



BENSON-MONTIN-GREER DRILLING CORP.  
UOS ENERGY, LLC

178 IBLA 11

Decided July 8, 2009



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

BENSON-MONTIN-GREER DRILLING CORP.  
UOS ENERGY, LLC

IBLA 2007-120

Decided July 8, 2009

Appeal from a decision of the Utah State Office, Bureau of Land Management, vacating a prior decision and rejecting in part an application to convert oil and gas leases into a combined hydrocarbon lease. UTU-71309.

Reconsideration *sua sponte* of a ruling in *William C. Kirkwood*, 175 IBLA 292, 318-319 (2008), to the extent it held that to preserve the right to convert existing oil and gas leases subject to a Notice of Intent, a complete plan of operations had to be filed prior to December 22, 1982.

Decision reversed; Motion for Reconsideration of Order of Aug. 6, 2007, denied as moot; Motion to Intervene denied; request for an order directing a refund of lease rental payments denied; *William C. Kirkwood*, 175 IBLA 292 (2008), overruled to the extent inconsistent herewith.

1. Combined Hydrocarbon Leasing Act: Applications--Mineral Leasing Act: Combined Hydrocarbon Leases--Mineral Leasing Act: Generally--Oil and Gas Leases: Expiration

To convert eligible existing oil and gas leases into combined hydrocarbon leases where the primary terms of such leases would otherwise expire between Nov. 16, 1981, the date the Combined Hydrocarbon Leasing Act (CHLA) was enacted, and 6 months after implementing rules became effective, or Dec. 22, 1982, lessees had to file a Notice of Intent to convert. To be timely, the Notice of Intent had to be filed prior to lease expiration. The Notice of Intent afforded holders of eligible leases that had expired or would expire between Nov. 16, 1981, and Dec. 22, 1982, an opportunity to preserve the conversion right under such lease. When a lessee filed Notices of Intent prior to lease expiration, filed an application to

convert oil and gas leases and plan of operations on or before Dec. 22, 1982, and that plan was deemed complete on or before Nov. 15, 1983, which was the end of the 2-year period established by the CHLA, the lessee complied with the statute and became entitled to the lease conversion it authorizes.

2. Administrative Procedure: Adjudication--Administrative Procedure: Administrative Review

Where appellants challenge a BLM decision demanding 7 years of accrued lease rentals and their oil and gas leases were or are part of a CHLA application considered at length in a prior decision of the Board in which the propriety of the demand for accrued rentals under like circumstances was considered and rejected, the prior decision controls and BLM's decision requiring the payment of accrued rentals is properly reversed.

APPEARANCES: Mike Dimond, Farmington, New Mexico, for Benson-Montin-Greer Drilling Corporation; Howard L. Boigon, Esq., and Jennifer L. Biever, Esq., Denver, Colorado, for UOS Energy, LLC; Richard McNeer, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Benson-Montin-Greer Drilling Corporation (BMG) and UOS Energy, LLC (UOS) have appealed from a January 29, 2007, decision of the Utah State Office, Bureau of Land Management (BLM), addressing a Combined Hydrocarbon Lease (CHL) conversion application filed by BMG and serialized as UTU-71309.

*Background*

On November 22, 1982, BMG submitted Notices of Intent to file an application to convert four oil and gas leases located in the Tar Sand Triangle Designated Tar Sands Area (Triangle DTSA) into CHLs.<sup>1</sup> The application and a plan of operations (Plan) was filed on December 13, 1982. By letter dated May 4, 1983, BMG requested that its Plan be "integrated" into the Plan filed by Santa Fe Energy Company (Santa

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<sup>1</sup> The oil and gas leases to be converted are U-8291G, U-17781, U-17979, and U-20860.

Fe) and Altex Oil Company (Altex) on December 14, 1982.<sup>2</sup> Nothing in the record before us documents BLM's action in response to the request, but BLM's decision acknowledges that BMG's Plan was integrated into the Santa Fe-Altex Plan. Decision at 1. The Santa Fe-Altex Plan was deemed complete as of July 19, 1983.

