WESTERN STATES INTERNATIONAL, INC.

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United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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WESTERN STATES INTERNATIONAL, INC.

IBLA 2014-180 & 2014-181 May 26, 2016

Appeal from two decisions issued by the California State Office, Bureau of Land Management (BLM), related to two Federal oil and gas leases. CACA 45619 and CACA 45618.

Affirmed.

1. Oil and Gas Leases: Assignments and Transfers;
Oil and Gas Leases: Burden of Proof

Where an appellant challenges BLM's approval of a lease assignment, the burden is on the appellant to show error in BLM's decision. Under the Mineral Leasing Act, "[t]he Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond." The Board will affirm BLM's decision to approve a lease assignment when an appellant does not demonstrate that the decision was in error either because the assignee was unqualified to hold the lease or because the bond was insufficient.

2. Oil and Gas Leases: Assignments and Transfers

The Department will not adjudicate private disputes regarding the validity and effect of oil and gas lease assignments and contracts pertaining to them until the parties have had an opportunity to resolve them privately or in court. Where BLM took action on an assignment application only after a private dispute between the parties was resolved finally by the state courts, BLM had no obligation to suspend its consideration of the application or provide notice to either party that the agency had received or was processing the application.

3. Oil and Gas Leases: Assignments and Transfers;
Oil and Gas Leases: Bonds

Under 43 C.F.R. § 3106.6-1, if bond coverage continues to be required for an oil and gas lease that is assigned, the assignee must furnish either the bond or consent of the surety under the existing bond to become co-principal on such bond. Where the terms of the bond specify that an assignee shall be considered to be a co-principal on the bond, this requirement is satisfied. In addition, where the assignor remains a record title holder of the lease, it remains responsible for all lease obligations, including bonding requirements.

4. Oil and Gas Leases: Assignments and Transfers;
Oil and Gas Leases: Bonds

In challenging a BLM decision to increase the bond for an oil and gas lease, an appellant must demonstrate that BLM's decision was in error. Where an appellant makes no claims that the bond is incorrect or miscalculated, and BLM's decision to increase the bond was well supported by the record and based on the rise in estimated reclamation costs, we will uphold the agency's decision as consistent with the regulations at 43 C.F.R. § 3104.5(b).

APPEARANCES: A. Alexander Gorman, Esq., Sacramento, California, for WSI; Richard D. Farkas, Esq., Sherman Oaks, California, for Tearlach Resources; Janell M. Bogue, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Western States International, Inc. (WSI) appeals from two separate April 4, 2014, decisions issued by the California State Office, Bureau of Land Management (BLM), related to two Federal oil and gas leases. In one decision BLM approved assignment to Tearlach Resources of a portion of the record title interest in Federal oil and gas Lease CACA 45619 (Lease 19), effective March 1, 2014. In the other decision BLM increased the bond for Federal oil and gas Lease CACA 45618 (Lease 18) and held assignment of that lease to Tearlach in abeyance pending the posting of an adequate bond.

Under Federal law, BLM approves lease assignments unless the assignee is unqualified or there is insufficient bond; in addition, BLM has authority to increase a bond when the agency determines that the existing bond is insufficient. Here, BLM approved assignment of Lease 19 to Tearlach after a dispute regarding the assignment was resolved in Tearlach's favor in state court and after determining that all other requirements for the assignment had been met. BLM increased the bond for Lease 18 after determining that the existing bond was insufficient to account for the increased costs of reclamation. Because we find that WSI has failed to demonstrate that either of BLM's decisions was in error, we affirm.

Background

BLM issued both leases to WSI, effective March 1, 2004.[1] On January 4, 2011, BLM received two assignment forms, assigning 60 percent of record title in both leases from WSI to Tearlach Resources.[2] Before BLM could act on the assignments, however, BLM learned that WSI and Tearlach were engaged in litigation in state court regarding the leases.[3] The agency therefore suspended action on the pending assignments until the dispute was resolved.

The litigation concluded in 2013 in Tearlach's favor, with a ruling that Tearlach had acquired a 60 percent interest in the leases on or before December 13, 2006.[4] Following resolution of the litigation, on April 4, 2014, BLM issued its decision approving assignment of Lease 19 to Tearlach.[5] BLM issued the other decision on the same day, notifying WSI and Tearlach that BLM had conducted a bond adequacy review and determined that, due to the rise in estimated reclamation costs, it was increasing the bond for Lease 18 by $100,000.[6]

WSI timely filed appeals and petitions to stay the effect of both decisions. By order dated May 29, 2014, we consolidated the appeals and granted Tearlach's motion to intervene. In a July 14, 2014, order, we denied WSI's petitions for stay.

WSI filed its statement of reasons (SOR) on June 30, 2014. Tearlach and BLM filed Answers on August 15, 2014, and September 2, 2014, respectively. WSI filed a Reply on November 17, 2014, and on November 20, 2014, Tearlach filed Evidentiary Objections to WSI's Reply.

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[1] Administrative Record (AR) Lease 19, Tab 1; AR Lease 18, Tab 1.
[2] AR Lease 19, Tab 4; AR Lease 18, Tab 6.
[3] BLM Answer at 2.
[4] *See* AR Lease 18, Tabs 9, 19; AR Lease 19, Tabs 12, 21.
[5] AR Lease 19, Tab 25.
[6] AR Lease 18, Tab 27.

Discussion

A. WSI has not shown error in BLM's decision to approve assignment of Lease 19.

[1] Where an appellant challenges BLM's approval of a lease assignment, the burden is on the appellant to show error in BLM's decision. Under the Mineral Leasing Act, "[t]he Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond."[7] WSI thus must demonstrate that BLM's decision to approve the assignment to Tearlach was in error either because Tearlach was unqualified to hold the lease or because the bond was insufficient.

WSI makes four arguments in support of its position that BLM erred by approving assignment of Lease 19: (1) BLM failed to give WSI notice that the assignment applications had been filed with the agency or that BLM was processing them; (2) Tearlach breached an agreement it had with WSI to transfer stock and thus is not qualified under BLM's regulations for assignment of the leases; (3) Tearlach obtained WSI's signatures on the assignment applications "through oppression and fraud," making the assignments "void and unenforceable[;]" and (4) Tearlach was required under BLM's regulations to post all, or at least a 60 percent share, of the bond prior to BLM's approval of the assignment, and Tearlach did not do so.[8] We address each argument in turn, and conclude that WSI has failed to demonstrate any error in BLM's approval of the assignment.

[2] WSI's first argument is that it was deprived of its "substantive due process rights" because BLM's "intentional or negligent lack of notice" that the agency had received or was processing the assignment applications prevented WSI from providing input on BLM's decision.[9] WSI, however, has not identified any law or policy that requires BLM to provide notice to an assignor before acting on a pending assignment application, and we can find none. WSI points to our decision in *Pat Reed* to support its blanket statement that "BLM is required to give notice of all pending actions it is considering taking before it does so."[10] But our decision in *Pat Reed* does not support this broad assertion. And as we explained in our order denying WSI's petition for a stay, the company's reliance on this decision is misplaced. In *Pat Reed* we found that BLM had improperly taken sides in a private dispute by failing to suspend its action on pending oil and gas lease assignments after it was made aware of the dispute.[11] We

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[7] 30 U.S.C. § 187a (2012); *Pardee Petroleum Corp.*, 98 IBLA 20, 24 (1987).
[8] SOR at 2-3.
[9] SOR at 6.
[10] *Id.* (citing *Pat Reed*, 119 IBLA 338 (1991)).
[11] 119 IBLA at 343.

stated that "[t]he policy of the Department has been that it will not adjudicate private disputes regarding the validity and effect of oil and gas lease assignments and contracts pertaining to them until the parties have had an opportunity to resolve them privately or in court."[12]

Here, unlike in *Pat Reed*, BLM took action on the assignment applications only after the dispute between WSI and Tearlach was resolved finally by the state courts. Because there was no longer any dispute, BLM's action to either approve or deny the assignment applications could not be interpreted as "taking sides." BLM thus had no obligation to continue to suspend its consideration of the assignment applications or provide notice to WSI that the agency had received or was processing the applications. Moreover, as we also noted in our order denying WSI's petition for a stay, any possibility that WSI was deprived of adequate notice of BLM's decision vanished when it appealed that decision to the Board.[13]

WSI next argues that because Tearlach breached the agreement it had with WSI to transfer stock in payment for the lease assignments, it is not qualified for the assignments under BLM's regulations.[14] Yet WSI does not cite to any regulation in support of its statement. Nor do the regulations specifying the qualifications of lessees and assignees – 43 C.F.R. §§ 3102.1 and 3102.5-1 – identify adherence to a private contract as a requirement for holding an interest in a lease. As we explained in our order denying WSI's petition for stay, disputes between private parties, such as the contract dispute apparently at issue between WSI and Tearlach, are beyond the Department's jurisdiction.[15] Tearlach's alleged failure to adhere to the private agreement it has with WSI is therefore not a basis for finding that Tearlach is unqualified to be an assignee or for overturning BLM's decision to approve the assignment of Lease 19. We agree with BLM that "WSI has not provided any evidence to demonstrate that Tearlach, as the assignee, is unqualified or that the BLM is prevented from processing the assignment."[16] We therefore find that BLM properly approved the assignment after the private litigation was resolved in Tearlach's favor.

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[12] *Id.* at 342-43.

[13] Order, IBLA 2014-180, *et al.* (July 14, 2014) at 4 (citing *ANR Co., Inc.*, 182 IBLA 248, 270 (2012) ("We find no denial of procedural rights under BLM rules or a violation of procedural due process, which is amply satisfied by a right of appeal to the Board.")).

[14] SOR at 7.

[15] *See* Order, IBLA 2014-180, *et al.* at 5 (citing to *Pat Reed* and other cases).

[16] BLM Answer at 6.

WSI's third argument is that Tearlach obtained WSI's signatures on the assignment applications "through oppression and fraud," and "threats of physical harm and intimidation."[17] WSI states that because Tearlach obtained WSI's signatures on the assignment applications through fraudulent means, the assignments are "void and unenforceable."[18] As we have already noted, however, the Board is without jurisdiction over disputes between private parties. Whether there was any fraud involved in obtaining WSI's consent to the assignments is an issue for the state courts, not this Board. Moreover, the state courts have already ruled on the assignments, finding that Tearlach obtained 60 percent of record title interest in both leases. Further, it appears that throughout the litigation, WSI never made this particular claim; Tearlach states in its Answer that "despite years of litigation in various State, Federal, and Appellate Courts, WSI . . . never asserted . . . that the subject assignments were signed under duress or death threats."[19] WSI cannot now make this claim in this forum.

[3] WSI's final argument is that BLM erred in approving the assignment of Lease 19 because Tearlach was required under BLM's regulations to post all, or at least a 60 percent share, of the bond prior to BLM's approval of the assignment, and Tearlach did not do so.[20] WSI primarily cites to 43 C.F.R. § 3106.6-1 in support of its argument. That regulation provides that if bond coverage continues to be required, a transferee must furnish either the bond or "consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent." WSI alleges that "Tearlach has never posted replacement bonds, or a pro rata share of the bonds OR provided evidence of consent as required by the regulation [at 43 C.F.R. § 3106.6-1]."[21] WSI, however, does not acknowledge that the existing bond satisfies the regulation by including a term that specifies that "this bond shall remain in full force and effect notwithstanding: *Any assignment(s) of an undivided interest in any part or all of the lands in the lease(s) in which event the assignee(s) shall be considered to be coprincipal(s) on an individual . . . bond* as fully and to the same extent as though his/her or their duly, authenticated signatures appeared thereon . . . ."[22]

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[17] SOR at 2, 8.
[18] *Id.* at 3.
[19] Tearlach Answer at 18 n.15.
[20] SOR at 3, 9-10.
[21] Reply at 2.
[22] AR Lease 19, Tab 2 (emphasis added).

Moreover, while WSI is correct that a sufficient bond must be in place prior to BLM's approval of an assignment,[23] that is what occurred in this case. BLM approved the assignment after it determined that the requirements for assignment had been met; these requirements include the sufficiency of the existing bond and express consent in the transferor's bond to be considered co-principal. Because the bond requirements for the lease were satisfied, BLM was not in error in approving the assignment. Regardless, because WSI is still a record title holder of the leases, having transferred only 60 percent to Tearlach, under BLM's regulations the company remains responsible for all lease obligations, including any bonding requirements.[24] WSI's arguments are therefore without merit.

B. WSI has not shown error in BLM's decision to increase the bond for Lease 18.

[4] WSI argues that Tearlach is also required under the regulations to pay all (or at least 60 percent) of the additional $100,000 assessed by BLM for the bond for Lease 18, and that it is "inequitable" for BLM to increase the bond "simultaneously with the improper processing of the [a]ssignments."[25] What WSI must demonstrate, however, is that BLM's decision to increase the bond was in error.[26] But WSI makes no claims that the bond is incorrect or miscalculated, or otherwise in violation of BLM's regulations. BLM's decision to increase the bond for Lease 18 was well supported in the record and based on the rise in estimated reclamation costs, which is one of the reasons enumerated in the regulations as a basis for an increase in an existing bond.[27] We therefore find no error in BLM's decision.

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[23] *See Merrion Oil & Gas Corp.*, 151 IBLA 184, 189 (1999); *R.E. Puckett*, 124 IBLA 288, 293 (1992); *Karis Oil Co., Inc.*, 58 IBLA 123, 124 (1981).

[24] *See* 43 C.F.R. § 3106.7-2(b) ("After BLM approves the assignment or transfer, you will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer."); *id.* Subpart 3104 (Bonds); *see also Petroleum, Inc.*, 161 IBLA 194, 209 (2004), *aff'd sub nom. Monahan v. United States Department of the Interior*, No. 04-CV-205-ABJ (D. Wyo. May 17, 2005), *aff'd*, No. 05-8068, 2007 U.S. App. LEXIS 24211 (10th Cir. Oct. 15, 2007).

[25] SOR at 3; *see also id.* at 10-11.

[26] *Pardee Petroleum Corp.*, 98 IBLA at 24.

[27] AR Lease 18, Tab 27; *see also* 43 C.F.R. § 3104.5(b) ("The authorized officer may require an increase in the amount of any bond whenever it is determined that . . . the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer.").

WSI urges this Board to use its equitable powers to void or stay BLM's decision to increase the bond, based on WSI's position that BLM unlawfully failed to require Tearlach to post 60 percent of the current bonds.[28] We have already concluded that because WSI remains a record title holder of the leases, it remains responsible for all lease obligations, including any bonding requirements. As such, and as we explained in our order denying WSI's petition for a stay, "BLM properly determined that either WSI or Tearlach could post the increased bond amount."[29] We therefore decline to address this argument further.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[30] we affirm BLM's decisions.

/s/
Amy B. Sosin
Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

[28] SOR at 11-13.
[29] Order, IBLA 2014-180, *et al.* (July 14, 2014) at 3.
[30] 43 C.F.R. § 4.1.