

INTERIOR BOARD OF LAND APPEALS

Devon Energy Corp.

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DEVON ENERGY CORP.

IBLA 95-579

Decided July 30, 1998

Appeal from decisions of the Colorado State Office, Bureau of Land Management, determining ownership of operating rights in the Federal No. 1-33 well situated on Federal oil and gas lease COC 23488 and upholding orders of the Grand Junction Area Manager on State Director Review requiring testing of the Federal No. 1-33 well. COC 23488; SDR CO-95-2.

Title determination affirmed; State Director decision reversed.

1. Oil and Gas Leases: Assignments and Transfers

While BLM will generally not approve a pending assignment of an interest in oil and gas leases after it has received notice of a controversy between the assignor and assignee as to its effect or validity but will rather maintain the status quo in order to allow the parties to resolve their dispute, this rule has no application where the issue involved is not a question of what the parties to an assignment intended but rather what BLM itself approved when it approved the assignment.

2. Oil and Gas Leases: Assignments and Transfers

Since, under 43 C.F.R. § 3162.4-2(b), BLM no longer approves operator designations but only requires that it be notified as to the operator's identity and that the operator furnish evidence of a sufficient bond, BLM approval is not needed to terminate an operator's status. Termination of an entity's status as operator, however, does not necessarily terminate that entity's or its surety's liability for past actions occurring on the lease.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for Devon Energy Corporation.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Devon Energy Corporation (Devon) has appealed from two separate decisions of the Colorado State Office, Bureau of Land Management (BLM), dated

June 19 and 21, 1995, respectively. In the first of these decisions, BLM determined that Devon held 1.31258 percent of the operating rights to certain lands within Federal oil and gas lease COC 23488 extending from the surface of the ground to the stratigraphic equivalent of a depth of 5,514 feet as penetrated by the Federal No. 1-33 well located in the SW¹/₄SW¹/₄ sec. 33, T. 6 S., R. 102 W., Sixth Principal Meridian, Garfield County, Colorado. In the June 21 decision, the Colorado State Director, upheld the May 8 and 23, 1995, orders of the Grand Junction Resource Area Manager requiring Devon to test the well for productive capacity in accordance with 43 C.F.R. § 3162.4-2(b). 1/

Federal oil and gas lease COC 23448 had been segregated from lease COC 10512 as a result of the commitment of other lands within the latter lease to the Calf Canyon Unit, effective February 1, 1976. The lessee of record for lease COC 23488 at that time was Fuel Resources Development Company (Fuelco). On January 23, 1980, the Conservation Division, United States Geological Survey (USGS), received an application for permit to drill (APD) the Federal No. 1-33 well on the lease from Fuelco. The APD was eventually approved on August 6, 1980.

In the interim between the filing of the APD and its approval, Fuelco designated Devon as operator of the well on July 23, 1980. On August 13, 1980, Devon filed a Designation of Operator form with BLM. 2/ Drilling operations commenced on August 16, 1980, and the well was completed on October 11, 1980, with an initial production capacity of 63 mcf of gas and 2 barrels of water per day. The well was shut in, ostensibly awaiting a pipeline connection, 3/ and has remained shut in to this day.

Effective March 1, 1981, BLM approved Fuelco's assignment to Devon of 100 percent of the operating rights in certain lands 4/ between "the surface of the ground and the stratigraphic equivalent of a depth of 5514' as penetrated by the #1-33 Federal well." We note that, under the terms of the assignment, Devon agreed at that time to "maintain such bond as may be

1/ The cited regulation, 43 C.F.R. § 3162.4-2(b), provides:

"After the well has been completed, the operator shall conduct periodic well tests which will demonstrate the quantity and quality of oil and gas and water. The method and frequency of such well tests will be specified in appropriate notices and orders. When needed, the operator shall conduct reasonable tests which will demonstrate the mechanical integrity of the downhole equipment."

2/ Devon and Fuelco had entered into a farmout agreement on June 2, 1980, in which Devon had agreed to commence drilling of the well within 30 days following receipt of all necessary Government approvals and permits.

3/ We note that, in 1983, Devon obtained permission from USGS to plug and abandon the well. Devon, however, subsequently reconsidered its decision to abandon the well. See Sundry Notice dated June 22, 1984.