In its January 29, 2007, decision, BLM rejected BMG's application in part as to lease U-20860 on the ground that the lease had terminated by operation of law before the Plan submitted by Santa Fe and Altex was deemed complete. BLM declared the remaining three leases suspended as of July 19, 1983, the date of the filing of the complete Plan. Stating that it "has the right to demand payment of overdue rent in full as a condition of processing your application," BLM calculated a total of \$24,440 in lease rentals that should have been paid for those three leases during the suspension period, and demanded payment of \$9,660 for rentals for the last 7 years to continue application processing. Decision at 2. BMG was given 60 days in which to pay the accrued rentals to the Minerals Management Service (MMS), failing which the leases would terminate for nonpayment of annual rental, and reinstatement information would be provided to BMG. *Id.* The decision advised that a 30-day extension to pay could be requested.<sup>3</sup> BMG and UOS timely appealed, also petitioning for a stay of BLM's decision.

BMG and UOS thereafter moved for and were granted extensions of time to file a statement of reasons (SOR). On August 6, 2007, the Board granted the petition for stay and ordered settlement discussions. BLM filed a timely Motion for Reconsideration of that part of the August 6, 2007, order that directed it to engage in settlement discussions with BMG and UOS. The Motion for Reconsideration was

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<sup>2</sup> Santa Fe and Altex submitted a CHL application for 48 oil and gas leases, intending to form a combined hydrocarbon unit in the Triangle DTSA, serialized as UTU-72405. The Plan was supplemented on Jan. 18, 1983, and on or about July 8, 1983. The latter was received by BLM on July 19, 1983, and by letter dated Aug. 5, 1983, the Plan was deemed complete as of July 19, 1983. *See William C. Kirkwood*, 175 IBLA 292 (2008), for a more complete description and discussion of the Santa Fe-Altex CHL application. Application UTU-72405 was also the subject of the complaint in *Southern Utah Wilderness Alliance v. Sierra*, No. 2:07cv199DAK (D. Utah, filed Apr. 7, 2007), which the district court dismissed without prejudice, on the ground that no final agency decision had been rendered. 2008 WL 3925216 (D. Utah, Aug. 20, 2008). On Sept. 23, 2008, the Southern Utah Wilderness Alliance (SUWA) filed an amended complaint in the district court under the same docket number challenging the Board's consolidated decision in *Kirkwood*, a copy of which was provided by counsel for BLM.

<sup>3</sup> The Jan. 29, 2007, decision also vacated an earlier decision dated Oct. 10, 2006, because it purported to extend the time for appealing to this Board.

accompanied by a Motion to Dismiss the appeal, in which BLM asserted that UOS was not an applicant for the CHL and was not a party to the decision, and therefore lacked standing to appeal the decision. BMG and UOS filed a Consolidated Response to Motion for Reconsideration and Motion to Dismiss opposing reconsideration and dismissal.

On February 21, 2008, SUWA moved to intervene in the appeal.<sup>4</sup> SUWA sought to intervene in support of BLM's conclusion that lease U-20860, which is located within the Glen Canyon National Recreation Area (NRA), had terminated by operation of law before the Plan submitted by Santa Fe and Altex was deemed complete. BMG and UOS opposed that Motion.

On January 7, 2009, we issued an order in which we denied BLM's Motion to Dismiss because on February 27, 2007, BLM had approved an assignment of 100 per cent of BMG's record title interest in leases U-8291G and U-17781 to UOS, thus establishing that UOS is a party to the case because those leases are the subject of BLM's January 29, 2007, decision. BLM's Motion for Reconsideration and SUWA's Motion to Intervene were taken under advisement, and we ordered the parties to show cause why the Board should not dispose of the appeal and outstanding motions on the basis of the decision in *Kirkwood*, 175 IBLA 292, without further briefing. In so ordering, we stated that it was not clear whether any issues remained that were not answered or answerable by the decision in *Kirkwood*, whether settlement discussions would at this juncture serve any purpose, or whether SUWA's request to participate in the adjudication of the merits of the appeal, based on the brief it had filed in *Kirkwood*, was moot.

BMG and UOS responded to the show cause order on February 9, 2009, stating that they agree that the decision in *Kirkwood* requires reversal of the termination of lease U-20860 and BLM's demand for rental payments for a 7-year period, and that no further briefing was needed. BMG/UOS Response at 2-3. Neither BMG nor UOS offered any comment or explanation regarding the integration of BMG's Plan for its four leases into the Santa Fe-Altex application and Plan. However, BMG and UOS requested that the Board issue an order directing the MMS to refund \$9,660 UOS paid for lease rentals for U 8291G, U-17781, and U-17979.

BLM timely responded on February 20, 2009, with a request to suspend further consideration of this appeal pending a final judicial decision in *Southern Utah*

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<sup>4</sup> SUWA had previously moved to intervene in *Kirkwood*. The Board there denied the motion because SUWA was not a party to the case and because it did not seek intervention until after the Board was actively considering the appeal, more than a year after it had been docketed. Order dated Feb. 28, 2008. However, SUWA was granted leave to file a brief as an *amicus curiae*.

*Wilderness Alliance v. Sierra*, No. 2:07cv199DAK (D. Utah, filed Apr. 7, 2007), which now embraces the Board's decision in *Kirkwood*. BLM argues that suspending the appeal would be "in the interest of economy of resources for the Board and for the parties, and in the interest of the parties' certainty that the effect of the Board's final decision in this appeal will be undisturbed by the outcome of other litigation."<sup>5</sup> BLM did not offer any comment or argument in the event that the Board determined to decide this appeal, and BMG and UOS did not respond to BLM's recommendation or seek leave to respond to it.

SUWA also timely responded to the show cause order. The specific question posed to SUWA was whether SUWA's participation as an *amicus curiae* based on the same brief it had filed in *Kirkwood* was moot, given the Board's decision on the merits. Instead of responding to the Board's query, SUWA reiterated the same arguments it presented in the *Kirkwood* brief, albeit in abbreviated form. SUWA is of the view that the Board should not apply the *Kirkwood* decision and should instead require full briefing, indicating that it does not object to participating as an *amicus curiae* if the Board concludes that such a role is appropriate.

Of course, we recognize that the district court in *Southern Utah Wilderness Alliance v. Sierra* may reverse the decision in *Kirkwood* and may remand the case. It also appears, however, that the parties are satisfied that their positions on the issues raised by BLM's decision were adequately represented in *Kirkwood* and require no further briefing. Accordingly, it is appropriate to dispose of this appeal at this time.

#### *Discussion*

As stated, BLM's January 27, 2007, decision rejected BMG's application to the extent it included BMG's lease U-20860 on the ground that the lease had terminated by operation of law before the Santa Fe-Altex Plan was deemed complete. The primary term of lease U-20860 expired on November 30, 1982; the Plan was deemed complete as of July 19, 1983. In the show cause order, we stated that it appeared that the decision in *Kirkwood* would require a reversal of BLM's decision on this point. See 175 IBLA at 317. However, we also noted that BLM had rejected the CHL application filed by Kirkwood Oil and Gas, LLC (Kirkwood LLC),<sup>6</sup> to the extent that it

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<sup>5</sup> No such similar request was made in UOS' appeals docketed as IBLA 2007-116 and 2007-118. See *UOS Energy, LLC*, 177 IBLA 341 (2009).

<sup>6</sup> The appeal filed by Kirkwood LLC was docketed as IBLA 2007-122 and was consolidated with William C. Kirkwood's appeal in IBLA 2007-121 for disposition in *Kirkwood*.

included three leases because those three leases are part of BMG's application now before us in this appeal.<sup>7</sup> *Kirkwood*, 175 IBLA at 300 n.15.

