

INTERIOR BOARD OF LAND APPEALS

Harvey E. Yates Co.

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HARVEY E. YATES CO.

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Decided June 7, 1996

Appeal from a decision of the Deputy State Director, Lands and Minerals, New Mexico, Bureau of Land Management, in part affirming requests by the Lea County Inspection Section, Roswell District, New Mexico, Bureau of Land Management, to supply documents concerning oil and gas production from three participating areas within the Young Deep Unit. SDR 93! 027.

Set aside and remanded.

1. Federal Oil and Gas Royalty Management Act of 1982: Generally! ! Oil and Gas Leases: Production

BLM may properly request that an oil and gas unit operator, pursuant to the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701! 1757 (1994), 43 CFR Part 3160, and Onshore Oil and Gas Order Nos. 3, 4, and 5, make documents available concerning oil and gas production from participating areas within a unit.

2. Administrative Practice--Administrative Procedure: Decisions--Bureau of Land Management! ! Federal Oil and Gas Royalty Management Act of 1982: Generally! ! Oil and Gas Leases: Production

Sec. 103(a) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1713(a) (1994), directs an operator to make appropriate records and information available for inspection and duplication by the Secretary. Where the case record fails to provide a rational basis for requiring an operator to duplicate its records and submit them to BLM, a decision affirming a request to do so will be set aside and the case remanded to BLM.

3. Administrative Practice--Administrative Procedure: Decisions--Federal Oil and Gas Royalty Management Act of 1982: Generally! ! Oil and Gas Leases: Production

A BLM decision affirming a request that an oil and gas unit operator make documents available concerning oil and gas production from participating areas within a unit will be set aside and the case remanded where the

record contains no rational basis for production of 6 months of documents.

APPEARANCES: Ernest L. Carroll, Esq., Artesia, New Mexico, for appellant; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Harvey E. Yates Company (HEYCO) has appealed from a September 1, 1993, decision of the Deputy State Director, Lands and Minerals, New Mexico, Bureau of Land Management (BLM), to the extent that he affirmed, on State Director Review (SDR) under 43 CFR 3165.3, three letters, dated June 23, 1993, from the Lea County Inspection Section, Roswell District, New Mexico, BLM, requesting HEYCO to supply information concerning oil and gas production from the three participating areas (PA) of the Young Deep Unit, known as Wolfcamp (891018042A), Delaware (891018042B), and Bone Spring (8910180420), situated in T. 18 S., R. 32 E., New Mexico Principal Meridian, Lea County, New Mexico. 1/ BLM stated that the information was necessary to close a "Production Accountability Inspection."

The nine items of requested information at issue in this appeal are tank strapping tables for all tanks, run tickets, pumper's daily gauge reports, seal records, oil purchaser volume statements, Lease Automatic Custody Transfer (LACT) meter provings, gas meter calibration tickets, gas purchaser volume statements, and gas chart integration reports of all meters. All but the tank strapping tables were requested for "the last 6 months." BLM provided HEYCO with 60 days within which to submit the information. 2/

The Deputy State Director provided the following explanation for upholding the requests for that information:

HEYCO complained that it would take one person more than 2 months to gather the requested data. In the oral presentation they

1/ The letters were not clear with regard to the exact participating areas and time frames for which information was sought or the deadline for supplying it. BLM issued explanatory letters on June 24, and July 23, 1993. Our description of the letters is as clarified by BLM's subsequent communications.

2/ BLM's June 23, 1993, letters requested a "[c]opy" of five of the items: run tickets, pumper's daily gauge reports, seal records, oil purchaser volume statements, and LACT meter provings. For the other four items, BLM did not expressly state that it wanted a "[c]opy." If, by omitting the word "copy," BLM intended to require the production of original documents, there is no explanation in the record of why it would require copies of some records and originals of others, e.g., "[c]opy of oil purchaser[']s volume statements for last 6 months" versus "[g]as purchaser[']s volume statements." For purposes of our review, we find that BLM was requesting copies of all the items.

requested that BLM personnel come to their office and obtain the necessary data.

Because of the nature of units, BLM conducts Detailed Production Accountability Inspections (DPAI) on the total unit including all PA's. Therefore, Hobbs was following policy when they requested information on the entire unit.

The BLM discourages the practice of BLM employees going through company files to obtain data. The data requested (excepted as previously deleted) is necessary to complete a DPAI and is to be supplied by HEYCO upon request. The 43 CFR part 3160 regulations and the applicable Onshore Orders require that HEYCO supply the Authorized Officer the requested data. Therefore, HEYCO is required to submit the requested data as modified. ^{3/}

(Decision at 2). The Deputy State Director provided no citations to written "policy," specific regulations, or particular Onshore Orders supporting his decision.

On appeal, appellant asserts that BLM's requests for documents are not authorized by the onshore oil and gas regulations or by onshore oil and gas orders. It contends that BLM's authority to determine production accountability is limited to ensuring that procedures are in place to measure oil and gas from a particular lease. MMS, it asserts, is the agency charged with determining if all calculations were accurately performed so as to ensure proper payment of royalties. Appellant argues that examination of the items requested reveals that BLM is "apparently attempting to perform audit functions not properly theirs" (Statement of Reasons (SOR) at 7). Further, appellant faults the Deputy State Director for failing to address why examination of the requested information in appellant's office would not be just as effective and "why BLM had inexplicably changed its policy of requesting similar records for single wells covering only several weeks rather than six months." Id.

In its answer, BLM responds that section 101 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1711 (1994), requires the Secretary to develop a program properly to account for production and that the Secretary has delegated that authority to BLM. ^{4/} It explains that it is

^{3/} The Deputy State Director's decision overturned the requests to the extent they required the following information: Copies of oil sale contracts, copies of gas sale contracts, MMS Form 2014's, and Division Orders. He stated that such documents are required by MMS, not BLM.

^{4/} BLM's answer consists of a statement from counsel for BLM relating to a procedural matter which has now been clarified by appellant and a Feb. 15, 1994, memorandum from the Acting Deputy State Director, Lands and Minerals, to the Field Solicitor responding to appellant's SOR. References in this decision to BLM's answer are to the memorandum.

responsible for the accuracy of the volumes which are reported by operators on MMS Form 3160. This form is designed to report production and sales by "Inspection Item." An inspection item is defined as a Lease by operator, a Communitization agreement or a Unit by Participating area. BLM must ask for all data related to an inspection item to verify production.

Id. at 2. BLM then lists seven documents "needed by BLM to verify production": Tank strapping tables, run tickets, pumper's daily gauge reports "(or equivalent)," seal records, LACT meter proving reports, gas meter calibration reports, and gas chart integration reports (Answer at 2). It also references five items as "not required," stating that the "State Director Review so held." Id. However, only four of those items were determined by the Deputy State Director not to be required. See note 3, supra. The fifth item, gas purchaser volume statements, was not expressly excepted by the Deputy State Director from his affirmation of the June 23 requests. Nevertheless, on appeal BLM takes the position that such statements are not required. The answer, however, omits any reference to oil purchaser volume statements, which were included in the requests and affirmed by the Deputy State Director. The silence of the answer on oil purchaser volume statements renders their necessity uncertain. Because of the contradictory record in this case regarding these two items, we set aside the Deputy State Director's decision to the extent he affirmed BLM's requests for gas purchaser volume statements and oil purchaser volume statements.

We turn now to consideration of the remaining seven items which the Deputy State Director concluded were properly requested by BLM.

[1] The Secretary of the Interior is directed by section 101(a) of FOGRMA, 30 U.S.C. § 1711(a) (1994), to establish a "comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, * * * and to collect and account for such amounts in a timely manner." The Secretary is to prescribe regulations deemed to be reasonably necessary to "carry out" the statute. 30 U.S.C. § 1751(a) (1994).

The Secretary is obligated by section 101(a) of FOGRMA, in part, to develop a system of "accounting" for all oil and gas production taken by private operators, in order to ensure the final collection of appropriate royalties owed on it. The responsibility for such accounting has, in the case of onshore operations, been delegated to BLM, as part of its broad range of duties under the regulations at 43 CFR Part 3160. See 43 CFR 3160.0! 2. Under 43 CFR 3161.2, the BLM authorized officer is authorized and directed "to approve, inspect and regulate the operations that are subject to the regulations" in Part 3160. BLM is entrusted with ensuring the security of all operations from the point of production until final disposition of oil and gas and the proper measurement of such production. See 43 CFR 3162.7.

In further fulfillment of this duty, BLM has promulgated several onshore oil and gas orders, which are binding on operators. See 43 CFR 3162.1(a) and 3164.1(b); Petro! X Corp., 127 IBLA 111, 115 n.3 (1993). They require, in part, an oil and gas operator to record and retain certain information regarding oil and gas operations within its purview. These orders concern site security (Onshore Oil and Gas Order No. 3, 54 FR 8060 (Feb. 24, 1989)) and the measurement of oil and gas produced from Federal leases (Onshore Oil and Gas Order No. 4, 54 FR 8092 (Feb. 24, 1989), and Onshore Oil and Gas Order No. 5, 54 FR 8106 (Feb. 24, 1989)).

Appellant admits that, with the exception of pumper's daily gauge reports, "BLM is correct that the items * * * are required to be maintained pursuant to Onshore [Oil and Gas] Orders No[s]. 3, 4, and 5" (Reply at 6). Appellant submits, however, that maintenance of such records does not "justify the overly burdensome, wholesale request of these items by BLM, especially in the absence of an audit, an indication that there was a problem with lost or unaccounted-for production, or any correlation between BLM's stated purpose and the items requested." Id.

Appellant maintains that BLM's role is limited to assuring that "there are in place procedures" to measure and account for production (SOR at 4). It argues that under a production accountability inspection BLM may inspect to determine if an operator is maintaining the records to account for production, but that the items requested in this case "would not assist BLM in the determination that the oil and gas produced is physically measured or accounted for with no exceptions" (Reply at 7). Appellant asserts that the documents would "only aid in determining whether or not proper payments of royalties were being made, a function which is not one with which BLM is charged" (SOR at 14).

We reject appellant's argument that BLM has such a limited role in overseeing onshore oil and gas operations. The "management" of onshore oil and gas produced from, stored or otherwise held on, and eventually sold and removed from Federal lands is under the jurisdiction of BLM (Secretary's Order No. 3087, Amendment No. 1, dated Feb. 7, 1983 (48 FR 8983 (Mar. 2, 1983))). BLM is thus responsible for accounting for oil and gas during the entire period of time prior to sale, whether they are found at the well head or in a pipeline or storage tank on the leasehold, in order to ensure that all of the production is finally accounted for in the computation and payment of royalty. This is clearly what BLM means when it says that it is "responsible for the accuracy of the volumes which are reported by operators [to MMS]" for royalty computation purposes (Answer at 2). It is obligated to see that those volumes match the quantity of oil and gas taken from the well head, held on the leasehold, and eventually sold and removed.

BLM clearly has the jurisdiction to determine whether the total amount of production, reported for royalty computation purposes, is accurate. There is no evidence that BLM's role is limited to seeing only that production accounting procedures are "in place," but not for assessing their accuracy in actually accounting for production, either from individual wells or from units.

The only requested item that appellant does not admit is required to be maintained by the orders is pumper's daily gauge reports. Appellant states that a pumper's daily gauge report is a record made by a pumper of the level of oil found in a storage tank at any given time, but that there is no requirement prescribing when or how often it should be taken (SOR at 8). Appellant asserts that this information only gives a "rough idea of what a well is doing [in terms of operations]." Id. at 11. It notes though, that BLM could use the information "to verify if or how much oil was lost * * * after a problem is discovered." Id. at 11! 12. Absent a "problem," appellant finds no basis for BLM's requests.

In response, BLM asserts:

The self! inspection requirement of Order No. 3 requires that the operator record the volume measurements made during their established self! inspection program. The "pumper's daily gauge report" is a commonly used document for recording measurements.

Heyco is correct that neither the pumper's daily gauge report nor the frequency of tank measurements is specifically required. But, it is common industry practice to maintain one. Heyco maintains such a log. Therefore, BLM is authorized to request it in lieu of the self! inspection report which is required.

(Answer at 1).

Order No. 3 provides that an operator

shall establish an inspection program for all leases for the purpose of periodically measuring production volumes and assuring that there is compliance with the minimum site security requirements. The program shall include a record of such inspections showing the findings of the inspection and a record of the volume measurements.

III.F.1, 54 FR at 8063. Thus, the order clearly provides, as a part of the required site security measures, for the periodic recording of measurements of "production volumes."

Appellant does not deny that it maintains such records. It only contends that BLM does not have the authority to request them. We conclude that such authority is implicit in the recordkeeping requirement since BLM is responsible for ensuring that an operator has properly accounted for oil production. Pumper's daily gauge reports account for oil production at certain intervals over time after its placement in a tank. In requesting that an operator provide such reports, BLM is not limited to only those instances where there is a suspected loss of oil. It may ensure that there is a routine accounting for oil production.

The Secretary of the Interior has a broad range of duties regarding royalty management under section 101 of FOGRMA, 43 U.S.C. § 1711 (1994).

