

PARDEE PETROLEUM CORP.

IBLA 85-742

Decided May 29, 1987

Appeal from a decision of the California State Office, Bureau of Land Management, requiring an increase in the amount of bond coverage for Federal oil and gas lease operations, and suspending consideration of applications for assignment of record title interest in Federal oil and gas leases. Sacramento 021009(b), Sacramento 066405, and Sacramento 066405-A.

Affirmed in part, set aside and remanded in part.

1. Oil and Gas Leases: Bonds

BLM has authority under 43 CFR 3104.5 to increase the required amount of bond coverage for Federal oil and gas leases whenever circumstances justify a conclusion by BLM that the previously set bond coverage is insufficient to insure fulfillment of all lease obligations. A BLM decision requiring an increase in the amount of bond coverage for ongoing lease operations will be upheld where the party required to post the increased amount disputes the increase but fails to establish error in BLM's determination thereof.

2. Oil and Gas Leases: Assignments or Transfers

Pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1982), oil and gas leases may be issued to citizens, associations of citizens, or to a corporation organized under the laws of the United States or any State thereof. The filing of a proposed assignment in conformity with the applicable laws and regulations ordinarily requires approval by the Department except for lack of qualifications of the assignee or lack of a sufficient bond. A decision rejecting an assignment to a Delaware corporation on the ground it is not registered under State law to do business in the State where the oil and gas leases are located will be vacated where no such requirement is found in the statute or regulations governing qualifications to hold oil and gas leases, although such a factor may be relevant to setting bond coverage requirements.

APPEARANCES: Jack Winters, President, Pardee Petroleum Corporation.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Pardee Petroleum Corporation appeals from the May 31, 1985, decision of the California State Office, Bureau of Land Management (BLM), wherein BLM required an increase in the amount of appellant's statewide bond coverage for oil and gas leases to \$79,000 to include existing liabilities arising out of prior operations on leases Sacramento 066405 and Sacramento 066405-A. The BLM decision also declined to take further action on the request for approval of assignment of record title in the leases to International Metals and Petroleum Corporation on the ground the assignee is not recognized as a corporation in good standing by the State of California. 1/

The decision below discloses that appellant holds 60 percent of the record title interest and 100 percent of the operating rights in oil and gas leases Sacramento 021009(b), Sacramento 066405 and Sacramento 066405-A. As operator, appellant presently provides coverage under two surety bonds: statewide oil and gas bond No. M 96 85 85 for \$25,000, Insurance Company of North America, surety; and statewide oil and gas bond No. 1009824 for \$25,000, Amwest Surety Insurance Company, surety.

The BLM decision cites several factors in support of the requirement of increased bond coverage. The decision notes that \$475 in bond funds were used to secure proper abandonment of a lease well. Further, the sum of \$375 was paid by bond surety for royalties which the operator did not pay. In addition, the decision states that according to the Bakersfield District Office the sum of \$67,124 is required "to cover the costs of abandonment of wells, production facilities, surface reclamation, and potential royalty payment deficiencies for leases Sacramento 066405 and Sacramento 066405-A." Finally, the decision notes that Minerals Management Service has estimated the outstanding royalty obligation for the subject leases, including interest for late reporting, at \$16,000. 2/

On appeal, Pardee challenges the increased bonding requirement on several grounds. First, appellant asserts it will not cost \$67,124 to abandon 12 shallow wells. Appellant suggests the \$475 previously expended by surety (multiplied by 12 wells) provides a more appropriate figure. Further, although appellant does not dispute the \$16,000 figure for royalties due, appellant asserts it is in chapter 11 proceedings before the bankruptcy court and the royalties will be paid when permitted by the court. In addition, appellant contends the land is privately owned, that BLM does not have jurisdiction over private property, and that appellant's bond on file with the State of California covers obligations associated with the abandonment of the wells.

1/ The decision regarding assignment of record title involved another oil and gas lease, Sacramento 021009(b), in addition to the leases previously mentioned.