BMG and UOS responded that BMG had timely filed a Notice of Intent to convert its oil and gas leases on November 22, 1982, and had submitted its application and Plan on December 13, 1982, concluding "BMG therefore timely submitted the requisite documentation to maintain the right to convert the lease to a CHL. Accordingly, Appellants agree with this Board's conclusion to reverse BLM's decision with respect to termination of lease U-20860." Appellants' Response at 2.

In *William C. Kirkwood*, 175 IBLA at 318-19, BLM rejected 10 leases held by the Kirkwood LLC on the ground that the leases had terminated by operation of law in January, May, June, and July 1982, before the Plan was deemed complete on July 19, 1983. The Board affirmed, but on the theory that a Plan must be *deemed complete on or before December 22, 1982*, to preserve the right to convert eligible oil and gas leases subject to a timely filed Notice of Intent.<sup>8</sup>

As the Board has stated, the CHLA provides that "[t]he owner of (1) an oil and gas lease issued prior to November 16, 1981, . . . shall be entitled to convert such lease . . . to a [CHL] . . . upon the filing of an application within two years from November 16, 1981," 30 U.S.C. § 226(n)(1)(A) (2006) (emphasis added). *William C. Kirkwood*, 175 IBLA at 317. We therefore determined that having timely filed an application, supported by a complete Plan as of August 8, 1983, within the 2-year period afforded by the statute, Kirkwood was "entitled" to convert his five oil and gas leases. *Id.* at 318. That conclusion should have dictated the outcome with respect to Kirkwood LLC's 10 leases as well. Instead, we held that for leases subject to Notices of Intent, to preserve the conversion right under such leases, a complete Plan had to be filed on or before December 22, 1982. It is thus necessary to reconsider that ruling and its premise *sua sponte*. See *Keith P. Carpenter (on Reconsideration)*, 113 IBLA 27 (1990); *American Telephone & Telegraph (On Reconsideration)*, 59 IBLA 343 (1981); *James V. Joyce (On Reconsideration)*, 56 IBLA 327 (1981); *James W. Smith (On Reconsideration)*, 55 IBLA 390 (1981).

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<sup>7</sup> The three leases are U-8291G, U-17781, and U-20860. Given Kirkwood LLC's failure to challenge the status of these leases and the parties' silence regarding whether this discrepancy is or should be significant in this case, or might provide the basis for new or additional argument, we assume that no irregularity or adverse impact to BMG or UOS is implicated. We address the point no further.

<sup>8</sup> When BLM deemed a plan of operations complete, the approval related back to the date when the lessee had actually submitted the plan for review if no revisions were required, or to the date when any required revisions completed the plan.

[1] We now clarify and hold that to convert eligible existing oil and gas leases into CHLs where the primary terms of such leases would otherwise expire between November 16, 1981, the date the CHLA was enacted, and 6 months after implementing rules became effective, or December 22, 1982, lessees had to file a Notice of Intent to convert. 30 U.S.C. § 226(n)(1)(B) (2006); 43 C.F.R. § 3140.1-2(a). To be timely, the Notice of Intent had to be filed prior to lease expiration. 30 U.S.C. § 226(n)(1)(B) (2006); 43 C.F.R. § 3140.1-2(c). The Notice of Intent afforded the holder of eligible leases that had expired or would expire between November 16, 1981, and December 22, 1982, an opportunity to “preserve his conversion right under such lease.” 30 U.S.C. § 226(b) (2006); 43 C.F.R. § 3140.1-2(a), (c).<sup>9</sup> When the oil and gas lessee filed a Notice of Intent prior to lease expiration, filed an application to convert oil and gas leases and a plan of operations on or before December 22, 1982, and that plan was deemed complete on or before November 15, 1983, which was the end of the 2-year period established by the CHLA, the lessee complied with the statute and became entitled to the lease conversion it authorizes.

We need not decide what else was necessary or expected to fully realize the conversion right under such leases, because in this case BMG filed Notices of Intent prior to lease expiration, it filed an application to convert oil and gas leases and Plan on or before December 22, 1982, and the Plan was deemed complete before the 2-year period established by the CHLA ended on November 15, 1983. BMG thereby complied with the statute and, under its terms, is entitled to the lease conversion it authorizes. 30 U.S.C. § 226(n)(1)(A) (2006). BLM’s decision rejecting lease U-20860 on the ground that it had terminated by operation of law before the Santa Fe-Altex Plan was deemed complete is therefore reversed.

