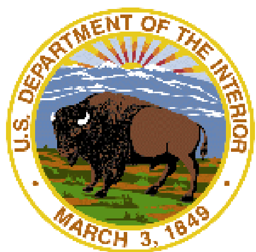

ANADARKO PETROLEUM CORP.

183 IBLA 1 Decided September 20, 2012

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

ANADARKO PETROLEUM CORP.

IBLA 2011-152 Decided September 20, 2012

Appeal from a decision by the Bureau of Ocean Energy Management, Regulation, and Enforcement denying a request to confirm that the Secretary of the Interior had effected a suspension of operations that extended the primary terms of certain oil and gas leases in the Gulf of Mexico. OCS-G 14205, *et al*.

Affirmed.

1. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

   The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) properly denied a request to confirm that all deepwater leases were suspended by the Secretary where the plain language of the Secretary's decision directed the Bureau to suspend only the drilling of deepwater wells using certain blowout preventer systems and to not approve pending and future applications for permits to drill wells that use such systems.

2. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

   The authority of the Secretary to direct a suspension or grant one at the request of a lessee is discretionary. Under 30 C.F.R. § 250.172, BOEMRE may grant or direct a suspension of operations or suspension of production (a) when necessary to comply with judicial decrees prohibiting any activities or the permitting of those activities; (b) when activities pose a threat of serious, irreparable, or immediate harm or damage; (c) when necessary for the installation of safety or environmental protection equipment; (d) when necessary to carry out

the requirements of the National Environmental Policy Act of 1969 or to conduct an environmental analysis; or (e) when necessary to allow for inordinate delays encountered in obtaining required permits or consents, including administrative or judicial challenges or appeals.

3. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

A suspension is generally appropriate under 30 U.S.C. § 209 where the Secretary has taken action which prohibits the lessee timely access to the lease, and a *de facto* suspension occurs when the Secretary prevents timely access to the lease or otherwise prevents beneficial use, to which the lessee is entitled as a matter of right. However, a lessee cannot claim to have been denied the beneficial use of a lease if the lessee has neither requested nor been denied authorization to conduct operations.

4. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

Whether a particular action has effected a directed suspension because it delayed lease development is a determination that must be made on a case-by-case basis in light of evidence regarding responsibility for lack of lease development.

5. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

Agencies retain a substantial measure of freedom to refine, reformulate, and even reverse their precedents in the light of new insights and changed circumstances. BOEMRE may properly depart from a perceived practice of directing blanket suspensions when experience shows that such a departure is more in keeping with the Secretary's role as trustee for the public and better serves the purposes of the Outer Continental Shelf Lands Act.

APPEARANCES: L. Poe Leggette, Esq., and Jennifer Cadena, Esq., Denver, Colorado, for appellant; Matthew Ballenger, Esq., and Milo Mason, Esq., Office of the Solicitor, Washington, D. C., for the Bureau of Ocean Energy Management, Regulation, and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Anadarko Petroleum Corporation has appealed from a February 28, 2011, decision of the Acting Associate Director for Offshore Energy and Minerals Management, Bureau of Ocean Energy Management and Reclamation (BOEMRE). The decision responded to a January 24, 2011, letter in which Anadarko [1] urged BOEMRE to direct a suspension of operations (SOO) or confirm that the terms of its oil and gas leases on the outer continental shelf (OCS) were extended as a result of the moratorium and new requirements for drilling operations that followed the BP Deepwater Horizon disaster (BP Disaster) in the Gulf of Mexico in 2010. BOEMRE's decision determined that Anadarko's 306 leases were *not* under an SOO as a result of the moratorium unless specifically directed by BOEMRE, and that suspensions would have been limited to "the drilling of wells using subsea blowout preventers (BOPs) or surface BOPs on a floating facility." BOEMRE had suspended operations on only three of Anadarko's leases.

While this appeal was pending, the Secretary provided for an extension of up to one year for deepwater leases (depths of more than 500 feet) on which there was no production as of May 15, 2010, and which would expire before December 31, 2015. Pursuant to this policy, Anadarko obtained SOOs for 195 leases and withdrew them from this appeal, so 168 remain. *See* Notice to Withdraw Certain Leases, Corrected Ex. C. Lessees that did not qualify for an extension under the new policy could still obtain suspensions if otherwise qualified.

The leases that remain in this appeal would not expire until after 2015. Even though there were no actual or planned operations on any of them for BOEMRE to suspend, Anadarko contends that the moratorium constituted a *de facto* suspension for all of them. In support of its claim for an extension for all of its leases, Anadarko makes a number of wide-ranging arguments, some of which go beyond the scope of this appeal, which involves whether BEOMRE's actions were *de facto* suspensions that extended the leases.[2] Nevertheless, Anadarko has failed to show that the moratorium

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[1] Anadarko's letter was filed on its behalf and that of two affiliated companies, Kerr-McGee Oil & Gas Corporation and Anadarko E&P Company LP. Statement of Reasons (SOR) at 2 n.1, Ex. 18.

[2] Anadarko contends that new requirements and procedures for approval of

(continued...)

had the effect of delaying operations on any of the leases that remain in this appeal, so we reject Anadarko's arguments and affirm BOEMRE's decision.

The BP Disaster

The drilling moratorium that is the focus of this appeal was imposed to provide time to determine what new safety measures would be needed to remedy the failures unmasked by the BP Disaster. To determine the causes of the disaster, improve the country's ability to respond to spills, and recommend reforms to make offshore energy production safer, the President established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. The Commission submitted its report, "The Gulf Oil Disaster and the Future of Offshore Drilling" (NC Report), to the President in January 2011. One cannot fully appreciate the arguments of the parties to this appeal without some understanding of how those issues developed as the catastrophe unfolded. The following narrative is drawn in part from the Report.

The disaster began on April 20, 2010, as the crew on the Deepwater Horizon drilling rig, about 41 miles off the Louisiana coast, was attempting to complete cementing the production casing for BP's Macondo well. Later that night, drilling mud began to spew on the rig floor, indicating a failure of the cementing operation. Efforts to shut the well in proved futile and the BOP failed to seal the well. The ensuing explosions and conflagration killed 11 crew members and injured others. Two days later, the Deepwater Horizon rig sank into the Gulf.