2/ The record discloses a royalty assessment letter from Minerals Management Service dated May 10, 1985, billing appellant for \$14,110.62 exclusive of interest or penalties.

Pardee also takes issue with the failure of BLM to recognize the assignment of record title in the leases to International Metals and Petroleum Corporation. Appellant asserts International is a Delaware corporation and that its qualifications to hold Federal oil and gas leases have been previously established with the California State Office, BLM.

[1] The initial issue raised by this appeal is whether BLM had the authority and the justification to require that appellant post a new bond in the increased amount. Authority for such an action is found in 43 CFR 3104.5, which provides: "The authorized officer may elect to increase the amount of any bond to be issued or any outstanding bond when additional coverage is determined appropriate." This rule in its present form was promulgated as part of a major revision of the regulations governing oil and gas leasing on Federal lands. 48 FR 33648 (July 12, 1983). In the supplementary information accompanying the promulgation of this revision, BLM discussed the relationship between the minimum level of bonding established by regulation and the authority to raise the bond amount:

One group of comments * * * suggested that the amount of the bonds was not adequate. * * * In response to [these] comments, the bond amounts set in the proposed rulemaking and adopted in the final rulemaking are the minimum amount. The authorized officer is given the authority, after consultation with the appropriate surface managing agency, to increase the amount of bond when conditions warrant.

48 FR at 33653.

Bonds are required by BLM to insure full compliance with all the terms and conditions of the Federal lease. Forest Gray, 88 IBLA 64 (1985); Cf. R. K. Teichgraeber, 96 IBLA 249 (1987); O. R. Weyrich, Jr., 49 IBLA 347 (1980) (an oil and gas lease bond may not have its period of liability terminated until all the terms and conditions of the lease have been satisfied). Thus, whenever circumstances justify a conclusion by BLM's authorized officer that the previously set bond amount is insufficient to insure full compliance, 43 CFR 3104.5 authorizes the officer to increase the bond amount.

Appellant claims that the Bakersfield District Office erroneously calculated the amount it would cost to abandon the 12 wells on leases Sacramento 066405 and Sacramento 066405-A. Instead of the \$67,124 figure calculated by the Bakersfield District Office, appellant proposes an alternative figure of \$5,700, or 12 times the amount of \$475 paid by the surety to abandon one well in 1980 on appellant's terminated lease Sacramento 021009a. However, it appears from the record that the challenged figure includes an allowance of costs to replug two previous wells as well as the costs of plugging 13 (rather than 12) wells. In the absence of an itemized appraisal of reclamation and abandonment costs by a qualified expert, we are unable to find appellant has shown error in the BLM estimate of costs. Cf. Dwight L. Zundel, 55 IBLA 218, 222 (1981) (in the absence of compelling evidence of error in a BLM appraisal, such an appraisal may generally be rebutted only by another appraisal). In addition to abandonment and reclamation costs, it also appears

the sum includes a BLM estimate for royalty obligations on oil produced, exclusive of interest or late payment charges. Hence, we cannot find appellant has sustained the burden of showing error in the estimated potential liability for costs of abandonment and reclamation as well as royalty obligations.

Appellant also argues that its leases are located on lands which are privately owned and that BLM "does not have jurisdiction over private property." Appellant further contends that because it has posted a bond with the State of California "to cover possible abandonment of wells," the bond coverage presently held by BLM "is more than enough to cover any potential liability to the Bureau of Land Management." We find these claims to be without merit.

Appellant's claim that BLM lacks jurisdiction because the land is privately owned is not based on the facts as shown in the record. The oil and gas plat found in the record indicates that the land upon which appellant's leases are located was patented to private ownership, but with an express reservation of the oil and gas interests to the United States. In other words, full ownership of the oil and gas deposits under this land was retained by the Federal Government at the time of patent, including the right to enter the land to extract the deposits. Thus, BLM, as the Federal agency charged with leasing and managing such Federally owned oil and gas deposits, has full "jurisdiction" over appellant's leases. The fact that the surface ownership is now in private hands is immaterial to BLM's authority and responsibility to supervise appellant's leases and to set the amount of required bond coverage.

Appellant is also incorrect in assuming that a bond posted with a state government covers obligations on a Federal oil and gas lease. This issue was recently answered by the Board in Forest Gray, supra:

[The] argument that a bond furnished to the State is sufficient to satisfy lease obligations is not responsive to BLM's request for bond. The bonding regulations, 43 CFR Subpart 3104, require bonds to be provided to insure compliance with all the terms and conditions of the Federal lease. A bond furnished to the State does not insure compliance with Federal lease obligations. [Emphasis added.]

88 IBLA at 65.

Finally, appellant's assertion of involvement in proceedings before the bankruptcy court offers little support for appellant's challenge to the bond amount. The risk of insolvency would appear to justify the amount of the bond set to cover the potential liability of the lessee/operator, rather than support a reduction in the bond amount.

None of appellant's assertions shows error on the part of BLM. In a recent decision, Dallas Oil Co., 93 IBLA 218 (1986), the Board held that 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 bond-coverage determination. The same is true where a party disputes a BLM decision under 43 CFR 3104.5 to require an increase in the amount of existing bond coverage. It is incumbent upon the party contesting the bond increase to show error in the BLM decision. In this case, appellant has failed to establish error in BLM's determination that an increase in bond coverage was necessary.

In addition to the bonding issue, appellant also contests that part of the BLM decision that suspended action on the application for approval of an assignment of the record title interest to the leases. The BLM decision stated:

Three 100% record title assignments, one for each of [appellant's three] leases, have been filed for approval. Each assignment is between International Metals and Petroleum Corporation, as assignee, and Pardee Petroleum Corporation and Energy Dynamics, Inc., as assignors.

The Status and Records Department of the Office of the Secretary of State of the State of California has reported that it has no record of a corporation with the name of International Metals and Petroleum Corporation. Accordingly, the corporation is held not to be qualified to hold Federal oil and gas leases because it is not in good standing under California State law. Therefore, this office is suspending action looking towards approval of the assignments. This suspension will be lifted when the corporation places itself in good standing under California State law, and the approval of the assignment will be either granted or denied on the merits of the case as it stands at that time.

Thus, the BLM decision requires that the assignee "[place] itself in good standing under California State Law" before action will be taken on the assignment.

In its statement of reasons, appellant contends that it had previously established the assignee's qualifications to hold Federal oil and gas leases. Appellant states that BLM was informed that the assignee "was a Delaware corporation and not a California one."

[2] An oil and gas lease may be assigned "subject to final approval by the Secretary." 30 U.S.C. § 187a (1982). The filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department except for lack of qualifications of the assignee or lack of sufficient bond. 30 U.S.C. § 187a (1982); North Central Oil Corp., 62 IBLA 38, 39 (1982); Montana Bank, Trustee, 54 IBLA 359 (1981). Oil and gas deposits shall be subject to lease under the terms of the Mineral Leasing Act of 1920 to "citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof * * *." 30 U.S.C. § 181 (1982). The regulation at 43 CFR Subpart 3106 govern Federal oil and gas lease assignments

and other transfers. The regulation at 43 CFR 3106.2 states that qualifications of assignees are to be determined in the same manner as lessees under 43 CFR Subpart 3102. In 43 CFR 3102.1, the rule states that "corporations organized under the laws of the United States or of any State or Territory thereof" are eligible to acquire leases. We find no basis in statute or regulation for imposing an additional requirement that the corporation place itself in good standing with the state in which the leases are located. Although such a factor may be a relevant consideration when it comes to matters such as the appropriate level of bonding to secure performance of the obligations of the lessee and/or operator, the decision must be set aside to the extent it holds the assignee to be disqualified on this basis.

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 in part and set aside and remanded in part.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

John H. Kelly
Administrative Judge

