

INTERIOR BOARD OF LAND APPEALS

Franklin Oil Co.

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FRANKLIN OIL CO.

IBLA 93-251

Decided April 5, 1994

Appeal from a decision of the Deputy State Director, Mineral Resources, California State Office, Bureau of Land Management, affirming a notice of assessments, actions, and penalties for failure to file a bond for producing Federal oil and gas lease No. CAS 042335. SDR CA-922-93-1.

Affirmed.

1. Oil and Gas Leases: Bonds

BLM properly required an operator of a producing oil and gas lease to furnish a bond under 43 CFR Subpart 3104 although the operator did not plan to begin surface disturbing activities related to drilling operations.

APPEARANCES: Frank P. Samples, Esq., Bakersfield, California, for Franklin Oil Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Franklin Oil Company has appealed from a January 27, 1993, decision of the Deputy State Director, Mineral Resources, California State Office, Bureau of Land Management (BLM), affirming a January 5, 1993, order of the Caliente Resource Area Manager, BLM, that required bond coverage for Federal oil and gas lease No. CAS 042335 and notified Franklin of assessments, actions, and penalties to be imposed for failure to comply with the bond requirement.

Federal oil and gas lease No. CAS 042335, embracing 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 15, T. 25 S., R. 18 E., Mount Diablo Meridian, Kern County, California, evolved from partial assignments from lease SAC 039855, originally issued for a 5-year term, effective October 1, 1949, and has been held by production since 1951. On January 23, 1951, before drilling the first well on the lease, then-designated operators Gilliland Oil Company and C. O. Davis executed a \$5,000 bond to cover lease operations. BLM approved their bond on March 12, 1951.

Effective September 1, 1981, BLM approved the assignment of 100 percent of record title interest in the lease to Devils Den Limited Partnership (Devils Den). Franklin is the general partner of Devils Den and also apparently operates the lease for the partnership, although the record does

not contain any document designating Franklin the lease operator (but there is a November 26, 1980, letter approving Franklin's application for a permit to drill well No. "Strode" 1-F on the lease). In a decision dated January 4, 1982, BLM corrected what were considered to be clerical errors in the \$5,000 oil and gas lessee bond furnished by Devils Den (No. 99451), accepted effective August 31, 1981. Those corrections included inserting the name of Devils Den Limited Partnership into a space for the principal's name, which originally contained Franklin's name, and adding the serial number of the lease. No copy of this bond appears in the case file.

Acting on a recommendation by Minerals Management Service (MMS), on October 19, 1982, BLM informed Devils Den that bond coverage required for the lease had increased to \$10,000 and requested Devils Den to furnish either a new bond in that amount or a rider to the existing bond increasing the coverage. The record contains no response to BLM's request or any follow-up requests by BLM. (Although we have been furnished correspondence between Franklin and BLM concerning release of Franklin's State blanket oil and gas well indemnity bond and copies of letters informing the State of California that the surety on Franklin's State bonds was in receivership, none of these documents refers to bond No. 99451, the \$5,000 Federal oil and gas lessee bond furnished by Devils Den).

On May 11, 1992, MMS asked BLM to notify Franklin's sureties that Franklin had failed to respond to a demand for payment, and that MMS was therefore seeking payment from them. Although this request was cancelled, inquiry was then made into Franklin's bond situation leading to discoveries that Devils Den (the lessee) was in bankruptcy and there was no record that Franklin, the lease operator, had furnished bond coverage in conformity to 43 CFR 3104. BLM notified Franklin of this deficiency on July 6, 1992, and again on August 21, 1992.

On October 21, 1992, the Area Manager ordered Franklin to furnish required bond coverage within 20 business days and stated that failure to comply would result in assessments and penalties. Franklin responded by letter dated October 26, 1992, asserting that no bond was required since it did not plan to begin surface disturbing activities related to drilling in the near future. BLM replied on November 23, 1992, that regulations required that all operators on the ground be covered by a bond, and that Franklin must therefore submit the necessary bond. By letter dated November 27, 1992, Franklin refused to provide a bond.

On January 5, 1993, the Area Manager found that Franklin's continued operation of the lease without necessary bond coverage was a major violation of Federal regulations. He allowed Franklin 20 business days to obtain needed bond coverage, and informed Franklin that if it did not post bond within that time, BLM would assess Franklin \$500 for each day of continued operation without bond, and would take action to shut down operations on the lease and bar Franklin from the lease during the shut-in period, and that BLM would plug and abandon existing wells and reclaim the surface, with the costs of the work (plus 25 percent of total costs to cover administrative expenses) being charged to the lessee and satisfied, if necessary, by

attaching the lessee's (Devils Den) bond. The Area Manager further informed Franklin that his decision constituted a notice of proposed civil penalty and that a civil penalty would replace the assessment for noncompliance if the violation was not corrected within 20 working days.