Because the BOP failed, oil flowed into the Gulf at a rate that would later be estimated as 62,200 barrels per day. That rate declined to 52,700 barrels per day until the flow was stopped by capping the well on July 14. It was not until September 19, 152 days after the blowout, that the Macondo well was pronounced dead.

The blowout and ensuing difficulty in stopping the flow of oil from the well and recovering it established that a number of the assumptions underlying approval of existing operations were simply false. These false assumptions included, for example, the efficacy of blind shear rams to prevent blowouts and the belief that oil-

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[2] (...continued)
operations established after the moratorium went into effect not only justify an extension of the leases, but also breach the provisions of its leases, and violate the rulemaking requirements of the Adminstrative Procedure Act, 5 U.S.C. § 553 (2006). *See* SOR at 8-12, 24-25, 31-35; Reply at 9-16. We briefly refer to these issues at the end of this opinion.

spill removal organizations could recover nearly 500,000 barrels of oil per day.[3] Deeming it imprudent to continue to approve operations on the basis of these false assumptions when all available recovery resources were being deployed to deal with the ongoing disaster, the Secretary called for a drilling moratorium. The moratorium was intended to provide an opportunity to develop those procedures.

The extensive and detailed findings of the Commission unequivocally pointed to the failure of the requirements and procedures under which existing operations had been approved. The Commission concluded:

> The blowout was not the product of a series of aberrational decisions made by rogue industry or government officials that could not have been anticipated or expected to occur again. Rather, *the root causes are systemic and, absent significant reform in both industry practices and government policies, might well recur*. The missteps were rooted in systemic failures by industry management (extending beyond BP to contractors that serve many in the industry), and also by failures of government to provide effective regulatory oversight of offshore drilling.

NC Report at 122 (emphasis added).

The Moratorium

Meanwhile, the ongoing catastrophe impelled the President to order the Secretary of the Interior to evaluate measures to improve the safety of OCS exploration and production operations. Given the Secretary's responsibility when administering OCS leases to protect the environment against waste and to conserve natural resources, *see Gulf Oil Corp. v. Morton*, 493 F.2d 141 (9th Cir. 1973), "it [is] not only reasonable, but also the legal obligation of the Secretary to employ procedures different from those followed prior to the blow out to assure that such disasters would not occur." *Sun Oil Co. v. United States*, 572 F.2d 786, 804 (Ct. Cl. 1978).[4] On May 6, 2010, Secretary Salazar ordered a halt for new offshore drilling

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[3] BP's oil-spill response plan for the Gulf of Mexico claimed that response vessels provided by the Marine Spill Response Corporation and other private oil-spill removal organizations could recover nearly 500,000 barrels of oil per day. NC Report at 132.

[4] As the court noted about an earlier disaster, "the blow out gave rise to a 'whole new ball game.'" *Pauley Petroleum Inc. v. United States*, 591 F. 2d. 1308, 1323 n.24 (Ct. Cl. 1979), *cert. denied*, 444 U.S. 898 (1979) (quoting *Sun Oil*, 572 F.2d

(continued...)

permits pending the results of an investigation that would be reported to the President at the end of the month.

The Secretary's report, submitted on May 27, 2010, was an interim measure, lacking the results of other investigations that would continue for months. Department of the Interior, Increased Safety Measures for Energy Development on the Outer Continental Shelf (May 27, 2010) (AR0001-44). It contained a number of recommendations for new procedures and equipment to improve safety and diminish the possibility of catastrophic events, including verification of compliance with existing regulatory requirements. AR00017-28. The recommendations included a 6-month moratorium on certain permitting and drilling activities until the safety measures could be implemented and further analyses completed.

In a May 28 memorandum to the Director of the Minerals Management Service (MMS), the predecessor to BOEMRE,[5] the Secretary directed a 6-month suspension of all pending, current, or approved offshore drilling operations of new deepwater wells in the Gulf of Mexico and the Pacific regions. AR0045. With all available resources deployed to address the ongoing disaster,[6] the Secretary sought to minimize the possibility of another catastrophic blowout. The moratorium would allow for implementation of the report's recommended measures and consideration of the findings from ongoing investigations, including that of the National Commission established by the President.

On May 30, MMS implemented the moratorium by issuing a notice to lessees, NTL No. 2010-N04.[7] AR0046-49. On June 4, MMS issued letters to Anadarko directing SOOs for three leases where APDs had been approved. AR0050-55. Subsequently, MMS issued NTL No. 2010-N05 (June 8, 2010) and NTL No. 2010-

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[4] (...continued)
at 804 n.24).

[5] By Secretarial Order No. 3302 (June 18, 2010), MMS was renamed the Bureau of Ocean Energy Management, Regulation and Enforcement.

[6] For example, local authorities were involved in "boom wars" over means to contain at least some of the spill. *See* NC Report at 153-54.

[7] As authority, the NTL cited 30 C.F.R. § 250.106, which requires safe lease operations; 30 C.F.R. § 250.172(b), which provides for MMS to direct a suspension when activities pose a threat of serious, irreparable, immediate harm or damage (this would include a threat to life, property, mineral deposit, or marine coastal or human environment); and 30 C.F.R. § 250.172(c), under which MMS may grant or direct a suspension when necessary for the installation of safety or environmental protection equipment.

N06 (June 18, 2010) that required certain specific safety measures and verification. AR0056-66.

Even though oil was still flowing uncontrollably from the Macondo well, contractors that service oil drilling, exploration, and production on the OCS sought and obtained a preliminary injunction against the drilling moratorium on June 22. *Hornbeck Offshore Services, L.L.C. v. Salazar*, 696 F. Supp. 2d 627 (E.D. La. 2010).[8] On July 8, the court of appeals denied the Secretary's motion to stay the effect of the district court's injunction. *See* 2010 WL 3219469, at *1 (5th Cir. Aug. 16, 2010).

[1] On July 12, the Secretary issued a Decision Memorandum to BOEMRE's Director that superseded his May 28 Memorandum.[9] AR0072-100. This time, the Secretary's memorandum provided a detailed rationale for a drilling and permitting moratorium.[10] The Secretary stated:

> I am directing BOEM to direct the suspension of any authorized drilling of wells using subsea BOPs or surface BOPs on a floating facility. I further direct BOEM to cease the approval of pending and future applications for permits to drill wells using subsea BOPs or surface BOPs on a floating facility. These suspensions shall apply in the Gulf of Mexico and the Pacific regions through November 30, 2010, subject to modification if I determine that the significant threats to life, property, and the environment set forth in this memorandum have been sufficiently addressed.

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[8] The court found that the Secretary's May 27 Report "ma[de] no effort to explicitly justify the moratorium: it does not discuss any irreparable harm that would warrant a suspension of operations, it does not explain how long it would take to implement the recommended safety measures." 696 F. Supp. 2d at 631. Indeed, the Report focused on specific measures that would lessen the risk of operations. Although all available recovery resources were directed at abating the as-yet-uncontrolled spillage from the Macondo well, the report did not explain the obvious increased risk of continuing operations without adequate resources for recovery.

[9] Based on the July Decision Memorandum, the circuit court dismissed the Government's appeal from the injunction against the May 28 Memorandum. *See* 2010 WL 3825395 (5th Cir. Sept. 29, 2010).

[10] The July 12 Memorandum included an attached summary of the decision record that identified numerous internal and external reports, memoranda, and meetings, as well as the hearing transcripts of 26 Congressional hearings held on the Deepwater Horizon incident and its aftermath between May 11 and June 24, 2010. *See* Decision Memorandum at 23-29 (Attachment).

Decision Memorandum at 19. The Secretary added "suspending *these particular operations* until November 30 will allow BOEM and the Department to develop the interim rules required to address the safety issues that have recently come to light," but recognized that "additional time will be required after these rulemaking actions are completed for operators to implement the new requirements established." *Id.* at 20 (emphasis added); *see* 30 C.F.R. § 250.172(c) (a suspension may be directed or granted when "necessary for the installation of safety or environmental protection equipment").[11]

The Secretary's memorandum concluded with a section entitled "Implementation" that expressly required BOEMRE to "withdraw" its May suspension letters, "issue new suspensions," and "cease the approval of pending and future applications for permits to drill consistent with this decision." Decision Memorandum at 22. BOEMRE issued new letters directing SOOs for lessees who were currently drilling or proposing to drill pursuant to approved APDs. The affected leases included the three Anadarko leases. AR0101-10. It is unarguably clear that the Secretary did not direct a suspension for all OCS leases, but only for those involving particular operations. *See Statoil Gulf of Mexico LLC (Statoil)*, 181 IBLA 252, 264 (2011). On October 12, 2010, the suspensions were terminated. AR0172-85. New safety rules were published and compliance statements were required.[12]

Anadarko's Leases

Anadarko has interests in more than 350 leases on the Gulf OCS in waters deeper than 500 feet. SOR at 1, Appx. A. In its January 24, 2011, letter, Anadarko asserted that BOEMRE should suspend the leases for the time of the moratorium from May 28 to October 12, 2010, plus a reasonable time to meet the new requirements for obtaining approval of operations. As of the time Anadarko filed its SOR, it had not yet received approval of a single deepwater Application for Permit to Drill (APD) since May 6, 2010. *Id.* Before that date, Anadarko had contracted for four deep-water drilling rigs and anticipated drilling 10 to 15 wells per year. SOR at 13. Of its more than 350 leases, five had reached the end of their primary terms and were subject to individual requests for suspension, 25 were set to expire by the end of

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[11] The National Commission established by the President confirmed the Secretary's perception that new rules were needed when it submitted its report in January 2011. *See* NC Report at 122, quoted above.

[12] An interim rule for increased safety measures was published on Oct. 14, 2010. 75 Fed. Reg. 63346-77. A final rule requiring new safety and environmental management systems was published on Oct. 15. 75 Fed. Reg. 63610-54. On Nov. 8, BOEMRE issued NTL-2010-N10, requiring statements of compliance and demonstrating adequate spill response and well containment resources.

November 2011, 84 during 2012, and 39 in 2013. SOR at 14-15. Anadarko claims it has experienced considerable delays in obtaining approval for proposed projects, disrupting its planning over the next few years, and that the delays caused by the Department's actions have made it impossible to drill on leases with less than 3 years remaining in their primary terms. *Id.* at 14-18. The company further argues that filing individual requests for suspension for each of the 148 leases that would expire by the end of 2013 provides no adequate remedy because the criteria established by NTL No. 2000-G17 do not account for the extraordinary delay caused by the Department's actions. *Id.* at 18. To the extent the Secretary refused to consider plans or drilling permits pending the issuance of new regulations or review of existing regulations, Anadarko avers, he acted in breach of the lease. *Id.* at 24.

Anadarko contends that the effect of the moratorium continued at least until March 28, 2011, when BOEMRE announced the criteria for judging the adequacy of well containment devices and procedures in considering APDs. SOR at 34; AR0304-09.

The Secretary Provides Further Lease Extensions

On June 16, 2011, shortly after Anadarko filed its SOR in this appeal, the Secretary issued a new memorandum to BOEMRE's Director providing for the extension of deepwater leases. The Secretary recognized that lessees who did not qualify for suspensions under the earlier criteria may have nevertheless experienced delay in their exploration and development activities as a result of having to comply with new requirements and required more time to provide new information in updating their plans. *See* 30 C.F.R. § 250.172(c), (d). The memorandum provided for an expedited process by which a lessee could obtain an extension for up to 1 year for deepwater leases (depths of more than 500 feet) on which there was no production as of May 15, 2010, which would expire before December 31, 2015. The suspensions would begin on May 28, 2010, and would terminate upon the commencement of operations or on May 28, 2011, whichever was earlier.

Noting that December 31, 2015, lies more than 4 years beyond the termination of the suspension directive and the imposition of new requirements, the Secretary determined that the expedited process need not be provided for leases with terms ending after 2015 because operators on those leases would have sufficient time to adjust to the new circumstances. Although this *expedited* process was only made available to leases that would expire before December 31, 2015, the Secretary stated that operators on leases expiring after that date could still obtain suspensions if justified under the process provided in 30 C.F.R. §§ 250.168-177. On June 29, BOEMRE issued NTL No. 2011-N05, which established the expedited procedure for obtaining a suspension.

The Secretary's memorandum thus provided a basis for redressing almost all of Anadarko's stated concerns. *See* Answer at 18-20. Although Anadarko contended that the effect of the moratorium continued at least until March 28, 2011, the Secretary provided for extensions until May 18. Although Anadarko expressed concern about the impossibility of drilling on leases that would reach the end of their primary terms in 3 years, the Secretary not only provided for a 1-year extension of those leases but also for leases that would expire much later—at the end of 2015. Although the Secretary considered it unnecessary to extend leases expiring after 2015 because the time remaining for those leases was sufficient to achieve production, he nevertheless concluded by noting that leases that did not qualify for an extension under the criteria established for the expedited process could still obtain suspensions if otherwise justified. Under these criteria, BOEMRE granted SOOs for 195 leases that had been involved in this appeal. Answer at 16-17.

Arguments on Appeal

Notwithstanding the fact that BOEMRE has granted suspensions of operations on leases that would expire before the end of 2015, even where there were no proposed operations to suspend, Anadarko nevertheless contends that the moratorium effected a blanket directed suspension that extended all deepwater leases, without regard to whether any operations were even planned for them. SOR at 19-23; Response at 4-5. Appellant bases this argument on *Copper Valley Machine Works, Inc. v. Andrus,* 653 F.2d 595 (D.C. Cir. 1981), a case arising under section 39 of the Mineral Leasing Act (MLA), 30 U.S.C. § 209 (2006), which Anadarko contends is analogous to the suspension provisions of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1334(a) (2006). In that case, the court held that withholding permission to drill on the basis of a lease stipulation that prohibited drilling during a 6-month period constituted a 6-month suspension of operations that entitled the lessee to an extension for an equivalent period. 653 F.2d at 604-05. Thus, the right to an extension does not depend on the issuance of suspension letters. SOR at 25-27.

Anadarko argues that the "duty of good faith and fair dealing" requires acknowledgement of a lease extension. SOR at 23-25, 31-33. It points to the Department's past practice of directing blanket suspensions for OCS leases, SOR at 27-29, and argues that it need not prove that it was ready to drill on each lease to obtain an extension. SOR at 29-31.

BOEMRE points to our *Statoil* decision in which we held that the Secretary did not require BOEMRE to direct a suspension of all deepwater OCS leases but only those involving particular operations. 181 IBLA at 264. In that decision, we also rejected Statoil's argument that the moratorium effected a *de facto* suspension of all leases. Although Statoil also relied on the *Copper Valley* decision, we pointed out that *Copper Valley* arose under the MLA and that Statoil had provided no authority

extending its rationale to OCS leases. *Id.* at 264-65. In this appeal, however, Anadarko and BOEMRE raise issues concerning the applicability of the *Copper Valley* case that were not addressed in our *Statoil* opinion. Before addressing the arguments based on *Copper Valley*, we first set forth the Secretary's duties under the OCSLA and the pertinent requirements regarding suspensions. We will then turn to the arguments concerning *Copper Valley*, and then address Anadarko's arguments concerning the practice of blanket suspensions for OCS leases.

The Outer Continental Shelf Lands Act

"The Secretary is the guardian of the people of the United States over the public lands." *Knight v. United Land Assoc.*, 142 U.S. 161, 181 (1891). In *Wilkie v. Robbins*, 551 U.S. 537, 557-58 (2007), the Court recognized "that the Government is no ordinary landowner, with . . . its role as trustee for the public." "'All the public lands of the nation are held in trust for the people of the whole country.'" *Light v. United States*, 220 U.S. 523, 537 (1911) (quoting *United States v. Trinidad Coal & Coking Co.*, 137 U.S. 160, 170 (1890)); *see Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1919). This trust includes the OCS. *United States v. California*, 332 U.S. 19, 40 (1947); *see Alabama v. Texas*, 347 U.S. 272, 277 (1954).

In enacting the OCSLA, Congress declared that the OCS "is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. § 1332(3) (2006). Congress further declared that OCS operations "should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." 43 U.S.C. § 1332(6). Congress later enacted amendments with the purpose of establishing policies and procedures resulting "in expedited exploration and development of the Outer Continental Shelf" and to

> preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition . . . .

43 U.S.C. § 1802(1), (2) (2006) (the statute lists 10 Congressional purposes). In his role as trustee for the public, the Secretary and his delegates must keep these policies in mind when exercising discretionary authority to direct a suspension or grant a request for one. *See Statoil Gulf of Mexico LLC*, 42 OHA 261, 307-08 (2011).

The OCSLA authorizes the Secretary to issue leases for an initial period (primary term) of 5 years or some other period of time, not to exceed 10 years, where a longer period is necessary to encourage exploration and development. 43 U.S.C. § 1337(b)(2) (2006). Leases "entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan . . . ." 43 U.S.C. § 1337(b)(4) (2006). OCS leases are granted by competitive bidding and usually carry a royalty of no less than 12½ percent of production. 43 U.S.C. § 1337(a) (2006). The leases are not renewable; the OCSLA provides that leases will continue in effect "as long after such initial period [*e.g.*, the 5- or 10-year primary term] as oil and gas is produced in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon." 43 U.S.C. § 1337(b)(2) (2006).

Standard terms of an OCS lease provide that it is subject to all regulations issued pursuant to the OCSLA "in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein; and all other applicable statutes and regulations." *Abbot v. BP Exploration and Production, Inc.*, 781 F. Supp. 2d 453, 463 (S.D. Tex. 2011); *Anadarko Petroleum Corporation*, 181 IBLA 388, 393 (2012); *see Pauley Petroleum Inc. v. United States*, 591 F.2d. 1308, 1325-26 (Ct. Cl. 1979); *cf. Mobil Oil Exploration & Producing Southeast, Inc. v. United States,* 530 U.S. 604, 616-17 (2000) (leases subject to future regulations under OCSLA, but not future regulations under other statutes).[13] Thus, a lessee takes a lease with the understanding that it is subject to future regulations that correct deficiencies in existing regulations to properly ensure that the natural resources of the OCS are protected.

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[13] Onshore leases are similarly subject to regulations "now or hereafter in force." *Petroleum, Inc.*, 161 IBLA 194, 218-19 (2004), *aff'd. sub. nom. Monahan v. U.S. Dept. of the Interior*, No. 04-CV-205, 2007 WL 2993577 (D. Wyo. May 17, 2005).

Suspensions under the OCSLA

The OCSLA authorizes the Secretary to prescribe regulations necessary to carry out the statute. Those regulations are required to include provisions

> (1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit . . . .

43 U.S.C. § 1334(a) (2006).

[2] The authority of the Secretary to direct a suspension or grant one at the request of a lessee is discretionary. *Statoil*, 42 OHA at 267-68 (citing *California v. Norton*, 311 F.3d. 1162, 1173 n.6 (9th Cir. 2003)); *see Hoyl v. Babbitt*, 129 F.3d 1377, 1384 (10th Cir. 1997); *Getty Oil Co. v. Clark*, 614 F. Supp. 904, 915-16 (D. Wyo. 1985), *aff'd sub nom. Texaco Producing, Inc. v. Hodel*, 840 F.2d 776 (10th Cir. 1988) (involving the analogous authority to grant or direct suspensions for onshore leases under 30 U.S.C. § 209 (2006)).[14] Under 30 C.F.R. § 250.172, BOEMRE may "grant or direct an SOO or SOP" (a) when necessary to comply with judicial decrees prohibiting any activities or the permitting of those activities; (b) when activities pose a threat of serious, irreparable, or immediate harm or damage; (c) when necessary for the installation of safety or environmental protection equipment; (d) when necessary to carry out the requirements of NEPA or to conduct an environmental analysis; or (e) when necessary to allow for inordinate delays encountered in obtaining required permits or consents, including administrative or

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[14] "The Department has recognized that, when Congress enacted OCSLA, it expected the Secretary to provide for suspensions in a manner similar to those under the Mineral Leasing Act." *Statoil*, 42 OHA at 268 n.5 (citing Sol. Op., "Revival of Offshore Oil and Gas Leases," M-37019 (Jan. 15, 2009), at 8 n.5, citing Sol. Op. M-36927, 87 I.D. 616, 622 (1980); *see Shell Offshore, Inc.*, 107 IBLA 165, 170-71 (1989); *Exxon Company, USA*, 156 IBLA 387, 399 n.8 (2002)).

judicial challenges or appeals.

We may commonly refer to "suspending a lease," but technically, it is not the lease that is suspended; the statute refers to "the *suspension of any operation or activity*, including production, pursuant to any lease," the term of which is extended for an equivalent period. 43 U.S.C. § 1334(a)(1) (2006) (emphasis added). The MLA similarly refers to the "suspension of operations and production," not suspension of the lease. 30 U.S.C. § 209 (2006). Thus, in analyzing appellant's arguments, we must bear in mind that the Secretary's directive suspended operations, not leases. The operations he suspended were not operations on all leases, but only on leases where there were pending, current, or approved offshore drilling operations of new deepwater wells. This suspension was replaced by "the suspension of any authorized drilling of wells using subsea BOPs or surface BOPs on a floating facility" and "the approval of pending and future applications for permits to drill wells using subsea BOPs or surface BOPs on a floating facility."

The Effect of the Moratorium on OCS Lease Development

Anadarko explains that leases are not necessarily developed in the order in which they were acquired, but in "order of exploration and production potential" for which Anadarko identifies three classes of acreage: (1) *trend* acreage which involves a new geological trend for which there is little data for which a long term commitment to development is needed; (2) *lead* acreage which requires more technical data before exploration; and (3) *prospect* acreage which is ready to drill. Response at 15. Lessees develop carefully sequenced drilling plans based on production potential and lease maturity,[15] and some argue that the disruption of this

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[15] Some of the factors lessees apply in prioritizing lease development were identified in a report prepared by the Government Accountability Office:

> Industry officials told us that companies purchase leases knowing that it will not be economically feasible to drill every lease; however, they maintain an inventory of leases in various stages of development so that they may plan their business to develop leases when it is most profitable to do so. Industry officials emphasized that the oil and gas business is inherently speculative; therefore commodity prices and other market conditions determine whether it is economical to drill. For example, some wells may not be economical to drill while oil and gas prices are lower, but companies may keep inventories of leases that could become profitable to develop at higher oil and gas prices. In addition, industry officials told us that if their producing leases are not part of a unit agreement, their companies need to maintain undeveloped leases surrounding their producing leases so that other

(continued...)

sequence disrupts all leases. *See, e.g.*, *Statoil*, 181 IBLA at 260-61. Under this theory, argues Anadarko, a blanket suspension of all leases is warranted because a suspension of operations on leases at the front of the line delays operations on leases further down the line. Anadarko further claims, "[b]ecause the prohibition was across the board, the extensions of time must be across the board." SOR at 31.

Anadarko's theory is based on false assumptions that ignore other facts of lease development. To put the matter in a proper perspective, one must bear in mind that the vast majority of OCS leases never get drilled,[16] so Anadarko is essentially arguing that leases on which operations will never occur should nonetheless be given the same extension as leases on which real operations were actually delayed. Indeed, Anadarko actually argues that "fair dealing" requires so inequitable a result. *See* SOR at 23-25; Reply at 9-11.

Several recent cases provide examples of lease development strategies that demonstrate how a moratorium early in the term of a lease would have had no practical effect if actual operations were not imminent. As noted before, OCSLA provides for a minimum primary term of 5 years or some other period of time, not to exceed 10 years, where a longer period is necessary, to encourage exploration and development. Recognizing the difficulty of deepwater development, Congress provided deepwater leases with primary terms of 10 years rather than 5, so that lessees will have extra time after drilling a producible well to develop the facilities for

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[15] (...continued)

> lessees do not tap into the same reservoir. They also told us that the development of oil and gas leases requires time-consuming and costly research to determine which leases to develop, including exploratory, geological, and seismic studies. Lease terms and stipulations can also influence companies' decisions. For example, industry officials told us that if a company is reasonably confident that a lease will produce relatively quickly, a 3- or 5-year lease term may be sufficient, but that it may need a longer lease in areas that are considered less certain and, hence, more speculative. In addition, they told us that companies consider the location and the availability of equipment, such as drilling rigs, as well as the infrastructure to deliver the oil and gas to market centers. Officials also noted that building additional connecting pipelines requires a critical mass of leases, which may take time to acquire.

Government Accountability Office, "Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development," GAO-09-74 (Oct. 2008) (GAO Report), at 21-22.

[16] As of 2007, only 26 percent of the offshore leases issued between 1987 and 1996 had been drilled. GAO Report at 24-25, Table 2.

production that will extend a lease beyond its primary term. *See Statoil*, 42 OHA at 299. Not all lessees make use of this extra time. In *Statoil*, for example, it was not until the leases were in the seventh year of their 10-year terms, and only after the discovery of oil in a deep formation on other leases, that the lessees entered into an exploration venture, and it was not until the ninth year that a well was drilled. *Id.* at 277. Other lessees also wait until a lease is near the end of its term before seriously contemplating the commencement of operations. *See, e.g., ATP Oil & Gas Corp.*, 173 IBLA 250 (2008), *aff'd, ATP Oil & Gas Corp. v. Dep't of the Interior*, 2009 WL 2777868 (E.D. La. 2009), *aff'd*, 396 Fed. Appx. 93 (5th Cir. 2010), *cert. denied*, 131 S. Ct. 2159 (2011). In neither of these cases would a moratorium announced during the first 5 years have suspended any operation or otherwise denied the lessees the beneficial use of their leases for the simple reason that the lessees had no plans to make any beneficial use of the lease during that period. As Anadarko implicitly acknowledges, the delay in developing such leases results from the lessee's own exploration priorities rather than any delay that could be attributed to the Government. *See* Response at 15.

Thus, it is completely unreasonable to suggest that *all* OCS leases were affected by the moratorium. As Anadarko states in its SOR, "[a] fundamental norm of administrative procedure requires an agency to treat like cases alike." SOR at 31 (quoting *Westar Energy, Inc. v. Federal Energy Regulatory Comm'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007)). However, we have observed that this "argument cuts two ways." *General Chemical (Soda Ash) Partners*, 176 IBLA 1, 12 (2008). Anadarko fails its own test by not explaining how the moratorium affected the leases that remain in this appeal in any way like the leases that have already been extended. The only effect of suspending fictitious "operations" on idle leases would be to delay their return to the Government and the availability of that land for future lessees who might want to develop it. We cannot reconcile such a result with the Secretary's "role as trustee for the public," with the OCSLA's goal of making the OCS available for "expeditious and orderly development," *see* 43 U.S.C. § 1332(3) (2006), or with the purposes stated in 43 U.S.C. § 1802(1) and (2) (2006), quoted above.

Nevertheless, Anadarko argues that under *Copper Valley,* BOEMRE must recognize that the moratorium effected a blanket suspension for all deepwater OCS leases, without regard to whether a lessee had any plans to drill. We now analyze that decision.

The Copper Valley Case

Although Anadarko and BOEMRE disagree about the applicability of an onshore suspension case such as *Copper Valley* to offshore suspensions,[17] the Department has recognized that the onshore and offshore suspensions may be sufficiently analogous in some (but not all) respects that Anadarko's arguments warrant more than a cursory analysis.[18] Under the MLA, a lessee may hold a lease for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (2006). A lessee who had no producing well could earn a 2-year extension by conducting drilling operations at the end of the 10-year primary term. *Id.*

In *Copper Valley*, the lessee had commenced a well at the end of the primary term, January 31, 1976, earning an extension to January 31, 1978, to complete a well capable of production. However, a "winter only" drilling restriction to protect permafrost precluded drilling operations during the summer thaw, so drilling was interrupted from May to November 1976. Drilling recommenced in February 1977 but halted again that summer. Copper Valley was told that the lease would expire on January 31, 1978, in the absence of a well capable of production. Unable to complete a well capable of production by that date, Copper Valley requested a 1-year extension to make up for the time when drilling was restricted. The extension was denied and BLM declared the lease terminated. 653 F. 2d at 598-99. On judicial

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[17] *See* Answer at 21-22; Reply at 2-7; Surreply at 1-4. BOEMRE points out that section 39 of the MLA contains specific provisions and requirements pertaining to suspensions while the OCSLA only required the Secretary to promulgate regulations providing for suspensions in a more general way. Answer at 22. This result was intentional. When Congress was considering proposed OCS legislation in 1953, Secretary McKay expressed his preference for more general provisions that related to a number of topics including suspensions as follows:

> If the authority to promulgate regulations on these subjects is cast in general terms, the Department would be free to incorporate the provisions of the Mineral Leasing Act on the same subjects, but would also be free to modify them as circumstances peculiar to operations and actual experience in administering a leasing program in the submerged lands made appropriate.

S. Rep. No. 411, 83rd Cong., 1st Sess. at 28 (1953). Secretary McKay submitted a proposed revision to § 5 that was adopted verbatim except for two minor changes. *See* Sol. Op., M-36927, "New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Leases," 87 I.D. 616, 622-23 (1980), for a discussion of the history of the OCSLA.

[18] *See* n.14, *supra*.

review, the court found that the seasonal drilling restriction constituted a suspension ordered by the Secretary.[19] *Id.* at 604. Anadarko likens the moratorium in this appeal to the seasonal drilling restriction in *Copper Valley*, and argues that BOEMRE is required to recognize that the moratorium effected a *de facto* suspension, not only for leases on which operations were occurring, but for all deepwater OCS leases.

Anadarko fundamentally misreads the *Copper Valley* decision by ignoring its factual context and attributing to the court a holding it explicitly declined to make. The court did not hold that the seasonal drilling restriction effected a blanket suspension for all periods covered by the seasonal drilling stipulation for all leases that were subject to it. Had the court actually held as Anadarko argues, its ruling would have effectively doubled the term of all leases on Alaskan tundra subject to the same 6-month drilling prohibition. Concerned that a ruling in Copper Valley's favor could have such an effect, the Department argued that such a result was contrary to the congressional intent that the term of a non-producing non-competitive lease be limited to 10 years. 653 F.2d at 603. The court, however, explicitly stated that the issue raised by the Department's argument was not before it, and the court did not undertake to decide it. *Id.*

Thus, *Copper Valley* does not hold that a general drilling prohibition effects a *de facto* SOO where there are no operations to suspend; rather, the Court ruled that the seasonal restriction effected a *de facto* suspension under 30 U.S.C. § 209 because it interrupted ongoing operations. Although Anadarko argues that BOEMRE has improperly created and implemented a "readiness to drill" requirement as a condition for an SOO, *see* SOR at 29, Anadarko has not identified any Board or judicial decision issued in the more than 30 years since the *Copper Valley* ruling that applied *Copper Valley* to extend a lease when there were no proposed operations to suspend. As BOEMRE points out, a "readiness to drill" requirement is consistent with the *Copper Valley* ruling. *See* Answer at 22-23.

[3] The courts and this Board have recognized that a suspension is generally appropriate under section 39 where the Secretary has taken action which prohibits the lessees' timely access to the lease, and a *de facto* suspension occurs when the Secretary prevents timely access to the lease or otherwise prevents beneficial use to

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[19] The court based its decision on Assistant Secretary Carver's decision in *Texaco, Inc.*, 68 I.D. 195 (1961), in which a lessee had been denied permission to drill a well because the drilling would result in waste of potash deposits on the same land. 653 F. 2d at 604-05. In *Texaco*, the Government's refusal to permit drilling "'amounted to an order prohibiting all operations thereon' so an application for suspension under section 39 may be allowed . . . ." 68 I.D. at 200.

which the lessee is entitled as a matter of right. *Hoyl v. Babbitt*, 129 F.3d at 1380 (citing *Copper Valley)*. We have held, however, that a lessee cannot claim to have been denied the beneficial use of a lease if the lessee has neither requested nor been denied authorization to conduct operations. *See 5M, Inc.*, 148 IBLA 36, 41 (1999).

In *Hoyl*, a coal lessee cited *Copper Valley* to support his argument that he was entitled "to a suspension as a matter of right because Interior had to prepare an EIS [environmental impact statement] before he or his predecessors could develop the coal leases." 129 F.3d at 1383. After observing that an EIS is prepared in the ordinary course of business, the court stated: "[T]he equitable policies surrounding § 39 would be thwarted if a suspension were granted where the delays in preparing the EIS were attributable to the lessee and not the agency. This determination, however, must be based on a careful consideration of relevant factors and made on a case by case basis." *Id.* at 1384.

[4] When an oil lessee argued that the denial of permission to stake a well effected a directed suspension under *Copper Valley*, the Board stated: "[T]his determination can only be made on a case-by-case basis through the evidentiary attribution of fault for the delay. In short, who is to blame for the fact that the lease has not been developed or production achieved within its primary or extended term?" *Sierra Club (On Judicial Remand)*, 80 IBLA 251, 261 (1984), *aff'd*., *Getty Oil Co. v. Clark*, 614 F. Supp. 904 (D. Wyo. 1985), *aff'd sub nom. Texaco Producing, Inc. v. Hodel*, 840 F.2d 776 (10th Cir. 1988). After examining the facts in that case, the Board, citing *Copper Valley*, "conclude[d] that the operator's inability to commence drilling before the lease expired can not be attributed to any order, action, omission, or delay by any Federal agency," so "the operator and the lessees were not entitled as a matter of right to have the leases suspended." 80 IBLA at 264. The Board has applied this principle to OCS leases. *ATP Oil & Gas Corporation*, 173 IBLA at 261-65 ("[T]he lessee's responsibility for timely action under an MLA lease is no different from that under an OCSLA lease").[20] As we observed above, the lack of activity on leases that remain in this appeal results from Anadarko's exploration priorities rather than any delay that can be attributed to the moratorium. *See* Response at 15.

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[20] Anadarko argues that *ATP* and other cases cited by BOEMRE are not germane because they involve *requested* suspensions. SOR at 29-30; Response at 7-9. Anadarko overlooks ATP's argument that a *de facto* suspension arose when MMS denied ATP's requested SOO on the basis that ATP had no approved Exploration Plan (EP) or APD. The Board rejected that argument. *ATP*, 173 IBLA at 261-65. Thus, *ATP* and other cited cases, including *Copper Valley*, are indeed relevant when the lessee whose suspension request has been denied argues that a directed or *de facto* suspension has occurred.

We note that even in cases such as *Hoyl* and *Sierra Club* where operations have been proposed, *Copper Valley* has not been extended beyond its context. Thus, Anadarko fundamentally errs in arguing that *Copper Valley* requires BOEMRE to recognize a blanket *de facto* suspension for all OCS leases without regard to a lessee's readiness to drill. For more than three decades, this Board and the courts reviewing our decisions have recognized that the applicability of *Copper Valley* depends on an analysis of the particular circumstances under which a lessee sought access to a lease.

Blanket Suspensions

We now turn to Anadarko's argument that the prohibition of activity on a class of leases results in the suspension of all leases in that class, based on a past practice of blanket suspensions that did not involve a lessee's readiness to drill. SOR at 27. Anadarko points to the suspension of leases that followed the 1969 Santa Barbara Channel oil spill which included leases that were suspended before the lessees had sought drilling permits. *Id.* (citing Sol. Op. M-36831, "Suspension of Operations on Oil and Gas Leases," 78 ID 256, 261-64 (1971)). Anadarko adds that the Department had suspended 53 leases off the North Carolina coast although no APD had been submitted. *Id*. at 28 (citing *Mobil Oil Exploration & Producing SE, Inc. v. United States*, 530 U.S. 604, 613 (2000)). Anadarko contends that the moratorium effected a similar blanket *de facto* suspension of all deepwater leases without regard to whether any operations had been planned.

Citing *Aera Energy LLC v. Salazar*, 642 F.3d 212, 215 (D.C. Cir. 2011), Anadarko points out that MMS ordered SOOs for all 40 undeveloped California unitized OCS leases for the purpose of conducting the California Offshore Oil and Gas Energy Resources Study. SOR at 28. However, the *Aera* decision upon which Anadarko relies ultimately is an instance of MMS's departure from the perceived practice of granting blanket suspensions. The blanket SOOs ordered for the 40 leases remained in effect only until August 16, 1999, even though no drilling operations could be approved. MMS did not continue a blanket suspension beyond that date. 642 F.3d at 215; *see Samedan Oil Corp.*, 173 IBLA 23, 39-40 (2007), *aff'd*, *Aera Energy LLC v. Salazar*, 691 F. Supp. 2d 25 (D.D.C. 2010), *aff'd.,* 642 F.3d 212 (2011). Instead, MMS advised the unit operators in December 1998 that they had to submit SOP requests if they wanted to continue the leases in suspension after the SOOs ended. 642 F.3d at 215.

According to testimony in *Aera,* the agency expressly rejected a recommendation to grant a blanket SOP. Rather than grant a blanket SOP, MMS examined the circumstances of individual leases in the units, and granted the

requested SOP only for leases that remained unitized.[21] Anadarko's reliance on *Aera* to support its argument that past practice should dictate a blanket suspension is thus misplaced.

[5] While we recognize that the *Aera* case involved granted SOPs rather than directed SOOs, the case illustrates the wisdom of considering suspensions on a case-by-case basis instead directing blanket suspensions. *See Amber Resources Co. v. United States*, 538 F.3d 1358 (Fed. Cir. 2008). The Department was free to reconsider the advisability of a blanket suspension, and, by allowing the four leases to expire, the United States avoided an unnecessary liability. One court observed: "Experience is often the best teacher, and agencies retain a substantial measure of freedom to refine, reformulate, and even reverse their precedents in the light of new insights and changed circumstances." *Davila-Bardales v. INS*, 27 F.3d 1, 5 (1st Cir. 1994). "Agencies are free to change course as their expertise and experience may suggest or require, but when they do so they must provide a 'reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.'" *Ramaprakash v. Federal Aviation Authority*, 346 F.3d 1121, 1124 (D.C. Cir. 2003) (quoting *Greater Boston Television Corp. v. Federal Communications Comm'n*, 444 F.2d 841, 852 (D.C. Cir. 1970)); *accord*, *Nuclear Energy Inst., Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1296 (D.C. Cir. 2004) (per curiam). In this case, as the foregoing discussion makes clear, a departure from a practice of directing blanket suspensions is more in keeping with the Secretary's role as trustee for the public and better serves the purposes of the OCSLA.

Other Matters

As noted earlier, Anadarko contends that new requirements and procedures for approval of operations established after the moratorium went into effect breach the provisions of its leases and violate the rulemaking requirements of the Administrative Procedure Act (APA), 5 U.S.C. § 553 (2006). *See* SOR at 8-12, 24-25, 31-35; Reply at 9-16. At the time Anadarko filed its SOR, it had not yet received approval of a single deepwater APD since May 6, 2010. SOR at 1. In its January 24, 2011, letter to BOEMRE, Anadarko stated that in addition to the moratorium itself, new requirements adopted during the moratorium disrupted rig schedules and

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[21] To be included in a unit, a lease must overlie "one or more [mineral] reservoirs or potential hydrocarbon accumulations." 642 F.3d at 214 (quoting *Samedan*, 173 IBLA at 39-40). In *Aera*, MMS determined that four leases did not contain the potential hydrocarbon accumulations necessary for continued inclusion in the units, and allowed those four leases to expire without granting a further suspension. This Board upheld MMS' determination, and the District Court affirmed.

availability.[22] SOR, Ex. 18 at 4. Anadarko contends its inability to obtain the approvals needed to conduct operations "further extends the de facto and de jure suspension of operations" on the subject leases. On appeal, Anadarko adds that to the extent the Secretary refused to consider plans or drilling permits pending the issuance of new regulations or review of existing regulations, he acted in breach of the lease. SOR at 24, 32. Although BOEMRE asserts that the Board is not a proper forum to adjudicate contract claims,[23] BOEMRE also argues no contractual provision mandates a suspension. Answer at 25.

This appeal is from a decision, which concluded that Anadarko's leases were not suspended, so the issue before us is whether the new requirements support Anadarko's claim that its leases should be suspended, not whether those new requirements breached the leases or violated the APA. Leases for which approvals may have been delayed because of the new requirements, were granted suspensions under the Secretary's July 16, 2011, memorandum to BOEMRE's Director, and have been withdrawn from this appeal. As for the leases that remain, Anadarko has submitted no evidence to support its argument that they "faced a delay in lease activities" and that the moratorium "created a three-year disruption in [its] ability to plan to drill its lease prospects." Response at 15-16. Given the fact that so many OCS leases are held for speculative purposes and never drilled (and therefore were unaffected by the moratorium), it was appellant's responsibility to submit evidence, on a lease-by-lease basis, supporting its claim that a particular lessee had particular plans that were disrupted by government action. As there is no evidence that the government denied Anadarko's proposal for operations, there is no proof that BOEMRE "unreasonably delay[ed] a lessee in contract performance or . . . unjustifiably prevent[ed] a lessee from performing under its contract." *See Sun Oil Co. v. United States*, 572 F.2d at 801, 806, 812, 817.

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[22] The letter specifically refers to the Drilling Safety Rule, the Workplace Safety Rule, NTL No. 2011-N06, NTL No. 2011-N10, and several guidance documents.

[23] *See Exxon Corp.*, 95 IBLA 374, 376 (1987). Although awards of monetary damages for breach of contract or other potentially actionable conduct are beyond the scope of authority delegated to the Board, *see Robbins v. BLM*, 170 IBLA 219, 227 (2006), and cases cited, we may nevertheless consider whether a decision that we have jurisdiction to review is consistent with lease provisions. *See*, *e.g.*, *R. L. Hoss*, 137 IBLA 193, 199-200 (1996) (whether residential occupancy was consistent with section 1 of an onshore oil and gas lease); *Sierra Club (On Judicial Remand)*, 80 IBLA at 253 (whether BLM correctly relied on opinion that refusal to approve an APD would lead to breach of contract claims).

Conclusion

Although the Department has sometimes directed blanket SOOs that extended OCS leases without regard to whether there were actual or proposed operations, it clearly did not do so when the Secretary announced a drilling moratorium after the BP disaster; it suspended operations only on leases where the operations were being undertaken or proposed. *See Statoil*, 181 IBLA at 264. When a lessee claims that some action constitutes a *de facto* or directed suspension, he must demonstrate how the action deprived him of timely access or beneficial use of the lease. A lessee cannot claim to have been denied timely access or beneficial use of a lease if the lessee has neither requested nor been denied authorization to conduct operations. Anadarko has failed to make the required showing for any of the leases that remain in this appeal.

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 affirmed.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge