

Editor's note: Reconsideration denied by Order dated Nov. 15, 1988

COLEMAN OIL AND GAS, INC.

IBLA 88-503

Decided September 27, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, upholding Area Manager's order requiring replugging of abandoned well.

Set aside and referred for expedited hearing.

1. Administrative Procedure: Burden of Proof -- Appeals: Generally -- Evidence: Burden of Proof -- Oil and Gas Leases: Generally -- Rules of Practice: Appeals: Burden of Proof

The burden is on the lessee/operator to establish that the plugging and abandonment of an oil and gas well has been conducted in accordance with a written plan approved by the authorized officer as required by regulation at 43 CFR 3162.3-4(a). Where the record on appeal from a decision requiring an operator to replug a well discloses a material issue of fact regarding whether the well was properly plugged, the case is properly referred for an evidentiary hearing pursuant to 43 CFR 4.415.

APPEARANCES: Tommy Roberts, Esq., Farmington, New Mexico, for appellant; Margaret C. Miller, Esq., Office of the Solicitor, Southwest Region, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Coleman Oil and Gas, Inc. (Coleman), has appealed from a May 17, 1988, decision of the Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management (BLM), upholding the April 12, 1988, order of the Area Manager, Farmington Resources Area, requiring replugging of the Navajo Wood #2 well based on Coleman's asserted failure to plug the well in accordance with the approved abandonment plan. The decision requires appellant to:

(1) Remove the dry hole marker, drill out the surface and surface casing shoe plugs, and tag the Ojo Alamo plug.

(2) Clean out to the top of the cement on top of the bridge plug set at 5135 feet if it is determined that the Ojo Alamo plug is not in its proper location or the plugging mud is not in accordance with BLM requirements.

(3) Replace the surface casing shoe plug, surface plug, and dry hole marker if it is determined that the Ojo Alamo plug is in its [sic] proper location and the plugging mud is in accordance with BLM requirements.

In support of the decision, BLM stated that the official who witnessed the plugging of the well "indicated the mud used to roll the well was little more than water" and that the service company had no scales on site to verify the weight was 9.2 pounds per gallon (lbs/gal) as specified in the plan of abandonment. Further, the BLM decision recited that there was evidence of only four or five sacks of gel and no barite being added to 150 barrels of water whereas about 30 sacks of gel and 60 sacks of barite would be required to obtain a weight of 9.2 lbs/gal. The BLM decision also found evidence of problems with the cement used in the plugs in the well. The BLM official at the site found the cement to be very thin and apparently less than the required weight of 15.6 lbs/gal. ^{1/} The decision noted specific problems with the equipment and procedures used by the service company: inability to measure the number of sacks of cement used to mix the slurry, inability to measure the volume of the cement slurry pumped into the well, lack of equipment to measure the weight of the slurry, and inability of the small hopper used to mix a consistent slurry before pumping. Further, BLM noted that using the same "eye balling" method on the later plugging of another well resulted in slurry weights of 12 to 14 lbs/gal "which will result in loss of strength and shrinkage of the plug." Subsequent efforts to tag the plugs in that well disclosed one was missing and another was 160 feet lower than it was required to be.

Appellant contends the well was, in fact, plugged and abandoned in accordance with the approved plan of abandonment. Further, appellant asserts it will be forced to spend at least \$ 10,000 to reopen the well and verify it has complied with the plugging requirements of the plan of abandonment. Appellant argues this is unreasonable in light of the lack of direct evidence of improper plugging. A request pursuant to 43 CFR 3165.4 to suspend the requirement to comply with the decision has been filed by appellant. This motion has been opposed by BLM on the basis of the potential for "irreparable damage to the drinking-water aquifer found in the Ojo Alamo Sandstone formation." In the alternative, BLM has requested expedited review of this appeal. Finally, appellant has requested an evidentiary hearing before an Administrative Law Judge in this case to resolve the issue of fact regarding whether the well was plugged in accordance with the specified requirements. Appellant requests that the hearing be held as expeditiously as possible. BLM has objected to the request for a hearing asserting that all material facts are clear from the record.

^{1/} The basis for the requirement that the cement weigh 15.6 lbs/gal is not entirely clear from the record before the Board. As noted *infra*, the cement requirement for the Ojo Alamo plug was specified in terms of the number of sacks of cement for the plug.

The motion for expedited consideration is hereby granted in light of the urgency of resolving this matter. In view of our decision in this case, we find it unnecessary to rule separately on the motion to stay the decision appealed from.

On November 12, 1987, BLM approved appellant's "Sundry Notices and Reports on Wells" containing its plan for plugging and abandoning the Navajo Wood #2 well. The approved notice of intention to abandon set forth certain specific requirements for plugging and abandoning the well including: "1. Set bridge plug at 5135' and spot 25 sks cement on top. 2. Roll Hole with 9.2 # mud. * * * 6. Ojo Alamo perf. 860' set 40 sk plug inside and out of 4 1/2" casing 860' to 700'." Plugging operations by a service company contracted by Coleman commenced on March 15, 1988, and concluded on March 16, 1988. A BLM representative, Ronald Snow, witnessed the plugging operation. According to his statement in the record, Snow noticed that the mud being used to roll the hole appeared to be nothing more than water and he asked the representative of appellant's service company, Don Walters, about the weight of the mud. Walters assured him that the mud weighed 9.2 lbs/gal in accordance with the approved plan. There were no scales present on the site, so the weight of the mud could not be verified at that time. Snow also questioned the volume of the cement being used, after noticing that the cement appeared to be very thin. The cementer told Snow that they based the mixing of the cement volume on the amount of water they used, but they had no means of weighing the cement to determine whether it met the 15.6 lbs/gal requirement.

Several days later, Snow and other BLM representatives observed the same service company, using the same procedures, plugging two other wells (Dry Creek No. 2 and No. 3) for appellant. After noting again that both the mud and cement appeared to be too light, the representatives requested that the company provide scales for weighing the mud and cement. By the time scales were provided, the second well had been plugged, so Snow weighed the mud being used on the third well. The mud weighed 8.4 lbs/gal, well below the required 9.2 lbs/gal. Similarly, when samples of the cement were finally weighed, they, too, came up light, weighing between 12 to 14 lbs/gal instead of 15.6 lbs/gal.

On April 12, 1988, the Area Manager, Farmington Resource Area, ordered appellant to replug the Navajo Wood #2 well. The order stated that "[t]he contractor who was plugging the third well (No. 3 Dry Creek) for your company was very uncooperative and had a very difficult time bringing the mud and cement up to Bureau requirements. Because of what was observed on the plugging of both No. 2 and No. 3 Dry Creek it is our opinion that well No. 2 Navajo Wood is improperly plugged." Appellant was given 30 days to comply.

By letter dated April 26, 1988, appellant requested State Director review of the Area Manager's order, arguing that the order was arbitrary, capricious, and unreasonable because it was based on plugging operations at other wells. The decision of the State Director, described previously, is now before the Board on appeal.

[1] The regulation governing abandonment of oil and gas wells provides, in pertinent part, "[t]he lessee shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer." 43 CFR 3162.3-4(a). The issue raised by the record in this case is whether appellant has secured the plugging of the well in accordance with the approved plan of abandonment. The ultimate burden of establishing compliance with the plugging and abandonment requirements is on appellant. Cf. E. B. Brooks, Jr., 92 IBLA 282, 289 (1986) (burden of proving well site has been properly rehabilitated placed on lessee/operator). Although appellant has asserted through the affidavits of people who participated in the operation that the well was properly plugged, it also appears they failed to either provide equipment at the site or use procedures which would facilitate verification of compliance with the requirements. The record also indicates the use of similar procedures by the same servicing personnel at nearby wells within a short time thereafter produced results which were not in compliance with plugging requirements. Accordingly, we find, contrary to the assertion of BLM, that the record presents a material issue of fact regarding whether the well was properly plugged. An evidentiary hearing is properly ordered pursuant to 43 CFR 4.415 where the record is inconclusive on an issue of material fact dispositive of the rights of the parties to an appeal. Rosita Trujillo, 77 IBLA 35 (1983). In view of the potential threat to the drinking-water aquifer, an expedited hearing is clearly in order in this case. 2/

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 set aside and the case is referred to the Hearings Division, Office of Hearings and Appeals, for assignment to an Administrative Law Judge for an expedited hearing. The decision of the Administrative Law Judge shall be final for the Department in the absence of any further appeal to this Board by a party adversely affected thereby.

C. Randall Grant
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

2/ BLM has indicated the well is located on a Navajo allotment lease. In this situation, it would appear the allottee is entitled to notice of the hearing.