Franklin sought State Director review of the Area Manager's decision. Citing 43 CFR 3104.1(a), Franklin again contended that since it did not plan surface disturbing activities related to drilling operations, it was not required to post a bond. In his decision affirming the Area Manager, the Deputy State Director distinguished between 43 CFR 3104.1, which required a bond prior to commencement of surface activities relating to drilling operations, and 43 CFR 3104.2, requiring an operator on the ground to be personally bonded either as principal or by a bond in the name of the lessee provided consent of the surety or obligor to the inclusion of the operator under the coverage of the lessee's bond was furnished to BLM. The Deputy State Director explained that the purpose of 43 CFR 3104.2 was to insure that bond liability coverage be maintained throughout the life of a producing lease up to plugging and abandonment. He affirmed the Area Manager's decision, concluding that wells and other facilities currently existed on the lease and that Franklin was the operator on the ground and was required to furnish a bond under both 43 CFR 3104.1 and 3104.2.

On appeal Franklin argues that the Deputy State Director's decision is contrary to law and fact. It is asserted that 43 CFR 3104.1 does not require every lessee, operating rights owner, or operator of each oil and gas lease furnish a bond, but only requires a bond to be submitted prior to commencement of surface disturbing activities. Franklin contends that 43 CFR 3104.2, by providing that "a lease bond may be posted," does not require that such a bond be submitted, but instead permits a person who intends to begin surface disturbing activities to either submit a lease bond or a statewide or nationwide bond under 43 CFR 3104.3. According to Franklin, these regulations do not require that all lessees and operators post a bond, and lessees who conduct no operations on the land and operators who do not plan surface disturbing activities are not subject to the bond requirement. Since Franklin maintains that it does not intend to commence surface disturbing activities and no facts exist from which the Area Manager could have concluded that such activities were planned, it concludes no bond is required.

Franklin also argues that requiring it to provide a bond would violate the constitutional prohibition against ex post facto laws and the "grandfather" principle by attempting to regulate past conduct and to require conforming operations to comply with subsequent requirements. Franklin acknowledges that there have been operating wells on the lease for many years, but insists no additional exploration activities are planned nor have such activities been conducted since the bonding regulations went into effect. Accordingly, Franklin urges that the Deputy State Director's decision be reversed.

[1] Bonds are required by BLM to insure full compliance with all the terms and conditions of Federal oil and gas leases. See Marathon Oil Co.,

102 IBLA 285, 289 (1988) and cases cited. As Franklin correctly points out, under 43 CFR 3104.1(a), bonds need not be furnished until surface disturbing activities on the lease are planned. That regulation provides:

Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) * * *.

Provisions of 43 CFR 3104.2 identify the means by which bonding requirements for an individual lease may be satisfied:

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than \$10,000 for each lease conditioned upon compliance with all of the terms of the lease. * * * The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the [BLM] office maintaining the bond.

Statewide and nationwide bonds may also be filed in lieu of individual lease bonds. 43 CFR 3104.3. Once the obligation to post a bond is triggered and an appropriate bond is submitted, the period of liability of the bond may not be terminated unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met. 43 CFR 3104.8; see Fidelity & Deposit Company of Maryland, 109 IBLA 389, 390 (1989).

A notice of intent to drill the first well on lease CAS 042335 was approved on February 1, 1951. The applicable regulation then in effect, 43 CFR 192.100(c) (1949), required a lessee or operator to furnish a \$5,000 bond before beginning drilling operations, and in accordance therewith the lease operators executed a \$5,000 bond on January 23, 1951, which BLM accepted on March 12, 1951. Bond coverage for this lease was therefore first required in early 1951. Although ownership of various interests and rights in the lease have changed hands throughout its life, BLM has required each assignee, including Devils Den, to furnish an acceptable substitute bond covering the lease before terminating liability under the assignor's bond. See 43 CFR 3106.2-3 (1981); see also 30 U.S.C. § 187a (1988) (requiring disapproval of an assignment for failure to submit a sufficient bond).

Franklin admits that the lease remains a producing lease; as a consequence, the need for bond coverage has not ended. Franklin does not dispute that it is the current operator on the ground, nor does it claim that it is covered by a bond in its own name as principal or by a bond in Devils Den's name. Since the applicable regulations unequivocally require that the operator on the ground of a producing lease be covered by a bond and Franklin concedes that it is not so covered, BLM correctly found that Franklin's operation of the lease without necessary bonding violated 43 CFR 3104. The fact that regulations in effect when Franklin began operating the lease, 43 CFR 3104.2(b) (1981), required that every operator be covered by either a general lease and drilling bond or an operator's bond, fatally undermines Franklin's contention that application of the current bonding requirements illegally imposes new constraints on its operations. Nor does BLM's failure to make an earlier demand on Franklin for the required bonding undercut the validity of that demand. See 43 CFR 1810.3(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge