

INTERIOR BOARD OF LAND APPEALS

Robert D. St. John and Burnett Oil Co.

141 IBLA 147 (November 5, 1997)

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ROBERT D. ST. JOHN
BURNETT OIL CO.

IBLA 95-272

Decided November 5, 1997

Appeal from a Decision of the Colorado State Office, Bureau of Land Management, denying application for suspension of operations and production on 15 oil and gas leases. COC-50541, et al.

Affirmed as modified.

1. Oil and Gas Leases: Suspensions

Section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994), provides for suspension of a Federal oil and gas lease either (1) where, through some act, omission, or delay by a Federal agency, beneficial use of the lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee "timely access" to the property; or (2) in the interest of conservation, e.g., to prevent loss of mineral resources or damage to the environment. The burden of establishing entitlement to a suspension rests with the applicant. Where a lessee seeking a suspension under BLM's suspension policy for leases affected by leasing delays fails to demonstrate that such relief is warranted, BLM properly denies the suspension application.

APPEARANCES: Robert D. St. John, Denver, Colorado, pro se, and David S. Rhodes, Land Manager, Burnett Oil Company, Denver, Colorado, for Appellants; Jennifer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Robert D. St. John (St. John) and Burnett Oil Company (Burnett) (collectively Appellants) have appealed from the February 3, 1995, Decision of the Colorado State Office, Bureau of Land Management (BLM or

Bureau), denying their application for a suspension of operations and production on 15 Federal oil and gas leases. 1/

Burnett is the lessee of the 15 leases. Between 1989 and 1992, St. John, as Burnett's agent, filed seven presale lease offers for additional lands within a prospective oil and gas area in Archuleta County, Colorado, the majority of which falls within the boundary of the San Juan National Forest. 2/ Because the U.S. Forest Service (Forest Service) had withdrawn its consent to leasing the requested lands pending environmental analysis of oil and gas leasing in the National Forest, BLM suspended action on the lease offers until completion of the Forest Service's review.

On November 14, 1994, St. John and representatives of Burnett met with BLM and submitted a written request for a suspension of Burnett's leases pursuant to Instruction Memorandum (IM) 92-331 (Suspension Policy for Federal Leases Affected by Leasing Delays) (Aug. 28, 1992), concerning suspensions of Federal leases the development of which was affected by the unavailability of unleased Federal lands considered critical to such development. Enclosed with the request were: a schedule detailing Burnett's 22 Federal oil and gas leases and lease offers encompassing 21,486.98 acres in a prospective oil and gas area in Archuleta County, Colorado (Enclosure 1); a lease map of the prospective area identifying the lands included in issued leases and those covered by offers to lease (Enclosure 2); and a geological map of the prospective area prepared by Burnett's geological department (Enclosure 3).

The request noted that 9,818.14 acres of the land described in the lease offers lay within the boundaries of the San Juan National Forest and that none of the acreage delineated in the offers had appeared on competitive sales lists or were expected to appear on such a list in the foreseeable future. The request indicated that, despite the fact that the primary terms of the 15 issued leases were running, with 3 expiring in 1995, Burnett's exploration program could not proceed further until the lands inside the National Forest had been offered for competitive sale, because the best site for the initial test well for the North Chromo Prospect was located within the National Forest on lease offer COC-53110. 3/ St. John and Burnett, therefore, sought suspension of the 15 issued leases, explaining that,

1/ The 15 leases are COC-50541, COC-50544, COC-51033, COC-51041, COC- 51043, COC-51100, COC-51725, COC-51753, COC-51985, COC-52992, COC-53111, COC-53149, COC-53931, COC-54680, and COC-55116.

2/ The seven lease offers are COC-50543, COC-52356, COC-52357, COC-53110, COC-53324, COC-53805, and COC-54065.

3/ Although the original request placed the desired site on issued lease COC-53111, on May 4, 1995, after issuance of the challenged Decision and submission of appellate arguments, St. John filed a correction to the suspension request indicating that the best site for the initial well on the North Chromo Prospect was on COC-53110, a presale lease offer covering lands within the San Juan National Forest.

[b]ecause of the above situation and in the interest of obtaining the greatest ultimate recovery of oil and/or gas and for the conservation of natural resources, we * * * believe that it is neither logical nor practical to proceed further with exploration activity in the prospective area prior to the issuance of oil and gas leases on the lands in the seven pre-sale offers.