4/ The assignment covered lots 3, 4, E¹/₂SW¹/₄ and SE¹/₄ sec. 31, N¹/₂ sec. 32, S¹/₂ sec. 33, T. 6 S., R. 102 W., Sixth Principal Meridian.

required by the lessor to assure compliance with the terms and conditions of the lease and the applicable regulations." There is, however, nothing in the record before the Board which indicates that Devon posted a bond or intended to do so at that time, though it is likely it was then covered by a nationwide bond.

On September 2, 1987, BLM approved Devon's assignment of 98.687422 percent of its operating rights to Devon Investors, Ltd. (Investors), leaving Devon with 1.312578 percent of the operating rights. In requesting approval of this assignment, Devon made explicit reference to its nationwide oil and gas bond, which had been filed on March 16, 1987. See Letter of Aug. 19, 1987. On February 6, 1990, BLM approved Investors' reassignment of 98.687422 percent of the operating rights back to Devon, effective July 1, 1989. As a result, Devon once again held 100 percent of the operating rights in the described lands.

On May 21, 1990, BLM received a request from Tracer Energy, Inc. (Tracer), to approve an assignment from Devon of operating rights in the subject lease. However, while Devon, in fact, owned 100 percent of the operating rights in the described acreage, the assignment indicated that Devon only owned 98.687422 percent of the operating rights and that Devon was assigning all of its 98.687422 percent working interest to Tracer. 5/ This assignment was approved on April 2, 1991, effective June 1, 1990. While the assignment of operating rights was approved, Tracer was not required to post a bond as a condition thereto.

Though the record before the Board fails to disclose any subsequent request for approval of the assignment of operating rights in the acreage from the surface of the ground to the stratigraphic equivalent of 5,514 feet, Tracer apparently conveyed the interest it had acquired from Devon to Powerline Energy Company (Powerline). It is undisputed that Powerline has been filing the Monthly Report of Operations (MRO) on the well for the monthly periods commencing in May 1990. 6/ Powerline also did not provide a bond nor did it seek approval of any assignment from Tracer of operating rights to this acreage.

5/ It appears from the record that no one realized that Devon had failed to obtain approval of the transfer of all of its operating rights to Tracer until some years after the approval of the assignment.

6/ We note that while the records submitted with this appeal contain a statement that "[b]eginning in 5/90, Powerline began submitting the [MRO]," the records indicate that all of the MRO's between the period May 1990 through October 1991 were accepted on May 20, 1992, and the MRO's from November 1991 through March 1992 were accepted on May 21, 1992. Since the file also contains a letter from MMS to Devon, dated Jan. 7, 1992, indicating that no reports had been filed from May 1990 through August 1991, it is possible that all of these MRO's were not filed until sometime in 1992. Since we do not have the complete MMS records before us, it is impossible to definitely resolve this question.

On October 27, 1992, BLM informed Powerline that, while its records indicated that it had been filing the MRO's for lease COC 23488, its records also showed that Devon was the recognized operator. BLM further informed Powerline that, as a condition for recognition as the operator, it was required to provide BLM with evidence of proper bond coverage, either by the consent of the surety of the lessee's bond to extend coverage to include the operator under the bond, or by providing bond coverage itself and submitting a sundry notice to that effect. No response from Powerline was forthcoming.

By letter dated May 25, 1993, the Grand Junction Resource Area Manager ordered Devon to submit plans to test the mechanical integrity of the Federal No. 1-33 well. Devon responded, by letter dated June 18, 1993, that it had sold its interest in the well on May 1, 1990, to Tracer. The records indicate that, subsequent to this response, a number of telephone conversations between BLM officials and Devon ensued. It is also clear that during this time officials of Devon and BLM attempted to get Powerline to post a bond, without any success. On October 5, 1994, the Area Manager sent a certified letter informing Powerline of the requirement that it provide adequate bond coverage as operator and further advising that failure to comply with this requirement could result in BLM taking action under 43 C.F.R. Subpart 3163. Copies of this letter were sent both to Devon and to Gasco, Inc., which now held both record title and the operating rights below the stratigraphic equivalent of a depth of 5,514 feet. ^{7/} No response from Powerline was forthcoming.

