GULF OIL CORP.

IBLA 84-515 Decided October 25, 1984

Appeal from decision of Colorado State Office, Bureau of Land Management, denying a request for a lower royalty rate upon reinstatement of oil and gas lease C-31573.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

   Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

   Section 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

APPEARANCES: Elaine L. Lawson, Esq. and Ken M. Brown, Esq., Gulf Oil Corporation, Houston, Texas, for appellant; Lowell L. Madsen, Esq., Department Counsel, Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gulf Oil Corporation (Gulf) appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 3, 1984, rejecting Gulf's request for a lower royalty rate upon reinstatement of oil and gas lease C-31573. The lease embraced lands in T. 49 N., R. 17 W., New Mexico Principal Meridian, Colorado.

On March 1, 1982, pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1982), as amended, BLM issued the subject noncompetitive oil and gas lease to Jerry and Alice Hagen Associates. On September 15, 1982, BLM approved an assignment of the lease to Gulf. The lease terminated on March 1, 1983, due to Gulf's failure to make payment of the required rental. On September 26, 1983, BLM notified Gulf of the lease termination. On October 26, 1983, Gulf filed a petition for reinstatement of the subject lease, asserting that its failure to pay was due to a clerical error and thus was "inadvertent." Nevertheless, Gulf sought reinstatement of the lease with a royalty rate of 12-1/2 percent. There has been no production from the leased lands.

In a decision dated November 7, 1983, BLM found that in the event that the subject lease was eligible for reinstatement, the royalty rate must be 16-2/3 percent. BLM found that "there is not sufficient cause showing that 'there are uneconomic or other circumstances which would cause undue hardship or premature termination of production * * *,'" citing 30 U.S.C. § 188(i)(2) (1982). On December 13, 1983, BLM issued a decision which vacated in part and modified its decision of November 7, 1983. BLM found that Gulf's failure to pay the rental timely was inadvertent. Accordingly, BLM held the lease to be eligible for reinstatement pursuant to section 401 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), P.L. 97-451, 96 Stat. 2447 (enacted Jan. 12, 1983), which amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982). 1/ BLM requested certain information from Gulf prior to determining whether the lease might be reinstated at a royalty rate lower than 16-2/3 percent. On January 17, 1984, Gulf submitted additional materials in support of its position.

In a decision dated April 3, 1984, BLM rejected Gulf's request for a lower royalty rate. BLM found that "our original decision of November 7, 1983, requiring a $5 per acre rental rate and a 16-2/3 percent royalty rate for the reinstatement of oil and gas lease C-31573 is correct." BLM found that "Public Law 97-451 requires that a royalty rate of at least 16-2/3% must be charged unless in our judgement it would be equitable to charge a lower rate, if circumstances warrant such relief due to uneconomic or other circumstances which would cause undue hardship or premature termination of production on the lease." In support of its decision, BLM cited the resolution of the House Committee on Interior and Insular Affairs (July 13, 1983), which reaffirms the intent of Congress with respect to the increased rental and royalty provisions of FOGRMA.

The arguments on appeal include: (1) the "equities" require that the 12-1/2 percent royalty rate be restored, (2) the House resolution cited by

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1/ BLM has published final regulations to implement these statutory provisions. 49 FR 30448 (July 30, 1984).

BLM does not purport to require that appellant's lease be reinstated at the higher 16-2/3 percent royalty rate, and (3) even if the resolution could be construed to support the imposition of the higher royalty rate in this case, the resolution does not bind this Board, and the royalty rate should still be reduced.

[1] Appellant argues that the royalty rate on the lease should be reduced from 16-2/3 percent to 12-1/2 percent, pursuant to 30 U.S.C. § 188(i)(2) (1982), which provides in pertinent part:

> In acting on a petition for reinstatement pursuant to subsection (d) of this section * * * the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold * * * if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, * * * or if in the judgment of the Secretary it is equitable to do so for any reason.

However, appellant fails to address 30 U.S.C. § 188(e)(3)(A) (1982), which provides certain reinstatement conditions. Among other requirements, the lessee must pay back rent and/or royalty and the reinstated lease must include a provision requiring "future royalties of not less than 16-2/3 percent." 30 U.S.C. § 188(e)(3)(A) (1982). Thus, 30 U.S.C. §§ 188(i)(2) and 188(e)(3)(A) (1982) provide that a reinstated lease shall have a royalty rate of 16-2/3 percent unless the Secretary finds that it would be equitable to reduce the royalty rate due to circumstances which could cause undue hardship or premature termination of the lease. BLM correctly recognized that the royalty rate could be reduced if it would be equitable to do so based on the circumstances. However, appellant failed to set forth any evidence of undue hardship which would justify reducing the royalty rate for equitable reasons.

Appellant asserts that the 16-2/3 percent royalty rate should be reserved for cases where the lease to be reinstated has achieved production. However, FOGRMA and its legislative history do not support appellant's contention. If Congress had intended to provide for a 12-1/2 percent royalty rate for reinstated leases which have not achieved produc-tion, it could have done so. But Congress did not draw such a distinction.

The legislative history of FOGRMA strongly supports the imposition of the 16-2/3 percent royalty rate on reinstated leases. H.R. Rep. No. 589, 97th Cong., 2nd Sess. 1, 27, reprinted in 1982 U.S. Code Cong. & Ad. News 4268, 4281, includes the following: "Subsection (e) - Prescribes additional conditions for reinstatement including: * * * (2) increase in rental and royalty rates." The House report further discusses section 401 of FOGRMA in detail as follows:

> Section 401(d) clearly establishes that any reinstatement of a terminated lease is entirely discretionary with the Secretary of the Interior. The Secretary need not reinstate any lease. He is provided with the discretionary authority to do so and may do so upon complying with certain minimum, but substantially increased, rental and royalty terms that pertain to any reinstated lease, and such extensions may not be for a longer period of time than specified in the bill.

> Section 401(e) states, and the Committee wishes to emphasize, that the rental and royalty terms for a reinstated lease are minimum terms only. There are no maximum rental to royalty terms on a reinstated lease. The Committee, while setting certain minimum terms, feels that on a reinstated lease the Secretary must adjust the rental and royalty terms to meet the value and economic conditions peculiar to each lease. For that reason, on a noncompetitive oil and gas lease a royalty rate of not less than 16 2/3 per cent has been established. The present rate for noncompetitive leases is set by statute at a flat 12 1/2 per cent. Similarly, on a competitive lease a minimum royalty rate of 16 2/3 per cent was also established. However, this rate is to be computed on a sliding or step scale, increasing as production increases at a rate which shall be not less than 4 per centage points greater than the competitive royalty schedule then in force. * * *
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> Thus while minimum rental and royalty terms are established, the Secretary of the Interior has the discretionary authority to establish higher rates, if, in his opinion, such higher rates are justifiable and reasonable. (Emphasis in original.)

H.R. Rep. No. 589, 97th Cong., 2nd Sess. 40, reprinted in 1982 U.S. Code Cong. & Ad. News 4294. See Resolution of the House Committee on Interior and Insular Affairs (July 13, 1983), reproduced in part, infra.

The royalty rate for a reinstated competitive lease must be "not less than 4 percentage points greater than the competitive royalty schedule then in force." 30 U.S.C. § 188(e)(3)(A) (1982). This, along with the legislative history, supra, indicates that Congress did not intend that a reinstated lease would return the lessee to his pre-termination position. The minimum 4 percent increase in royalty serves as a penalty, and therefore is an incentive for prompt rental payment. The Secretary of the Interior is authorized to reduce the royalty "if, in his judgment, there are uneconomic or other circumstances which would cause undue hardship or premature termination of production * * * or if in the judgment of the Secretary it would be equitable to do so for any reason." 30 U.S.C. § 188(i)(2) (1982).

Appellant contends that there are no "criteria for the Secretary to follow in deciding whether royalty reduction would be 'equitable.'" Appellant also asserts that "[t]he legislative history of P.L. 97-145 is silent on what circumstances might justify royalty reduction on a reinstated lease." However, House Report 97-589 does provide the Secretary some guidance in the exercise of that discretionary authority:

> Section 401(i) provides the Secretary of the Interior with the discretionary authority to reduce the royalty rates on a reinstated lease, or an abandoned oil placer claim converted to a noncompetitive lease, if, in his opinion, such a reduction is justifiable due to hardship, premature termination of production, or uneconomic conditions surrounding a particular lease. This should not be construed as blanket authority for royalty reductions on all reinstated leases. While the Committee feels that the substantially increased royalty rates on reinstated leases are justified, it also recognizes that there may well be individual

> situations where a lesser royalty rate, even below the specified minimum, may be justified and necessary to keep a well on production. This is not considered by the Committee as any "windfall," and should not be used as such. It is a measure that is necessary to achieve conservation of a resource and maximum ultimate production from those leases and wells that would otherwise be shut down prematurely with a resulting loss of a badly needed resource.

H.R. Rep. No. 589, 97th Cong. 2nd Sess. 41, reprinted in 1982 U.S. Code & Ad. News 4295.

While BLM did not elaborate on its reasons for rejecting appellant's request for a reduced royalty rate, there is no evidence in the record indicating that appellant will suffer any undue hardship if the 16-2/3 percent royalty is imposed. Nor are there any equitable reasons appearing of record justifying a reduction in the royalty rate. Moreover, there is no basis to conclude that BLM has abused its discretion by not reducing the royalty rate.

[2] Appellant argues that the resolution cited by BLM does not purport to require the imposition of a royalty rate of 16-2/3 percent on the reinstated lease. Appellant argues that the cover letter accompanying the resolution from Chairman Udall to Secretary Watt indicates that the resolution merely affirms the intent of Congress with respect to the date of application of the increased rental and royalty provisions of FOGRMA. Appellant contends that the resolution was not intended to clarify under what circumstances the increased royalty rate would be appropriate. While it is true that Chairman Udall's letter accompanying the resolution identified the resolution as reaffirming the intent of Congress with respect to the date of application, the letter does not limit the resolution to reaffirming the intent of Congress solely on that point. The resolution is instructive on several matters:

> WHEREAS, the Congress specifically intended that, as consideration for reinstating any such terminated oil and gas leases or to issue leases in lieu of such oil placer mining claims, affected former lessees and claimants should be required to pay substantially increased rental and royalty payments and should not be unjustly enriched due to their own inadvertence, oversight or negligence in failing to comply with the law and should not receive the same terms and conditions as would apply if the former leases and claims had not been terminated; * * * [Emphasis added.]
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> NOW, THEREFORE, BE IT RESOLVED by the Committee on Interior and Insular Affairs of the United States House of Representatives,
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> That, in enacting Title IV of Public Law 97-451, the Congress intended that former lessees and claimants who apply for reinstatement of terminated leases or to have leases issued in lieu of such claims pursuant to Title IV of that Act should not be permitted to benefit, at the expense of both Federal and State Governments and the general public, from their own errors and/or acts of omission, and therefore the Congress specifically provid-ed for increased rental and royalty payments effective from the date of termination or abandonment of any former lease or claim; and

> That the Congress acted with one specific intent, viz. to require a substantially increased rental payment from the date of termination or abandonment and substantially increased royalty payments on all production made subsequent to the date of termination or abandonment as consideration for reinstating either a terminated oil and gas lease * * *.

Resolution at 3, 4.

Finally, appellant argues that even if the resolution is construed to favor the imposition of the higher royalty rate, this Board should still reduce the royalty rate because the resolution does not bind this Board. Appellant cites Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. 102 (1980), and other cases for the proposition that post hoc legislative interpretation is not accorded much weight by the courts. "[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." Id. at 117. Of course, as a general proposition, appellant's contention is correct. See Weinberger v. Rossi, 456 U.S. 25, 35 (1982). However, in the instant case, the legislative history of FOGRMA, as indicated in House Report 97-589, is entirely consistent with the resolution. Thus, this Board need not solely rely on the resolution as a basis for imposing the higher royalty rate.

Appellant is correct in that the resolution does not absolutely require the imposition of the 16-2/3 percent royalty. As we have discussed, the Secretary may reduce the royalty rate under certain limited circumstances. 30 U.S.C. § 188(i)(2) (1982). However, the resolution, the legislative history, and the statutory provisions combine to indicate that the Congress invested the Secretary with discretionary authority to reduce the prescribed statutory royalty rate only in those extraordinary instances where that action is warranted by such circumstances as undue hardship or resource conservation.

BLM correctly analyzed the circumstances in order to determine whether it would be equitable to charge a lower royalty rate. BLM's conclusion was premised on a rational basis, and appellant has failed to show that it was erroneous. Therefore, we will not substitute a lower royalty rate on the subject lease.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris   James L. Burski
Administrative Judge

Administrative Judge