103.3-2(a) (1982) providing for advance rental payments did not apply to the type of situation found in Dyco. Instead, analysis of the lease provisions in light of the regulation showed that a hiatus existed in the rules for leases issued between September 1, 1960, and February 1, 1977. The leases here fall into that period. In such leases, the only operative provisions concerning rental payments for nonparticipating acreages appear in the lease agreement. Since the leases here are committed to a unit with wells capable of production, but parts of the leases are outside the participating area, lease section 2(d)(1) prohibits rental increase to the extent the leases are not participating. Rental increase, therefore, was proper only for the acreage within participating areas. Consequently, we affirm the BLM decision only to the extent it increased rental rates for the participating area acreage. Because the record does not indicate the amount of the remainder involved, it will be necessary for BLM to calculate this acreage on remand. See Dyco, supra at 68.

Appellants assert they were not notified of the KGS determination or the basis for the determination. The decisions on appeal do constitute formal notice of the KGS determination. Appellants have not submitted any evidence to contradict that determination. One who challenges a determination that lands are situated within a KGS of a producing oil or gas field has the burden of showing that the determination is in error. The determination will not be disturbed in the absence of a clear and definite showing of error. CO[2]-in-Action, 50 IBLA 54 (1980).

As to appellants' assertion of a lack of notice of the MMS handling of the lease account, the case records contain notices from MMS to the interested parties made prior to the decision. No protest of these notices appears of record. Appellants do not specify how the participation of MMS

in the decisionmaking process operated to harm them. By Secretarial Order No. 3071 published in the Federal Register on February 2, 1982, 47 FR 4751, the Secretary created MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey. On December 3, 1982, Secretarial Order No. 3087 consolidated the onshore mineral leasing functions of the MMS within BLM. 48 FR 8982 (Mar. 2, 1983). These organizational changes do not appear to have affected appellants in any way material to this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Colorado State Office are affirmed in part and reversed in part and the case is remanded for further action in accordance with this decision.

Franklin D. Arness  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge.