By letter dated May 8, 1995, the Area Manager first recounted the foregoing facts relating to BLM's unsuccessful attempts to obtain a bond from Powerline. In light of Powerline's failure to submit evidence of bond coverage, the Area Manager concluded that "[s]ince no new operator has been approved by BLM, Devon Energy Corporation is still the bonded operator and is responsible for [the Federal No. 1-33 well]." (Letter of May 8, 1995.) After noting that the well had been shut in since 1980, the Area Manager instructed Devon to conduct a test of the well's capability to produce in paying quantities within 60 days. Id. Devon responded by letter dated May 19, 1995, noting that "the referenced well was sold by Devon to Tracer Energy, Inc.," and asserting that, under 43 C.F.R. § 3106.7-2, upon approval of the assignment of operating rights, Tracer became "responsible for all obligations under the lease." ^{8/}

^{7/} BLM had approved assignments from Fuelco to Gasco of all of Fuelco's record title interest and operating rights for the subject lease on June 4, 1994. Evidence of record also shows that Fuelco transferred its overriding royalty interest to Gasco at that time. Subsequent attempts by Gasco to transfer its interest to Genesis Oil and Gas were not approved. Gasco remains the record title holder with respect to the subject acreage.

^{8/} Devon also asserted that "Devon owns no record title in the associated lease, and only owns operating rights below the stratigraphic equivalent of 5514' as penetrated by the Federal 1-33." Id. This last assertion seems to have been made in error, since there is nothing in the record to indicate that Devon ever owned the operating rights below the stratigraphic equivalent of 5,514 feet.

By letter dated May 23, 1995, the Area Manager responded by noting that "[w]hile the approved transfer of operating rights may have relieved you from obligations as sublessee, it did not relieve you of any obligations as operator." Since BLM's records failed to show "any notification or approval of a change in operator," the Area Manager concluded that Devon remained responsible for compliance with the May 8 letter. Devon, by letter dated June 6, 1995, thereupon requested State Director Review (SDR) of this determination pursuant to the provisions of 43 C.F.R. § 3165.3.

At the same time that the Area Manager was ordering Devon, as operator, to conduct a test of the capability of the Federal No. 1-33 well, the Colorado State Office was conducting a determination of title with respect to the operating rights to lease COC 23488 in the context of approving a transfer of record title and operating rights to the lease from Gasco to RIM Nominee Partnership. The results of this determination were announced in a decision dated June 19, 1995. The determination of title concluded, *inter alia*, that Devon still owned 1.31258 percent of the operating rights in the above-described acreage from the surface to stratigraphic equivalent of a depth of 5,514 feet. While all parties were provided a 30-day period in which to appeal this decision to the Board, we note that Devon was not served with a copy of this decision.

While Devon's request for SDR was filed prior to the issuance of the determination of title, it alluded to the fact that, in making its assignment to Tracer, Devon had described only a 98.687422-percent interest in the operating rights. Devon explained that "[a]pparently, the earlier assignment from Devon Investors Ltd. to Devon Energy Corporation was used as the pattern for this assignment." (Request for SDR at 3.) Notwithstanding this fact, Devon argued that "the assignment of operating rights from Devon to Tracer Energy, Inc. makes it clear that Devon retained no interest in the lease and this intent is confirmed by the assignment recorded in Garfield County, Colorado which states that Devon conveys 'all its right, title and interest.'" Id.

In seeking reversal of the Area Manager's order to test the Federal No. 1-33 well, Devon argued that, under this Board's decision in R.E. Puckett, 124 IBLA 288 (1992), approval of the assignment (in that case of record title interest) by BLM ended the assignor's liabilities for the subject lease. (Request for SDR at 3.) Devon also maintained that, under the Puckett analysis, the Area Manager's attempt to justify holding Devon liable as operator must also be rejected. Id. at 4. In support of this latter point, Devon asserted that "when Tracer Energy, Inc., advised BLM in writing, in its request for approval of the assignment, that it accepted all the obligations of the lease, any writing required by the regulatory definition of 'operator' and/or by § 3162.3(a) was satisfied." Id.

On June 21, 1995, the State Director affirmed the decision of the Grand Junction Area Manager. Initially, the State Director noted that, according to the official case record, Devon held 1.31258 percent of the operating rights involved in the controversy. The State Director also recounted that BLM had approved a Designation of Operator form establishing

Devon as the operator on August 14, 1980, and asserted that, at the time of operator designation, Devon had a nationwide bond in effect to cover well operations. After detailing the various efforts of BLM to either obtain bonding from Powerline or to get Devon to test the well, the State Director proceeded to an analysis of two discrete questions: (1) the status of the operating rights and (2) the requirements and procedures necessary to effect a change in an operator.

The State Director noted that, as defined in the regulations, 43 C.F.R. § 3100.0-5(d), operating rights authorize the "holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil and gas from such lands in accordance with the terms of the lease." Thus, the assignment of operating rights transfers the "right" to operate the lease. But, the State Director continued, the mere assignment of operating rights does not necessarily imply that a change in the lease operator has occurred or was intended; that, he cautioned, is an independent question. (Decision at 3-4.)

Relying on the regulatory definition of operator provided at 43 C.F.R. § 3160.0-5(g), the State Director noted that an operator is "any person or entity * * * who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands." Applying this definition, the State Director concluded that, in order for the assignee of the operating rights to become the operator, the assignee must notify the authorized officer, in writing, that it is responsible for the operations conducted on the lease. But that is not all. Relying on the provisions of 43 C.F.R. § 3162.3(a), the State Director noted that the operator must provide bond coverage. While admitting that BLM did not formally "approve" an operator, the State Director declared that "BLM verifies the intent of the proposed operator and ensures sufficient bond coverage is furnished before recognizing a new operator." (Decision at 4.)

Insofar as the form of the required notification was concerned, the State Director admitted that:

Notification can occur through several means. The proposed operator can notify the jurisdictional BLM field office by letter or through operational proposal or informational disclosure submitted on a BLM form such as a sundry notice, APD, or completion report. A MRO is also an acceptable form of notification. MROs are received by BLM from the MMS.

(Decision at 4.) Notwithstanding the foregoing, however, the State Director emphasized that Bureau policy since 1989 has been not to recognize assignment of operating rights as constituting notification of a new operator because "the intent to become an operator and assume existing

operations is not explicitly stated in [an] operating rights transfer." ^{9/} Id. Moreover, quite apart from the notification requirement, a prospective operator was required to provide evidence of adequate bond coverage.

Based on these principles, the State Director explained that, when BLM approved the assignment of operating rights to Tracer from Devon, it did not require Tracer to provide a replacement bond as a condition of approval because it did not consider this assignment to constitute the designation of a new operator. And, since Tracer never "notified" BLM of any change in the operator status nor provided a bond, Tracer could not be considered to have ever been an operator with respect to the subject lands. The Director continued:

Devon was both the operating rights holder and operator of the well at the time of the operating rights transfer to Tracer. The regulations at 43 CFR 3106.6-1 require the transferee of operating rights to furnish bond coverage if coverage is maintained by the transferor and is still required. No bond coverage was furnished by Tracer at the time of operating right transfer. Therefore, the bond coverage maintained by Devon was construed as coverage maintained by the operator of the lease barring any notification from a proposed (new) operator. If Devon had provided bond coverage and not operated the well, Tracer would be required to submit the required replacement bond or a consent of surety rider to Devon's bond (43 CFR 3104.2).

(Decision at 5.)

The State Director concluded, based on the foregoing, that Devon remained the designated operator of the well and instructed it to comply with the Area Manager's order to test the well or provide adequate evidence to show that testing the well is unnecessary. Devon thereupon appealed to this Board, challenging not only the State Director's June 21, 1995, decision but also the June 19, 1995, title determination issued by the State Office. ^{10/}

On appeal, Devon first challenges the title determination as, in effect, violating the Department's long-standing rule that it would decline to adjudicate the effect of an assignment as between private parties. (Statement of Reasons (SOR) at 4.) Devon argues that, in

^{9/} The State Director contrasted the submission of an assignment of operating rights with the filing of an MRO by opining that "[A] sundry notice provides BLM with notification that a lease activity is actively planned or pursued whereas an operating rights transfer is a passive activity that does not distinctly relate to the lease. The submittal of an MRO is considered an active lease responsibility since the production figures require involvement in lease activities."

^{10/} By Order dated Sept. 1, 1995, this Board stayed the June 21, 1995, decision of the State Director pending resolution of the appeal.

effect, BLM was interpreting the assignment contrary to the interpretation which both of the parties to the assignment had placed upon it since, Devon asserts, the parties to the assignment have construed the assignment as conveying all of the operating rights which Devon held in the subject lands. Devon claims that BLM has exceeded its authority in determining that Devon retained 1.31258 percent of those operating rights.

Insofar as the order of the Area Manager directing Devon to test the Federal No. 1-33 well is concerned, Devon argues that, inasmuch as it has, in fact, disposed of all of its interest in the lands involved, the order "places Devon between the proverbial rock and a hard place: if Devon complies with BLM's order, it faces civil liability for trespass on Powerline's lease; if Devon does not comply, it faces civil penalties under 43 C.F.R. Subpart 3163." (SOR at 5.) Devon buttresses this point, by noting that the decision in Pan American Petroleum Corp. v. Gibbons, 168 F. Supp. 867 (D. Utah 1958), aff'd 262 F.2d 852 (10th Cir. 1958), had expressly held that, as between the assignor and the assignee, an unqualified assignment is effective not when submitted to BLM for approval but when executed by the parties.

Devon also complains that the State Director ignored relevant Board precedents such as R.E. Puckett, supra, and Karis Oil Co., 58 IBLA 123 (1981), which held that, under the Department's regulations, approval of an assignment mandates release of lease bonds posted by the assignor. Devon argues that, inasmuch as BLM approved the assignment of its operating rights to Tracer, Devon no longer has any liability or obligations under the lease. (SOR at 6-7.) Devon subsequently argues that the failure of BLM to require Tracer to put up a bond prior to approving the assignment is not attributable to Devon. Devon notes that, to the extent that the applicable regulation, 43 C.F.R. § 3106.6-1, mandated submission of a bond by Tracer, it was BLM's responsibility to enforce this provision. There is, Devon notes, "no regulatory basis for BLM to 'construe' (State Director decision at page 5) Tracer's failure to post a bond as evidence that Devon remains the bonded, responsible party." (SOR at 10.)

Next, Devon criticizes the State Director's reliance on an unpublished 1989 policy change which determined that the Department would no longer construe assignments of operating rights as evidencing a change in the operator of a lease. Devon argues that the State Director's attempted justification for this new policy is internally inconsistent in its explanation as to why the filing of an MRO is construed as indicating a desire to change operator while the filing of an assignment is not. In particular, Devon notes that nothing in an MRO explicitly states that the submitter "is responsible under the terms and conditions of the lease for the operations conducted on the lease lands," and contrasts this with the assignment form which explicitly provides that the assignee's signature constitutes acceptance of all applicable terms and conditions, including "an obligation to conduct all operations on the leasehold in accordance with the terms and conditions of the lease." (SOR at 8-9.)

[1] The two issues presented by this appeal, while clearly intertwined, are ultimately independent of each other. We will, therefore,

treat the question whether BLM erred in holding that Devon presently owns 1.31258 percent of the operating rights in the acreage first and then proceed to examine the various issues presented by the State Director's June 21 decision.

As noted above, Devon not only disputes the conclusion reached in the title determination, it essentially challenges the right of the State Office to interpret the impact of the assignment as between the parties, claiming this violates long-standing Board precedent. See, e.g., R.E. Puckett, supra; Karis Oil Co., supra. We do not agree.

It is, of course, true that the Department has long eschewed adjudicating the validity or effect of unapproved assignments as between the parties thereto when apprised of a controversy between the parties. Instead, the Department will generally maintain the status quo pending resolution of the problem by a court of competent jurisdiction. See generally Pat Reed, 119 IBLA 338 (1991); J.R. Holcomb Oil, 96 IBLA 35 (1987); Fimple Enterprises, Inc., 70 IBLA 180 (1983). Similarly, where an assignment has been approved without notice of a subsisting controversy, the Department has declined to disturb the existing situation or to approve any changes thereto without evidence of an agreement among the parties or a court decree on the matter in dispute. See William B. Brice, 53 IBLA 174, 177, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981). This principle, however, is not involved in the instant case.

This is not a situation in which BLM is inserting itself into an essentially private dispute between the assignor and the assignee and altering the status quo prior to a resolution of their disagreement. ^{11/} Rather, this is a case in which BLM is determining what its records show as to the assignments it has approved. BLM has determined that it approved the assignment to Tracer of 98.687422 percent of the operating rights in the disputed acreage. Of necessity, this means that Devon retained a 1.312578-percent interest ^{12/} in those operating rights since Devon had been vested with 100 percent of those rights prior to the assignment.

Our own review of the record convinces us that BLM is correct on this point. Regardless of what Devon and Tracer might have intended to do, BLM approved an assignment of 98.687422 percent of the working interest. While Devon may well be correct that, under applicable State law, it was obligated to transfer 100 percent of the working interest to Tracer, this is essentially irrelevant. The question is not what the parties to the assignment intended to assign; the question is what BLM approved when it approved the assignment which was submitted by Tracer. By its express terms, Tracer sought approval of an assignment of 98.687422 percent of

^{11/} Indeed, according to Devon, there is no dispute as between the parties as to what they intended to accomplish in the assignment. See SOR at 4.

^{12/} We note that in the June 19, 1995, decision, BLM, for reason of convenience, reduced the percentage of interests in the operating rights to five decimal places, conforming to standard business practice.

the working interests involved herein. That was the assignment which BLM approved. BLM is correct in asserting that, according to its records, Devon retains a 1.312578-percent interest in the operating rights at issue. Devon's challenge to this determination must be rejected.

We must point out, however, that, despite the fact that Devon focusses much of its attention on the working-interest ownership issue, the decision below did not proceed on the assumption that Devon's retained fractional working interest vested it with continuing responsibility for the Federal No. 1-33 well. Rather, the State Director's decision focussed on the question of Devon's operator status as the ratio decidendi for affirming the decision of the Area Manager requiring Devon to test the productive capability of the well. It is to that question which we now turn.

[2] In brief, BLM argues that, notwithstanding the fact that it does not "approve" the designation of an operator, it still "recognizes" the operator of a lease. There are, however, two independent preconditions for recognition as an operator. First, the operator must notify BLM that it is "responsible for all obligations under the lease." Second, the operator must post a bond. Absent fulfillment of each of these two conditions, BLM will not "recognize" a party as the "new" operator. In the instant case, since neither Tracer nor Powerline ever submitted a bond, neither were ever recognized as operator and, therefore, Devon remains the recognized operator with respect to the Federal No. 1-33 well. The foregoing does, we believe, fairly encapsulate BLM's essential argument. While we find ourselves in substantial agreement with much of what BLM asserts, we believe that its ultimate conclusion is critically flawed.

Initially, we must record our agreement with BLM that, under the present regulatory structure, BLM does not approve the designation of a lease operator. Under the regulations, an "operator" is defined as "any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof." 43 C.F.R. § 3160.0-7(q). Thus, an individual becomes an operator merely by stating in writing that it is responsible for operations conducted on the lease.

The mere status of an individual as an "operator" within the scope of the regulatory definition, however, does not invest that individual with authority to conduct operations on a Federal lease. Thus, in addition to being an "operator," such an individual is, under 43 C.F.R. § 3162.3(a) and 3106.6-1, required to provide the authorized officer with evidence of "sufficient" bond coverage. See generally R.E. Puckett, supra, at 292. The bond coverage which is deemed necessary is most clearly expressed in 43 C.F.R. § 3104.2. That regulation provides, in relevant part, that:

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 the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

As we noted in Puckett, where the lessee or the operating rights owner is also the operator on the ground and the lessee or operating rights owner has provided a lease or operating rights bond, no further bonding is needed in order for that individual to act as operator. However, "if the operator on the ground is neither the lessee of record nor the operating rights owner and the operator conveys its rights in the well, the new operator is required to furnish bond coverage." Id. This, indeed, is essentially what Devon originally did in this case.

Devon's right to operate the acreage in question actually preceded its acquisition of any working interest in the lease, having been obtained under a farmout agreement from Fuelco who was then the lessee and operating rights owner. Under the procedures then in effect, Devon was required to file a Designation of Operator form. The submission of this form was an indication that Devon, as operator, was being covered under the lessee's bond. ^{13/} Subsequently, Devon acquired the working interest at issue. ^{14/} From that point on, its right to operate the acreage no longer proceeded from its farmout agreement with Fuelco but rather was the result of its ownership of the operating rights thereto.

BLM was clearly correct in its assertion that, absent the furnishing of a bond, neither Tracer nor Powerline could properly conduct operations on the subject lands. Where BLM erred, however, was in its implicit assumption that, since neither Tracer nor Powerline were, under the regulations, authorized to conduct operations, Devon retained the authority to do so. The conclusion simply does not flow from the premise.

^{13/} Thus, the USGS Conservation Division Manual provided:

"For operations to be conducted by an operator under a lessee's bond, the District Office must either have a Designation of Operator form or a decision from the Bureau of Land Management advising of the approval of an operating agreement from the lessee to such operator. However, such operator cannot further designate a subsequent party to operate the lease under the lessee's bond in the absence of a new Designation of Operator form from the lessee, since all designations must come from the entity providing the bond. All interest owners in the affected portion of the lease, either all holders of record title or operating rights, must be bonded and must sign a Designation of Operator form if operations are conducted by a second party."

Conservation Division Manual 645.11.3H.

^{14/} We note that, according to the State Director, Devon was, at that time, covered by a nationwide bond.

Leaving aside for the moment the problem presented by its retained fractional interest, when Devon sold the operating rights in the parcel to Tracer, it necessarily lost the right to continue operations under the lease, vis-a-vis Tracer, unless some other arrangement was made to allow Devon to continue as operator since, by that time, Devon acted as operator based on its ownership of the operating rights to the acreage. There is no indication in the record nor does BLM even assert that any such special arrangement between Tracer and Devon was made.

BLM, as noted above, subsequently approved the assignment of the operating rights to Tracer. Regardless of whether or not Devon (as operator) or its bond remained liable for compliance with the lease terms and operating regulations, Devon at that time presumably lost the right to actually conduct operations on the lease. ^{15/} Notwithstanding BLM's claims to the contrary, there is absolutely nothing in the regulations which purports to provide any entity which has at one time been "recognized" as an operator, with authority to continue to act in this role once its rights to do so, under the lease, have terminated.

The problem with BLM's decision is that it confuses the question of Devon's continuing liability for its past actions with the issue of whether Devon has continuing authority to act as operator. These two matters are discrete. While Devon might well have a continuing liability for its past actions as operator, this does not mean that it has any present authority to act as operator. Since BLM no longer approves the designation of operator, neither is its assent needed to terminate an operator's status. Nothing in the regulation purports to invest a former operator with continuing authority to act pending "recognition" of a new operator. Under the present regulatory scheme, once an individual no longer purports to be responsible for operations under the lease, he or she ceases to be an "operator."

On the other hand, the fact that BLM no longer approves operator designations distinguishes the question of continuing operator liability from that which arises with respect to the continuing liability of either record title or operating rights owners. In R.E. Puckett, supra, and Karis Oil Co., supra, this Board noted that, under 43 C.F.R. § 3106.7-2, liability of the assignor of record title or working interests and its surety terminates upon approval of the assignment. These holdings were based on regulatory language which provided that until BLM approval of assignments, assignor liability continued but, after approval of assignments, assignees (and their sureties) became liable for all lease obligations attendant

^{15/} While we have affirmed herein BLM's determination that Devon has retained a 1.31258 interest in the operating rights, it is obvious that Devon would not retain the authority to act as operator as an incident of ownership of this fractional interest. We do not, however, decide whether or to what extent, Devon's retained interest in the operating rights serves to make it or its surety liable under the lease.

thereto. ^{16/} But, inasmuch as BLM no longer approves operator designations, the mere fact that a new operator has been designated does not necessarily discharge an operator or its surety of its past obligations.

We need not decide at the present time whether or to what extent Devon and its surety remains liable for the Federal No. 1-33 well. The decision under appeal did not purport to determine such liability or assess costs related thereto. Rather, the decision of the State Director ordered Devon to take action, as an operator, to test the well to establish its capability of producing gas in paying quantities. Since, as explained above, Devon no longer held any rights as operator of the well, this decision cannot be sustained.

Therefore, pursuant the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the determination of title is affirmed but the decision of the State Director ordering Devon to test the Federal No. 1-33 well is reversed.

James L. Burski
Administrative Judge

I concur.

James P. Terry
Administrative Judge

^{16/} The present regulation provides:

"The transferor and its surety shall continue to be responsible for all obligations under the lease until a transfer of record title or operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee."