



VAQUERO ENERGY, INC.

185 IBLA 233

Decided February 9, 2015



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

VAQUERO ENERGY, INC.

IBLA 2013-125

Decided February 9, 2015

Appeal from a decision of the California State Office, Bureau of Land Management (BLM), on State Director Review, denying an application for a Suspension of Operations on a Federal oil and gas lease. CACA 44934.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Suspensions

Section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (2006), authorizes the Secretary to suspend operations and production under a mineral lease in the interest of conservation. The burden of demonstrating entitlement to a suspension rests with the lessee.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Suspensions

The Secretary is obligated to grant a suspension of operations and production where she acts or fails to act so as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. The Secretary is under no such obligation when the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, but she has the authority to grant a suspension in the exercise of her informed discretion after making the necessary finding that suspension is in the interest of conservation.

APPEARANCES: Erik Vasquez, Bakersfield, California, for Vaquero Energy, Inc.; Kevin Tanaka, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE PRICE

Vaquero Energy, Inc. (Vaquero), designated operator/representative for Petro Rock, LLC, has appealed from a February 29, 2013, decision of the Deputy State Director (DSD), Energy and Minerals, California State Office, Bureau of Land Management (BLM), denying an application for a Suspension of Operations (SOO) on Federal oil and gas lease CACA 44934. We affirm.

*Background*

Effective February 1, 2003, BLM issued Lease CACA 44934 to Vaquero for a period of 10 years. The leased lands are in sec. 6, T. 4 N., R. 19 W., San Bernardino Meridian, Ventura County, California. Five years into the lease, Vaquero assigned 100% of its lease interests to Rock Energy, LLC (later renamed PetroRock), but remained involved as PetroRock's designated operator/representative. On November 29, 2012, 62 days before the primary term of the lease was to expire, Vaquero submitted two Applications for Permits to Drill (APDs). On December 26, 2012, Vaquero filed the SOO application, seeking a suspension to permit time for Section 7 consultation with the Fish and Wildlife Service, U.S. Department of the Interior (FWS or USFWS), pursuant to the Endangered Species Act (ESA) of 1973, 16 U.S.C. §§ 1531-1544 (2006).

The lease is within the range of several species protected under the ESA. Of primary concern are the endangered California condor and the threatened Steelhead trout. *See* Dec. 18, 2012, Vaquero SOO Request. On January 23, 2013, the BLM Bakersfield Field Office (BFO) denied the requested SOO,<sup>1</sup> observing that 2 months did not allow sufficient time to process the APDs and comply with the ESA, and that the timeframe for complying with the ESA was clearly stated in the stipulations attached to the lease agreement. Given those circumstances, BLM instead invited Vaquero to submit an "expression of interest" to include these lands in a future competitive oil and gas lease sale. Vaquero requested State Director Review (SDR).

On SDR, Vaquero provided the following explanation:

The lease is unique in that it is located in/near the Sespe Condor Refuge and therefore requires a Section 7 Consultation by US Fish Wildlife, and possibly a review by the National Marine Fisheries Service due to proximity to a creek with potential for steelhead.

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<sup>1</sup> Because BFO's Jan. 23 decision did not include instructions for pursuing an appeal, BLM rescinded the decision. On Jan. 31, 2013, the day the lease was to expire, the decision denying the SOO was reissued with appeal instructions. It was the decision before the State Director.

The Applicant was cognizant of the sensitive nature of the location of the lease and therefore went to extreme lengths to submit an application to drill that had the least possible environmental impact. This included the utilization of existing drill sites and roads instead of proposing new ones. These drill sites are located not on the lease itself as the topography of the leased lands do not allow for drilling without significant construction which would result in greater impacts, but rather from adjacent private lands which took great amounts of time and considerable expense to secure rights to.

Feb. 11, 2013, SDR Request at 1. Vaquero acknowledged BLM's invitation to nominate the lands for lease in the future, but expressed doubt that the leased lands ever would be available again, given their location and local opposition to drilling.

The DSD affirmed BFO's denial of the requested SOO. SDR Decision No. LLCA921-13-01 dated Feb. 28, 2013 (Decision). The DSD reviewed the lease and the Protected Species Special Stipulation (Stipulation). *Id.* at 2. He noted that this Stipulation expressly notified the lessee that the leasehold was within range of several threatened or endangered plant and animal species, and that time frames for processing applications "may be extended beyond established standards to allow for species surveys, and consultation or conferencing with the USFWS." *Id.* If consultation was required, as appeared likely in the case, FWS had up to 135 days to render an opinion, and could take an additional 60 days if needed, for a consultation period of up to 195 days. *Id.*

With respect to Vaquero's argument that BLM could grant the requested SOO in the interest of conserving natural resources under 43 C.F.R. § 3103.4-4(a), the DSD found no error in BFO's refusal to exercise its discretionary authority pursuant to 43 C.F.R. § 3103.4-4(a). He agreed the requested SOO was properly denied where the failure to drill prior to lease expiration could not be attributed to any order, delay, or inaction by any Federal agency. As Vaquero presented no evidence that a Federal entity or agency had caused the delay in filing the APDs, the DSD affirmed BFO's decision.

This appeal followed.

On appeal, Vaquero argues that "the SOO should have been granted, taking the unique proposed drilling program into consideration, which would allow for development of the leased lands, without additional surface impacts, which is in the interest of conservation." Notice of Appeal/Statement of Reasons at 2.

BLM responds that Vaquero has not shown it was entitled to an SOO, arguing that the failure to develop and use the lease was due to Vaquero/PetroRock's own inaction. Answer at 8.

### *Discussion*

[1] Section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (2006), authorizes the Secretary to suspend operations and production under a mineral lease "in the interest of conservation," to prevent damage to the environment or loss of mineral resources.<sup>2</sup> *Savoy Energy, L.P.*, 178 IBLA 313, 322 (2010); *Carbon Tech Fuels, Inc.*, 161 IBLA 147, 161 (2004) (coal); *5M, Inc.*, 148 IBLA 36, 41 (1999). The burden of demonstrating entitlement to a suspension rests with the lessee. See, e.g., *Harvey E. Yates Co.*, 156 IBLA 100, 104, 105 (2001); see also *Atchee CBM, LLC*, 183 IBLA 389, 413 (2013).

[2] The Board has addressed similar last-minute suspension requests in the past. In *Prima Oil & Gas Co.*, 148 IBLA 45 (1999), we noted suspensions in the interest of conservation of natural resources had been granted where action could not be initiated because of the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370f (2006): "This authority has been interpreted to mean that the Secretary is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease." *Prima Oil & Gas Co.*, 148 IBLA at 49 (citing *Copper Valley Machine Works, Inc. v. Andrus*, 653 F.2d 595, 603-04 (D.C. Cir. 1981); *John March*, 98 IBLA 143, 147 (1987); *Sierra Club (On Judicial Remand)*, 80 IBLA 251, 260-64 (1984), *aff'd*, *Getty Oil Co. v. Clark*, 614 F. Supp. 776 (D. Wyo. 1985), *aff'd*, *Texaco Producing, Inc. v. Hodel*, 840 F.2d 776 (10th Cir. 1988)) The Board explained that the Secretary is under no such obligation when the inability to commence drilling is due solely to the lessee's action or inaction:

When the lessee's inability to commence drilling prior to lease expiration cannot be attributed to any order, delay, or inaction by any Federal agency, the Secretary of the Interior is under no obligation to grant a suspension, but has the authority to do so in the exercise of his informed discretion after making the necessary finding that suspension is in the interest of conservation.

*Prima Oil & Gas Co.*, 148 IBLA at 49, and cases cited.

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<sup>2</sup> Such suspensions extend the term of an oil and gas lease by the length of the suspension period. 43 C.F.R. § 3103.4-4(b).

Lessees and/or operators are responsible for timely filing required plans and necessary applications and cannot reasonably assume the Secretary will grant a suspension of operations on the lease under 43 C.F.R. § 3103.4-4(a) merely to relieve them of the consequences of their poorly timed decisions and actions. *See ATP Oil & Gas Corp.*, 173 IBLA 250, 262 (2008), *aff'd*, No. 08-1514 (E.D. La. Aug. 26, 2009), *aff'd* No. 09-30953 (5th Cir. Sept. 23, 2010). Thus, in *Nevdak Oil and Gas Exploration, Inc.*, 104 IBLA 133, 137 (1988), for example, the Board upheld BLM's refusal to grant a lease suspension where an APD was filed 22 days before a 5-year lease was to expire. Although the APD was approved the day before the lease expired, drilling at that point was impossible, a dilemma not attributable to any act, omission, or delay on BLM's part, but one that resulted simply because the APD approval process was "begun too late." *Id.* In *Harvey E. Yates Co.*, 156 IBLA at 106, BLM approved an APD mere days before the lease expiration date, too late for the work in question to be performed. The Board rejected the suggestion that BLM should have approved an SOO for the period of time needed to conduct the APD review.

Here, Vaquero alone was responsible for its dilemma. It was clearly apprised of the special circumstances and timing requirements posed by the presence of threatened and endangered species, and yet it did not file the APDs until it was obviously too late for BLM to comply with the ESA in order to process them; only 1 month remained of the primary term of the lease when Vaquero filed the SOO request on December 26, 2012. Vaquero's situation is markedly different from that discussed in *Atchee CBM, LLC*, 183 IBLA at 413 (a *de facto* suspension will be recognized where BLM unjustifiably delays action on an APD, or otherwise acts or fails to act in an appropriate manner and prevents the lessee from undertaking operations and production on the lease); *Harvey E. Yates Co.*, 156 IBLA at 107-08 (a lease will be extended if the actions of the Department constitute, in effect, an order of suspension); *Prima Oil & Gas Co.*, 148 IBLA at 49-50 (Forest Service's failure to determine whether Federal oil and gas leases may be issued for the offset tract rendered drilling of a unit well infeasible; denial of suspension of production was inconsistent with BLM policy that leases should not expire because of the unavailability of adjacent or commingled unleased Federal lands needed for logical exploration and development). In these circumstances, we are unable to find BLM abused its discretion in denying the request for an SOO.

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/  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge