

DALLAS OIL CO.

IBLA 85-658

Decided August 20, 1986

Appeal from a decision of the Montana State Office, Bureau of Land Management, requiring the posting of a bond as a precondition for approval of a transfer of oil and gas leases BLM(ND) 023548-A and BLM(ND) 023548-B.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfer -- Oil and Gas Leases: Bonds

A BLM decision requiring submission of a bond for an oil and gas lease prior to the approval of a transfer of the lease will be upheld where the transferee disputes the amount of the required bond but fails to establish error in BLM's determination, thereof.

APPEARANCES: Philip Solseng, Chaska, Minnesota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Dallas Oil Company (Dallas) appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 7, 1985, refusing to approve the transfer of oil and gas leases BLM(ND) 023548-A and BLM(ND) 023548-B, in the absence of a bond submitted by appellant in the amount of \$50,000. We affirm.

Oil and gas lease BLM(ND) 023548 issued with an effective date of December 1, 1951, for an initial term of 5 years. As originally issued, the lease embraced the S 1/2 SW 1/4 sec. 15, and lots 1 and 2, and the NE 1/4 NE 1/4 sec. 28, T. 154 N., R. 95 W., fifth principal meridian. During the initial term of the lease a producing well was completed on the acreage in sec. 15. Subsequently, while the base lease was in its extended term, another well was completed on lots 1 and 2 in sec. 28.

Thereafter, two partial assignments from the lease were approved. The first, BLM(ND) 023548-A, embracing lots 1 and 2, sec. 28, was approved effective November 1, 1957. The second, BLM(ND) 023548-B, embracing the NE 1/4 NE 1/4 sec. 28, was approved June 1, 1959. Both of these leases were eventually acquired by Williams Oil Company (Williams). The lands within both leases were apparently included in the Delta Field Communitization Agreement, CA 14-08-0001-6762, approved effective January 1, 1959.

Thus, since lease BLM(ND) 023548-A was a producing lease, lease BLM(ND) 23548-B was considered held by constructive production, and both continued for indefinite terms, held by production.

It appears that actual production ceased sometime in 1971. However, the leases, as well as the communitization agreement, continued based upon the conclusion of the Geological Survey that the well was still capable of production. 1/

On June 12, 1984, appellant acquired the leasehold interest held by Williams in the two leases at a sheriff's sale. Appellant subsequently applied for BLM approval of the transfer of the subject leases. As a pre-condition to obtaining BLM's approval, appellant was informed on March 4, 1985, that, inasmuch as the lease and well were in a "critical environment," a \$ 50,000 bond would be required. Appellant then sought permission to test the existing well under the outstanding \$ 5,000 bond which had been provided by Williams. This request was denied on April 9, 1985. Appellant was at that time informed of its right to request a technical and procedural review (TPR). 2/ Appellant did so by letter of April 24, 1985.

In its request for a TPR, appellant noted that the property was marginal, at best, and that increased costs might make the project infeasible. Dallas noted that the bond maintained by Williams had only been for \$ 5,000, and it had originally anticipated that it might be increased to \$ 10,000. It later retained the services of a consultant who estimated that, "excluding contingencies," well plugging would cost an estimated \$ 25,000. Dallas objected to any bond over that figure. By decision of May 7, 1985, the State Office informed appellant that it considered the decision of the Dickenson District Office to be technically and procedurally correct based on a justification provided by the District Office on February 26, 1985, and reaffirmed the determination that a \$ 50,000 bond would be required. Dallas then appealed to this Board.

[1] In its statement of reasons in support of its appeal, Dallas essentially reiterates the arguments it presented to the State Office. Succinctly

1/ See memorandum dated Sept. 3, 1981, from the District Supervisor, Billings, Montana, to the Deputy Conservation Manager, Casper, Wyoming. 2/ There is some confusion apparent in the record as to the availability of a TPR. Technically, a TPR would be available in the instant case only to review the decision of the District Office not to allow any operations under the Williams bond. See 43 CFR 3165.3. A TPR would not be available for the purposes of contesting a determination of the amount of bond necessary to obtain BLM recognition to the transfer of the leases, because such a determination does not arise under 43 CFR Part 3160. Appellant was clearly somewhat confused by this, since the entire thrust of its subsequent letter was directed to the amount of the bond which it had been directed to submit. Its filing on Apr. 24, 1985, was, however, within the 60-day period afforded by the State Office, in its Mar. 4, 1985, decision, to contest the determination as to the amount of the required bond. It is obvious that the State Office treated it as such.

summarized, these arguments are based on its contention that \$ 25,000 is sufficient to guarantee proper plugging of the well, that some costs anticipated by BLM will not occur because either Dallas believes that it need not perform certain tasks, or Dallas will take reasonable precautions to avoid spills and will have contingency plans to clean up and control any spill that might occur. Dallas restates its willingness to submit a bond in the amount \$ 25,000, and suggests that that is the proper figure. We do not find these arguments convincing.

In the first place, appellant's own study shows that \$ 25,000 is not the estimated cost of plugging the well. The estimate provided by Broschat Engineering was actually \$ 25,790 before adding an additional charge of \$5,160 for miscellaneous costs and other contingencies. Precisely because estimates of such matters have a degree of uncertainty, those in the business of supplying them routinely apply a contingency factor to their computation. The total estimate includes this factor. Indeed, in the letter transmitting the estimate, Richard Broschat stated, "Our Estimate of the cost to Plug and Abandon this well is \$ 30,950, as shown on the attached Summary Sheet."

In any event, while the direct costs foreseen in plugging and abandoning a well are an important element in formulating a bonding level, they are by no means the only factors considered. Here, BLM has noted that the well is on a man made island in Lake Sakakawea, so that even minor spills could adversely affect fish habitat and result in expensive clean up operations. We do not doubt that appellant intends to conduct its operations in such a way as to avoid spills. Appellant, however, clearly cannot guarantee that no spill will occur. BLM is charged with anticipating adverse events and making provision to assure that they are corrected. The requirement that a bond be posted is integral to performance of this duty. Thus, while we may credit appellant's good intentions these cannot outweigh BLM's obligations to adequately safeguard the public interest.

We have noted in the past that an individual challenging the amount of a bond required by BLM must show error in its decision. See Forest Gray, 88 IBLA 64 (1985). This, appellant has failed to do.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge.