In order to fulfill those obligations, Congress directed in section 103(a) of FOGRMA, 30 U.S.C. § 1713(a) (1994), that operators maintain records and make those records available to the Secretary. That section provides that operators

establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this chapter or determining compliance with rules or orders under this chapter. Upon the request of any officer or employee duly designated by the Secretary * * * conducting an audit or investigation pursuant to this chapter, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee * * *.

In this case, BLM made its requests as part of a Detailed Production Accountability Inspection. In the course of conducting such an inspection, BLM requested information that, with one exception, appellant admits it was required to maintain. We conclude that BLM's inspection may be considered to have been undertaken pursuant to the authority of section 103(a). Under that section, such information must be made available by appellant to the Secretary's delegate, BLM.

Appellant poses the question, however, of "why examination of HEYCO's records in HEYCO's office was not just as effective" as providing BLM with copies of the requested information (SOR at 7). It states that this question was raised during SDR and not answered by BLM. In his decision, the Deputy State Director merely stated, without citation, that "BLM discourages the practice of BLM employees going through company files to obtain data." In its answer, BLM did not address the question raised by appellant.

[2] As noted above, section 103(a) of FOGRMA, 30 U.S.C. § 1713(a) (1994), directs the operator to make appropriate records and information "available for inspection and duplication" by the officer or employee designated by the Secretary. (Emphasis added.) The regulations at 43 CFR 3162.7-5 dealing with site security on Federal and Indian (except Osage) oil and gas leases direct operators to retain and make available "on request" records of inspections and measurements. 43 CFR 3162.7-5(b)(6). They also state that site security plans "shall be made available to the authorized officer." 43 CFR 3162.7-5(c)(2). Onshore Oil and Gas Order No. 3 provides that records are to be "readily available to the authorized officer or authorized representative upon request." III.G.1, 54 FR at 8063. Onshore Oil and Gas Order Nos. 4 and 5 each explain that the authorized officer "may request" the records which are required to be maintained "any time." III.A, 54 FR at 8093; III.A, 54 FR at 8107. None of these regulations or orders dictates that the operator is responsible for copying its records and submitting them to BLM. Each regulation and

each order must be read in light of the statutory authority for its promulgation. That statutory authority, section 103(a) of FOGRMA, requires only that operators make records and information "available for inspection and duplication by" BLM.

Although the Deputy State Director states that BLM "discourages the practice of BLM employees going through company files to obtain data," he cites no authority for requiring an operator to duplicate its records and submit them to BLM. Thus, it appears that an operator could comply with a request for documents by making those documents available for inspection and duplication by BLM, as contemplated by section 103(a) of FOGRMA.

We must conclude that the case record fails to provide a rational basis for requiring appellant to duplicate its documents and submit them to BLM. Accordingly, we must set aside the Deputy State Director's decision and remand the case to BLM. See Burnett Oil Company, Inc., 122 IBLA 330, 332 (1992); Soderberg Rawhide Ranch Co., 63 IBLA 260, 261-62 (1982). If upon remand, BLM continues to require the duplication and submission of copies of documents, it should cite appellant the authority for such a requirement.

[3] Appellant also contends that the Deputy State Director improperly failed to address its contention that, even if BLM was authorized to request the production accountability information, its request for 6 months of information is not justified by the regulations or onshore orders. Appellant contends that BLM has "inexplicably changed its policy of requesting similar records only for single wells covering only several weeks rather than six months" (SOR at 7). Appellant contends that it specifically sought an answer to this question during SDR, but that none was forthcoming.

In its answer, BLM does not address appellant's assertion that it had a previous policy of only requiring several weeks of similar records for single wells. Nor does it direct our attention to any existing policy, regulation, or onshore order that might support its present requests for 6 months of documents. In the face of appellant's challenge to this time period and the lack of any support in the record for the necessity for requiring 6 months of documents during a production accountability inspection, appellant's assertion that such a requirement is overly burdensome rings true, absent an audit or explanation of a perceived problem. We find that the decision, in this regard, also is not supported by a rational basis. Accordingly, to the extent the Deputy State Director affirmed the requests for items to be provided for a period of 6 months, his decision is set aside and the case remanded. If on remand, BLM continues to insist on 6 months of documents, it should cite appellant the authority for such a requirement and provide a reasonable explanation of the necessity for it.

Accordingly, 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 set aside and the case is remanded to BLM for further action consistent herewith.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

John H. Kelly
Administrative Judge