(Suspension Application at 2.)

In its February 3, 1995, Decision, BLM denied the request for suspension of operations and production on all of the issued leases. ^{4/} The Bureau based the denial on the discussion and geologic maps provided during the November 14, 1994, meeting and on subsequent telephone conversations. ^{5/} The Decision addressed the three specific fault-defined prospects delineated on the maps:

Prospect "A" contains approximately 200 acres, of which 40 acres are in lease COC 52992, which contains approximately 857.77 acres. The 40 acres are not in the best location to test the geologic prospect but it is an adequate amount of acreage to test the prospect. The Burnett Oil Company has not made any effort that we are aware of to test the forty acres by either filing a notice of staking or an application for permit to drill. The only reason that was made apparent to us was by Mr. St. John, who stated that if they were to drill a well and establish production in this prospect the bonus value of the other leases would increase. Although the [environmental review] process is holding up any further leasing in this prospect, the underlying purpose of the request is to limit the competition and to prevent the receipt of fair market value on the remaining lands in the prospect. We do not find it in the best interest of the public to suspend a lease which may be developed on its own or where only about 5 percent of the lease is within the prospect.

Prospect "B" is another faulted structural trap which on the maps does not contain any federal oil and gas leases. Therefore, there is nothing to suspend on this prospect.

^{4/} Although the Decision indicated that 22 oil and gas leases were involved, Burnett owns and requested suspension for only 15 Federal oil and gas leases. We, therefore, modify the Decision to the extent necessary to clarify that it affects only the 15 Federal leases issued to Burnett.

^{5/} The record does not contain any notes memorializing the Nov. 14, 1994, meeting or the subsequent telephone calls. Thus, we are not privy to whatever information might have been imparted during those encounters. Burnett has supplied the relevant maps in accordance with our Apr. 27, 1995, Order denying a petition for stay and ordering production of the geologic and geophysical maps initially filed with the suspension application.

Prospect "C" was presented as a conglomerate of prospects and in discussion with Burnett's geologist it was indicated that he did not have adequate geophysical data to specifically define the prospects. Therefore, [the suspensions of] the oil and gas leases that were requested in conjunction with Prospect "C" cannot be granted.

(Decision at 1-2.) ^{6/}

In their Statement of Reasons (SOR), Appellants argue that BLM's Decision erroneously ignores the policy established in IM 92-331, even though "the oil and gas leases on which suspension was requested are in an area logically subject to exploration and development which includes all acreage (leased or otherwise) necessary to properly drill and explore the target play." (SOR at 1.) They assert that they submitted all necessary supporting geologic and geophysical information and that they "believe they have established that the existing leases cannot be successfully operated without the leasing of the adjacent land, specifically the lands described in the seven pre-sale offers to lease which have yet to appear on a [BLM] competitive sale list." *Id.* Appellants note that the seven presale lease offers embrace lands within the San Juan National Forest, the leasing of which has been prevented due to the environmental compliance process. Since further exploration on the North Chromo Prospect cannot proceed absent the leasing of those tracts, Appellants maintain that their situation squarely falls within the parameters of IM 92-331 and warrants the requested suspension.

Appellants object to BLM's division of the North Chromo Prospect into three specific fault defined traps instead of one prospect. They challenge BLM's analysis of Prospect "A," questioning the logic of BLM's conclusion that the 40 leased acres suffice to test the prospect and disputing BLM's assessment of the underlying motivation of the suspension request. Appellants acknowledge that Prospect "B" contains no issued Federal oil and gas leases, but argue that this prospect should have been considered as part of the North Chromo Prospect as a whole and that BLM's Decision should have mentioned whether the presale lease offers describe lands within this prospect. The Decision's assessment of Prospect "C" errs, Appellants assert, by assuming that the individual prospects within this conglomerate must be defined wholly or partially by geophysics, since "[m]any prolific and profitable oil fields in the Rocky Mountain area were discovered and developed completely unsupported by geophysical work or supported with varying combinations of geophysical work, surface work and subsurface work." (SOR at 2.)

^{6/} Although the bracketed words "the suspension of" do not appear in the Decision, we accept BLM's explanation that these words should have been inserted at the beginning of the sentence and further modify the Decision by adding this language.

In its Answer, BLM contends that Appellants have failed to establish their eligibility for the requested suspensions. The conclusory statements in Appellants' suspension request do not provide complete information showing the necessity for such relief, BLM submits, and fail to satisfy Appellants' burden of proving that the suspensions would be in the interest of conservation. Nor, BLM argues, does the suspension request comply with the requirements of IM 92-331, which places the burden on the lessee to prove that, in the interest of obtaining the greatest ultimate recovery of oil or gas and the conservation of natural resources, the existing leases cannot be successfully operated without the leasing of the adjacent lands, or that the suspension is necessary to promote development. The Bureau asserts that eligibility for a suspension cannot be established by the lessee's unsubstantiated conclusion that it qualifies for a suspension, but must be demonstrated by supporting geological and/or geophysical information. The Bureau maintains that Appellants provided no geophysical data supporting the requested suspensions, and that, instead of furnishing the underlying geological records or reports, Appellants limited the geological information submitted to that depicted on their maps, which simply indicated that the area was highly faulted.

According to BLM, Appellants' maps identified three distinct prospects, captioned Prospects "A," "B," and "C," a characterization BLM adopted in the Decision. The Bureau asserts that Appellants have neither shown error in BLM's finding that the leased 40-acre tract in Prospect "A" is a sufficient amount of acreage to test the parcel nor adequately explained why they were unable to test the prospect by activities on that tract. As for Prospect "B," BLM points out that since the prospect contains no leased land, there is nothing for BLM to suspend, regardless of whether currently unavailable Forest Service lands exist within the prospect. The Bureau explains that Appellants' geologist tendered Prospect "C" as a conglomerate of prospects which could not be defined further due to the lack of adequate geophysical data. While not disputing that oil fields have been discovered and developed unsupported by geophysical work or supported by combinations of geophysical, surface, and subsurface work, BLM maintains that this statement does nothing to establish why Appellants are entitled to a suspension of operations and production on the lands within Prospect "C," given Appellants' failure to supply BLM with supporting data from any kind of work.

[1] Section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994), empowers the Secretary or his delegate to suspend operations and production under a mineral lease "in the interest of conservation," thereby extending the term of the lease for the suspension period. We have construed this statutory section as providing for suspension of Federal oil and gas leases either (1) where, through some act, omission, or delay by a Federal agency, beneficial use of the lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee "timely

access" to the property; 7/ or (2) in the interest of conservation, that is, to prevent damage to the environment or loss of mineral resources. Alfred G. Hoyl, 123 IBLA 169, 190-91, 99 Interior Dec. 87, 98-99 (1992), reaffirmed as modified, 123 IBLA 194A, 100 Interior Dec. 34 (1993), aff'd, 927 F. Supp. 1411 (D. Colo. 1996), appeal filed, No. 96-1388 (10th Cir. Aug. 12, 1996); Bronco Oil & Gas Co., 105 IBLA 84, 87 (1988); NevDak Oil & Exploration, Inc., 104 IBLA 133, 137-38 (1988) (applying Sierra Club (On Judicial Remand), 80 IBLA 251 (1984), aff'd sub nom., 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); and Copper Valley Machine Works Inc. v. Andrus, 653 F.2d 595 (D.C. Cir. 1981)). The burden of showing entitlement to a suspension rests with the lessee. TNT Oil Co., 134 IBLA 201, 203 (1995). Appellants have failed to establish that any of the requisite circumstances warranting a suspension exist.

Appellants base their request for a suspension of operations and production on IM 92-331. The IM recognizes that delays in making lands available for leasing occasioned by the time needed to complete comprehensive environmental documentation have, in some instances, frustrated Federal lessees in their efforts to pursue exploration and development in the most logical and sound manner, and that some oil and gas leases might expire while the lessees wait for adjacent tracts necessary to complete lease blocks to become available for leasing. Accordingly, the IM promulgates the policy for suspension of leases when leasing delays by the

7/ We note that the Solicitor has quoted language from Hoyl to the effect that such an extension was available "as a matter of right." That language was substantially modified in our Opinion on reconsideration, wherein we observed:

"The question is whether such administrative delay 'constituted a de facto suspension mandating an extension of the lease term'; if so, denial of the suspension requested by the lessee under section 39 could constitute an abuse of discretion. See Getty Oil Co. v. Clark, supra at 917. 9/

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"9/ Thus, it is not strictly true, as we stated in Hoyl, supra [at 190], that the lessee is entitled to a suspension as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded. Nevertheless, the Court in Getty suggested that a suspension of the lease term in the interest of conversation is required where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee's operator 'timely access' to the property, as it would be an abuse of discretion not to grant a suspension in such circumstances. Getty Oil Co. v. Clark, supra at 917."

Alfred G. Hoyl (On Reconsideration), supra, at 194I and 194J (emphasis supplied in part).

Federal Government have thwarted a lessee's ability to form lease blocks sufficient for the efficient and orderly development of oil and gas resources:

POLICY: The following policy will be initiated for the suspension of leases that cannot be explored and produced efficiently due to the proximity, or commingling, with Federal lands necessary for logical exploration and development but currently unavailable for leasing. Through this policy, such lessees will not face the prospect of losing their existing leases because of unavailability of adjacent or commingled unleased Federal lands necessary for logical exploration and development.

Lessees in the situation described above should submit a proposal for designation of [an] area as logically subject to exploration and development that includes all acreage (leased or otherwise) necessary to properly drill the target play, along with supporting geologic information, including results of any geophysical surveys, and any other pertinent available information. Concurrently, the lessee(s) may request a Section 39 [30 U.S.C. § 209 (1994)] lease suspension by demonstrating that it is not logical to proceed with exploration activities on existing leases without the acquisition/participation of neighboring Federal tracts which are currently unavailable for leasing. The lessee(s) making the application for lease suspension will have the burden of proving to the satisfaction of the BLM's authorized officer that, in the interest of obtaining the greatest ultimate recovery of oil or gas, and the conservation of natural resources, the existing lease(s) cannot be successfully operated without the leasing of the adjacent or commingled lands or that such a suspension is necessary to promote development.

(IM 92-331 at 2 (emphasis supplied).)

Thus, the IM does not mandate the approval of a suspension request whenever adjacent land is unavailable for leasing. Instead, it requires a lessee seeking a suspension to prove that the requested relief is warranted. ^{8/} The IM, as well as the applicable regulations and case law, place the burden of proving entitlement to a suspension on the lessee.

^{8/} We also note that the IM envisions a two-part process, with the lessee submitting a proposal for the designation of the area as an area logically subject to exploration and development and, concurrently, filing a suspension request. Nothing in the record indicates that Appellants sought the requisite designation.

Appellants' suspension request and SOR parrot the language of the IM but fail to offer adequate evidence establishing that the leased and unleased lands form an area logically subject to exploration and development that includes all acreage necessary to properly drill and explore the target play, or that the 15 issued leases cannot be developed without the leasing of the unavailable lands. ^{9/} The application contains no analysis justifying Appellants' selection of a site on lease offer COC-53110 as the best location for a test well for the prospect. Nor does it explain why development of each of the 15 issued leases depends on the outcome of the drilling of this test well. ^{10/} Appellants have not produced the data and evaluations underlying the maps submitted to BLM, thereby preventing BLM from verifying the accuracy of those maps, which, we note, divide the North Chromo Prospect into three distinct prospects. While Appellants state in the application that granting the suspension would be in the interest of obtaining the greatest ultimate recovery of oil and/or gas and would conserve natural resources, the record lacks any substantiation of that claim. Accordingly, we find that Appellants have failed to meet their burden of establishing that a suspension of the 15 leases should be granted.

To the extent not specifically addressed herein, Appellants' arguments have been considered and rejected.

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 as modified.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

^{9/} Appellants' suspension request was deficient under 43 C.F.R. § 3103.4-2(a), which requires that "[c]omplete information showing the necessity of such relief shall be furnished," and under 43 C.F.R. § 3165.1, which provides that suspension applications "shall include a full statement of the circumstances that render such relief necessary." The request was, therefore, subject to rejection for this reason alone. See NevDak Oil & Exploration, Inc., 104 IBLA at 138 n.7; Prima Exploration, Inc., 102 IBLA 352, 353-55 (1988).

^{10/} We note that, according to a document St. John faxed to BLM on Nov. 18, 1994, lease offer COC-53110 is in the Chromo, not the North Chromo, Prospect which contains part of only one Federal lease, COC-52992.