*William C. Kirkwood*, 175 IBLA at 318-19, is overruled to the extent that it decided that the holders of leases subject to a Notice of Intent were required to file a

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<sup>9</sup> No regulation in 43 C.F.R. Part 3140 clearly and directly states that the holder of an eligible lease shall file an application and Plan on or before Dec. 22, 1982. However, the regulations state that lease conversion is initiated by filing a written request accompanied by three copies of a Plan. 43 C.F.R. § 3140.2-3(a). The regulations further require that the Plan must be filed on or before Nov. 15, 1983, or prior to lease expiration, whichever is earlier, except as provided in 43 C.F.R. § 3140.1-2. The latter regulation pertains to holders of leases that would otherwise expire “prior to the effective date of these regulations [June 23, 1982] or within 6 months thereafter [Dec. 22, 1982]” who filed Notices of Intent to “preserve the right to convert their leases,” but states only that the Notice “shall preserve the lessee’s conversion rights only for a period ending 6 months after the effective date of this subpart.” 43 C.F.R. § 3140.1-2(a), (c).

*complete* plan on or before December 22, 1982, to preserve their conversion right under such leases.

[2] In the show cause order, we also observed that *Kirkwood* appeared to have decided the question of whether BLM properly could demand 7 years accrued lease rentals as well. As noted, BLM opted to stand by its recommendation that the Board defer its decision until the District Court renders its judgment in *Southern Utah Wilderness Alliance v. Sierra*, rather than offer any new or additional argument regarding the matter. In *Kirkwood*, the Board faced the challenge of squaring competing MLA provisions that mandate automatic termination by operation of law for the failure to pay annual rental and provide a right to petition for reinstatement that is no longer available to the appellants, with the more recent amendment effected by the CHLA to ensure that holders of existing eligible oil and gas leases would not be disadvantaged by the change in the mineral leasing law authorizing CHLs. *William C. Kirkwood*, 175 IBLA at 311. We noted that once a plan was deemed complete, the lease terms should have been suspended under the CHLA and annual rentals should have been paid every year until the leases finally were converted into the new CHL, but found that the lessees had relied to their detriment on the Government's repeated and consistent written direction to lessees that no rentals would be due or accepted once a lease included in a CHL application was beyond its primary term. *Id.* at 312-13. Given that the leases in this appeal were or are part of the Santa Fe-Altex application considered at length in *Kirkwood*, our decision in that case regarding lease rentals controls here. BLM's decision demanding past accrued rentals is therefore reversed.

BLM's Motion for Reconsideration of the Board's order of August 6, 2007, is denied as moot.

SUWA's Motion to Intervene is denied because SUWA is not a party to the case, 43 C.F.R. § 4.410(b), and because it did not seek intervention until after the Board was actively considering the appeal, more than a year after it had been docketed.<sup>10</sup>

BMG's and UOS' request that the Board issue an order directing MMS to refund \$9,660 UOS paid for lease rentals for U-8291G, U-17781, and U-17979 must be denied. The Board does not exercise general supervisory authority over Departmental bureaus and agencies. *General Chemical (Soda Ash) Partners*, 176 IBLA 1, 12 (2008); *Western Watersheds Project*, 175 IBLA 237, 263 (2008). Such a request

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<sup>10</sup> As stated, SUWA's response to the Board's Jan. 7, 2009, show cause order is a re-statement of the brief filed in *Kirkwood*, confirming that SUWA's position has not changed. The Board therefore declines to allow SUWA to participate in this appeal as an *amicus curiae*.

may be directed to MMS for a decision in the first instance; should MMS issue a decision denying the requested refund, it may be appealed to this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed.

\_\_\_\_\_/s/\_\_\_\_\_  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Christina S. Kalavritinos  
Administrative Judge