

INTERIOR BOARD OF LAND APPEALS
Great Western Drilling Co. and Davoil, Inc.
156 IBLA 42 (November 28, 2001)

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GREAT WESTERN DRILLING CO.
DAVOIL, INC.

IBLA 98-155

Decided November 28, 2001

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, upholding assessment of compensatory royalty due to drainage of oil from Federal oil and gas leases WYW041522A and WYW041522. SDR No. WY-98-1.

Reversed in part, affirmed as modified in part, and affirmed in part.

1. Oil and Gas Leases: Compensatory Royalty–Oil and Gas Leases: Drainage

For purposes of assessing compensatory royalty, "common ownership" occurs when a Federal lessee owns or participates in production from the well draining the Federal lease. Without proof of such facts, a BLM decision finding the entity to be a "common lessee" will not be affirmed. With evidence that a lessee participated in the offending well while owning an interest in the offended lease, a BLM decision finding the entity to be a "common lessee" may be affirmed even where the lessee later disposed of any interest in the offending well.

2. Oil and Gas Leases: Compensatory Royalty–Oil and Gas Leases: Drainage

Every lessee of record bears the obligation to protect the lease from drainage and the United States as lessor has the right to enforce that obligation by requiring the lessee either to drill a well or pay compensatory royalty.

3. Appeals: Generally–Rules of Practice: Appeals: Generally

The Board will properly decline to rule on a request for an advisory opinion.

4. Oil and Gas Leases: Compensatory Royalty–Oil and Gas Leases: Drainage

A lessee's claim, standing alone, that a payout time of seven to nine years is unacceptable is not sufficient to constitute a contention as to whether, based on facts in a particular case, a protective well would have been economic to drill.

APPEARANCES: Russell P. Richards, Great Western Drilling Co., Inc., Midland, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Great Western Drilling Co. (Great Western) and Davoil, Inc., (Davoil) have appealed from a December 5, 1997, decision of the Deputy State Director (DSD), Wyoming State Office, Bureau of Land Management (BLM). (SDR No. WY-98-1.) The DSD decision upheld four separate orders, two to each company dated August 19 and 20, 1997, of the Chief, Reservoir Management Group, BLM, assessing compensatory royalty due to drainage of oil from Federal oil and gas leases WYW041522 (base lease) and WYW041522A (segregated lease). Each lease consists of separate parcels intermingled with each other and with other parcels of patented land in Secs. 10 and 15, T. 47 N., R. 75 W., 6th P.M., Campbell County, Wyoming (Secs. 10 and 15).

Legal Background

The facts and contentions of the parties will better be understood after a statement of the legal principles governing consideration of cases of drainage from Federal and Indian leases. Drainage occurs when a well is drilled close enough to the boundary of an adjacent parcel that oil or gas migrates from that parcel to the well. Federal and Indian oil and gas lessees are obligated to protect the lessor against drainage. The lessor is protected from drainage either by the lessee's drilling of protective wells or by payment of "compensatory royalty."

Regulations governing Federal leases provide:

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee shall both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may * * * pay compensatory royalty.

43 CFR 3100.2-2. The regulations also provide:

The operating rights owner shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage. The authorized officer may assess compensatory royalty * * * adequate to compensate the lessor for operating rights owner's failure to drill and produce wells required to protect the lessor from loss through drainage by wells on adjacent lands.

43 CFR 3162.2(a); see also 30 CFR 221.21(c).

The obligation to protect the lessor from drainage, however, is tempered by the longstanding "prudent operator" rule. See Nola Grace Ptasynski, 63 IBLA 240, 252, 89 I.D. 208, 215 (1982) (general discussion of rule's application to Federal lessees). In most drainage situations, both the owner/lessor of the drained parcel and its lessee have an incentive to recover production by drilling a protective well because they are losing the opportunity to sell production that is being drained by the offending well. While the lessee's incentives to produce are aligned with those of the lessor, the lessor does not share in costs of well development and hence does not share the lessee's risk of loss from an uneconomic well. Thus, compensatory royalties are due only if a "prudent operator" would have drilled an offset well.

A prudent operator would not drill a protective well if the costs of drilling and operation exceed the value of oil and gas recovered. See Cowden Oil & Gas Properties, 126 IBLA 32, 43 (1993); Nola Grace Ptasynski, 63 IBLA at 252, 89 I.D. at 215. The determination of whether a protective well is economically feasible is based on the anticipated recovery and costs at the time that a prudent operator would have drilled the well. If a protective well would have afforded a reasonable profit after cost, a lessee is liable for compensatory royalty for failing to drill it. See Cowden Oil & Gas Properties, 126 IBLA at 43.

The timing of the economic feasibility determination, as well as application of the prudent operator rule, hinges on notice of drainage. See Atlantic Richfield Co., 105 IBLA 218, 225-26, 228, 95 I.D. 235, 240 (1988). This Board has held that as a general rule:

The obligation to protect a leasehold from drainage arises not upon completion of the draining well, but only after the passage of a reasonable time subsequent to notification by the lessor that an adjoining well is draining the leasehold. Thus, had appellant herein proceeded to complete an offset well within a reasonable time after notice, there would have been no assessment for intervening drainage.

Nola Grace Ptasynski, 63 IBLA 240, 256-57 (1982) (citation and footnote omitted); see also Atlantic Richfield Co., 105 IBLA 218, 225-26, 228, 95 I.D. 235, 240 (1988).

Our cases have ensured, however, that notice from whatever source will compel the obligation to protect the lessor from drainage. Such notice may be provided by BLM or by circumstances that BLM may establish.

In such instance, the compensatory royalties would begin to accrue after the passage of a reasonable time following the date of the lessee's knowledge. * * * If BLM is to assess compensatory royalties for any period prior to the time it gives formal notice, the burden of proving that a lessee knew or that a reasonably prudent operator would have known of drainage rests with BLM. See Lafitte Co. v. United Fuel Gas Co., 177 F. Supp. 52, 59 (E.D. Ky. 1959).

CSX Oil and Gas Corp., 104 IBLA 188, 198-99, 95 I.D. 148, 154 (1988) (emphasis added; citation and footnote omitted).

An exception to the underlined rule arises in the case of a "common lessee," where the lessee of a drained, or "offended," lease or spacing unit is also owner or operator of the offending well. In such a case, the lessee's economic incentive to protect the lessor may be diminished if an offset well would provide little if any net gain to the lessee, or if production from an offset well would diminish the recovery from the offending well. See generally 5 Williams and Myers, Oil and Gas Law, § 824.2 (2000). For this reason, in cases involving a "common lessee" of a drained Federal or Indian lease, application of the prudent operator rule is varied in a respect critical here.

Although a lessee is ordinarily liable for drainage only after passage of a reasonable time from the date he knew or should have known that drainage was occurring, a common lessee whose operations are causing the drainage is in the best position to know that drainage is occurring and is presumed to have knowledge of the drainage upon first production from its offending well. Cowden Oil & Gas Properties, [126 IBLA at 42]; Atlantic Richfield Co., 105 IBLA at 226, 95 Interior Dec. at 240 (1988). This presumption is rebuttable by the lessee whose operations are causing the drainage, but the lessee bears the ultimate burden of persuasion as to notice of drainage.

Forest Oil Corp., 141 IBLA 295, 298 (1997) (emphasis added). See also Petroleum, Inc., et al., 115 IBLA 188, 192 (1990) (common operator, like common lessee, presumed to know of drainage on first production from offending well; that presumption is rebuttable; common lessee "bears the ultimate burden of persuasion with respect to notice"). 1/

Factual Background

The case before us involves two allegedly offended Federal leases, serialized WYW041522 and WYW041522A (the base lease and the segregated lease, respectively). The base lease was issued to Martin Kissinger in 1956, for parcels within Secs. 10 and 15. A portion of the lease was segregated in 1961. Through a series of transfers, Great Western acquired 100% record title interest in the remaining part of the base lease effective September 1, 1962. 2/ Thereafter, effective December 1, 1962, Great

1/ The "common lessee" need not have all ownership interest in the respective tracts as long as the difference in ownership is "not sufficient to deprive the lessee of the drained tract of its position to know that drainage is occurring * * *." Forest Oil, 141 IBLA 295, 298 n.4, citing Cowden Oil & Gas Properties, 136 IBLA at 32.

2/ The base lease comprises the S1/2 NW1/4 and the SE1/4 of Sec. 10, and the N1/2 NW1/4 and the SE1/4 of Sec. 15. The segregated lease comprises the S1/2 NE1/4 and the SW1/4 of Sec. 10, and the N1/2 NE1/4, the SW1/4 NW1/4, the NW1/4 SW1/4 and the E1/2 SW1/4 of Sec. 15.

Western divested itself of a 50% share of the record title to the lease, in equal parts (16 2/3%) to George Anderman, Charles Wilcox, and Edward Boland. Effective February 1, 1977, Great Western assigned a 17.762% lease interest to Davoil, retaining 32.238% of the record title in the lease. While the base lease file contains various assignments to related companies and relatives by the other three lease owners, Great Western and Davoil continue to hold together 50% of the record title in the lease, in the percentages described above.

On September 1, 1961, Anderman, Wilcox and Boland received in equal shares record title to the segregated lease WYW041522A. Effective October 1, 1961, they together transferred to Great Western the entire 100% share of the record title to the segregated lease. Great Western transferred 35.524% of the record title in lease A to Davoil, effective February 1, 1977, retaining 64.476% to itself. The two companies retain these interests, totalling 100%, in the segregated lease.

By letter dated May 21, 1992, BLM notified the five record title holders in the base lease that it was under review for potential drainage from two offending wells on private lands in Campbell County. BLM identified as a potential offender the Napier No. 1 well in Sec. 10, which was reported as completed in the Parkman formation on January 20, 1971. ^{3/} BLM also cited as an offending well the No. 1 Bessie Napier (Bessie Napier) well in Sec. 15, reported as completed in the Parkman formation on November 23, 1962. The letter requested the title holders to furnish information if they believed that drainage was not occurring or that a well could not be drilled economically. BLM sent a letter dated May 26, 1992, to Davoil and Great Western alleging potential drainage from the segregated lease as a result of production from the same two wells.

Great Western sent BLM a letter, dated June 3, 1992, which promised a further response with regard to the segregated lease, and attached a letter of that same date from Great Western to Northern Production Company, Inc. (Northern Production), seeking land and field maps and production data regarding potential drainage of the segregated lease from both "offending" wells. On June 25, 1992, Anderman responded that drilling an offset well on the base lease would be uneconomic at that time. On April 22, 1993, Great Western advised BLM that it had sold its working interest in the "Napier #1" well to Northern Production in February 1973, and provided "core analyses" which it indicated it had retained in duplicate, since before the time of sale. ^{4/}

On November 30, 1994, BLM issued two letters to record title holders of the two leases. One letter was sent to Great Western and Davoil

^{3/} This well is variously identified as the No. 1 Napier and the MWJ Napier No. 1.

^{4/} For reasons described below, we believe this reference pertained to the Bessie Napier well rather than the Napier No. 1 well and may have been the source of BLM's confusion as to the ownership of this offending well.

alleging drainage from the segregated lease by the Napier No. 1 offending well in Sec. 10. 5/ The other November 30, 1994, letter was sent to the five record title interest owners of the base lease and asserted drainage by the Bessie Napier well in Sec. 15. 6/ Citing 43 CFR 3161.2, both letters stated that unless the recipients could demonstrate that no drainage was occurring, they would be required to drill a protective well on the relevant lease, enter a royalty agreement with the lessor, or relinquish the affected portions of the leases after payment of any compensatory royalty due. The letters further provided that detailed information must be submitted by January 30, 1995, if appellants were contending that either no drainage was occurring or a well would not produce oil or gas in paying quantities.

Appellants and others filed timely responses. On behalf of itself and Davoil, Great Western sent two letters dated January 26, 1995, responding separately to both November 30 BLM letters. In both cases, appellants stated that offset wells would not be economically viable based both on current and projected oil prices, as well as on production information from offending and other wells.

With respect to the Sec. 10 case, Great Western stated:

An economic analysis was performed * * * based on this cumulative production [from the offending wells] with a production decline typical for the field. The results of this analysis are (Before Federal Income Tax): Rate of Return 9.9%, Undiscounted payout 6.6 years, Discounted Payout 16 years, Undiscounted Net/Investment 1.52:1, Discounted Net/Investment .93:1.

We do not know of anyone in the industry who would be willing to drill based on these economics.

(Letter dated January 26, 1995, Sec. 10 drainage case referencing Napier No. 1 well.) With respect to the Sec. 15 case, Great Western similarly concluded:

The results of this analysis are (Before Federal Income Tax): Rate of Return 15.9%, Undiscounted payout 5.6 years, Discounted Payout 9.6 years, Undiscounted Net/Investment 2.22:1, Discounted Net/Investment 1.16:1.

There is also a significant element of risk of being able to recover this average [recoverable reserve] of 90,000 BO. The

5/ This letter identified two drainage case numbers. The drainage case number subsequently assigned to this matter is 4707510L1, and this drainage case will be referred to hereafter as the Sec. 10 case.

6/ This letter identified drainage case number 4707515W1, and will hereafter be identified as the Sec. 15 case.

Conoco Federal well which was essentially a dryhole demonstration of the Bessie Napier #1.

strates there to be a rapid loss of reservoir quality

(Letter dated January 26, 1995, regarding Sec. 15 case.)

In 1997, BLM issued orders to all five record title holders in the two leases demanding compensatory royalties for drainage from the leases. Each case is described separately below.

The Sec. 10 Case. On August 19, 1997, BLM issued separate but identically-worded orders to Davoil and Great Western alleging drainage from the segregated lease by the Napier No. 1 well in Sec. 10, within zones 3 and 4 of the Parkman formation. The reasons supporting BLM's decision are set forth in a Reservoir Analysis for the Sec. 10 case, signed August 18, 1997. BLM considered the case to be a "common ownership" case for Great Western because, according to BLM, "Great Western once had a working interest in the Napier No. 1 well (which was subsequently sold to Northern Production Company in February 1973), and has been one of the record title owners of the offending lease since June 1956." (Reservoir Analysis 4707510L1 at 1.) BLM noted that production from the offending Sec. 10 well started in 1971, but explained that, "pursuant to WO IM [Instruction Memorandum] No. 93-287, the BLM cannot make a demand for compensatory royalty for more than 10 years prior to the first appealable decision." Id. Accordingly, BLM assessed Great Western compensatory royalty from September 1, 1987, that would continue until the date that protection is afforded. BLM concluded that Davoil did not have a common interest in the offending well, so BLM assessed Davoil for compensatory royalty from March 1, 1993, nine months after BLM's 1992 drainage notice to the company. ^{7/}

The Reservoir Analysis for the Sec. 10 case also performed an economic analysis of a protective well as of September 1, 1987, for Great Western, and March 1, 1993, for Davoil. With respect to the 1987 assessment of compensatory royalties from Great Western, BLM's analysis indicated that a prudent operator would have anticipated that "a protective well would pay out its drilling and completion costs in 9.35 years (discounted) with a rate of return of 16.06 percent." (Reservoir Analysis 4707510L1 at 2.) With respect to Davoil, BLM concluded that, in 1993, a prudent operator would have expected the well to pay out in 8.71 years with the same rate of return. Id.

The Sec. 15 Case. On August 20, 1997, BLM issued separate orders to Davoil, Great Western, and the three other interest holders of the base lease regarding drainage from the Bessie Napier well in Sec. 15. BLM

^{7/} Liability for compensatory royalty does not arise upon issuance of the notice but after a reasonable time for drilling and establishing production from a protective well. See CSX Oil and Gas Corp., 104 IBLA at 190-91; Nola Grace Ptasynski, 63 IBLA at 256-57.

assessed compensatory royalties as a result of drainage by this well from zones 1 and 4 of the Parkman formation underlying a parcel of the base lease.

BLM conducted a separate Reservoir Analysis for the Sec. 15 drainage case. (Reservoir Analysis 4707515W1, signed August 18, 1997). BLM considered the Sec. 15 drainage case to be a "common ownership" situation for Great Western (but not for Davoil), because Great Western had once operated the offending Bessie Napier well. According to BLM, the Bessie Napier offending well was subsequently sold to Northern Production Company in 1985, but Great Western had been a record title holder of the offended lease since 1977. *Id.* at 2. For the same reasons stated in the Sec. 10 drainage case, BLM assessed Great Western compensatory royalty for drainage from the base lease from September 1, 1987, but assessed Davoil for compensatory royalty from March 1, 1993.

The Reservoir Analysis also performed economic analyses for the two dates. With respect to the 1987 date, BLM concluded that a prudent operator would have expected that "a protective well would pay out its drilling and completion costs in 7.08 years (discounted) with a rate of return of 21.64 percent." (Reservoir Analysis 4707515W1 at 2.) For the 1993 economic analysis date, BLM asserted that a prudent operator would have anticipated a pay out in 6.77 years with a discounted rate of return of 21.64 percent. *Id.* at 2-3.

State Director Review of Both Drainage Cases. On September 15, 1997, Great Western and Davoil filed a request for State Director Review of the drainage cases. After reviewing the data provided by BLM, Great Western submitted a letter on November 3, 1997, concluding that it was not economically feasible to drill a well on either lease because a "prudent operator would view a seven (7) or nine (9) year payout as totally unacceptable." Nevertheless, notwithstanding its belief that compensatory royalty was not justified, Great Western offered to pay its proportionate share of compensatory royalty from the May 1992 date of BLM's first official notification that it believed drainage was occurring from both leases.

In his December 5, 1997, decision (SDR No. WY-98-1), the DSD affirmed the August 19 and 20, 1997, orders for payment by Great Western and Davoil of compensatory royalties for both leases. Referring to the parties as "Great Western," BLM noted that they did not dispute the finding that drainage has been occurring. The DSD rejected the argument that the payout times were too long: "BLM policy for making a paying well determination only requires the cash flow to become positive during the life of the well. There is no allowance given for wells with lengthy payout times." (SDR

No. WY-98-1 at 1.) The decision also rejected Great Western's offer to settle the cases on the basis of the 1992 notification date.

Great Western and Davoil appealed. In their January 29, 1998, Statement of Reasons (SOR), appellants present three "points of disagreement with BLM's decision." First, they attack BLM's conclusions about Great Western's "common ownership" in the offending wells and offended leases. Great Western asserts that it never owned an interest in the

offending Napier No. 1 well in the Sec. 10 case. With respect to the Sec. 15 case, Great Western asserts that it divested itself of all interest in the offending Bessie Napier well in 1973. Second, appellants assert that they do not own the operating rights from the producing Parkman formation in the offended leases and thus could not have caused a protective well to be drilled. Finally, they challenge BLM's reliance for the compensatory royalty assessments on a stated "policy" that allegedly rejects "basic economic criteria such as acceptable payout time."

Analysis

At the outset, we note that the appellants do not and have never contested that drainage has occurred as a result of production from the two offending wells. Thus, the issue of whether drainage occurred is not before us.

[1] Turning first to Great Western's assertions concerning common ownership, the record suggests several errors on BLM's part with respect to Great Western's ownership interests in each drainage case. Based on the following analysis of the record, we conclude that Great Western was not a common lessee in the Sec. 10 case, but was a common lessee in the Sec. 15 case.

The SOR attaches a copy of a 1973 assignment to Northern Production of all of Great Western's interest "down to and including the Parkman formation" in the S1/2NE1/4 Sec. 15, where, according to the record, the Bessie Napier well was located. See, e.g., Geological Review, August 15, 1997. As noted in the SOR, this was the alleged offending well that drained the base lease in the Sec. 15 case, not the offending Napier No. 1 well in the Sec. 10 case. The Reservoir Analyses upon which BLM's decisions were based appear to have confused these wells.

In the Reservoir Analysis for the Sec. 10 case, BLM states: "Great Western once held a working interest in the Napier No. 1 well (which was subsequently sold to Northern Production Company in February 1973)." (Reservoir Analysis 4707510L1 at 2.) In the Reservoir Analysis for the Sec. 15 case, BLM states: "Great Western once held a working interest in the Bessie Napier well (which was subsequently sold to Northern Production Company in April 1985)." (Reservoir Analysis 4707515W1 at 2.) It is undisputed that the Bessie Napier well is the offending well in the Sec. 15 case, but it was an interest in that well, not the Napier No. 1 well in Sec. 10, that Great Western sold to Northern Production in 1973.

The Sec. 10 Case. The record refutes BLM's assertion that Great Western ever had an interest in the Napier No. 1 offending well. To the contrary, documents in the record indicate that MWJ Producing was the operator of the "1 Napier" well and that it was spudded on November 26, 1970, and completed on January 29, 1971. ^{8/} Likewise, BLM's assertion that

^{8/} A "Record Title Ownership" page for the segregated lease indicates that Great Western had an interest in the Bessie Napier well until Feb. 1, 1973,

Great Western owned an interest in the segregated lease in 1956 is belied by the lease files. Great Western's first interest in either lease came about when it acquired 100% of the record title to the segregated lease in 1961.

On this record, it appears that BLM erred in finding Great Western to be a common lessee in the Sec. 10 drainage case alleging drainage from the segregated lease. We reverse BLM's conclusion in part with respect to the Sec. 10 case, to the extent BLM found Great Western to be a common lessee. Likewise, we hold that Great Western, like Davoil, may be held responsible only for compensatory royalties from March 1, 1993, nine months after BLM's 1992 notice to the parties.

Sec. 15 Case. The Sec. 15 case, alleging drainage from the base lease by the Bessie Napier well in Sec. 15 also contains errors. As noted above, BLM errs in dating Great Western's divestiture of an interest in that well in 1985. Great Western divested itself of an ownership interest in the Bessie Napier well in 1973. Likewise, BLM errs in dating Great Western's interest in the base lease as of February 1977. (Reservoir Analysis 4707515W1 at 1.) According to the lease file, Great Western owned an interest in the base lease effective September 1, 1962, to the present. It was Davoil that acquired lease interests in both leases from Great Western in 1977.

Correcting these errors, however, confirms that Great Western's ownership interests in the offending Bessie Napier well and the offended lease indisputably overlapped for an 11-year period, at a minimum. ^{9/} Moreover, the record indicates that the offending Bessie Napier well began to produce in 1962, the same year in which Great Western acquired an interest in the offended base lease. (Petroleum card API # 49-005-05072; Attachment 2 to Reservoir Analysis 4707515W1, "Chronology for [Sec. 15] Drainage Case"; "Screening and Administrative Review"). While a production record document for the Bessie Napier well suggests that its date of first production was in January 1976, that same document notes that "prior production" before 1976 was 86,422 barrels. This total figure would result

fn. 8 (continued)

and that MWJ Producing was an interest holder in the Napier No. 1 well. Moreover, this document associates a 1985 date with Northern Production's interest in the Bessie Napier well. This document suggests that Great Western transferred an interest in the Bessie Napier well to Northern Production in 1973, and Northern Production (not Great Western) disposed of an interest in the Bessie Napier well in 1985. A map entitled "enclosure number 1" and four additional geologic and pore volume maps show a "Great Western No. 1" well in Sec. 15, and the "MWJ No. 1" in Sec. 10. See also "Geologic Review" (offending wells are MWJ Napier No. 1 and Bessie Napier); Well Data Sheet, Dead Horse Creek South * * * Parkman Formation.

^{9/} We say at a minimum because the assignment of interest "down to and including the Parkman formation" in the parcel where the Bessie Napier well is located, attached to the SOR, is ambiguous as to whether Great Western retained some interest in the well after 1973.

in an average monthly production from 1962 to 1976 of approximately 600 barrels, a figure consistent with a declining production rate indicated in production ledgers from 1987 and forward. According to the record, then, it appears that Great Western's interest in a draining well and the offended lease covers at least an 11-year period, making it a common lessee.

The fact that the common lessee may have divested itself of an interest in the offending well does not alter this conclusion. Our cases impute knowledge to a participant in an offending well upon production from it. Nola Grace Ptasynski, 63 IBLA at 256-57; see also Amoco Production Co., 129 IBLA 186, 208 (1994) (Burski, J., concurring). Great Western's sale of an interest in the Bessie Napier well after 11 years of production does not negate the presumption that it, as a common lessee, had knowledge of the drainage as a result of production from the offending well. Thus, because Great Western had an interest in the Bessie Napier producing well from 1962 through 1973, and it also owned an interest in the offended base lease from 1962 to the present, we consider Great Western to be a common lessee. Great Western bears the burden of rebutting the presumption that it should have known from its interest in the production operation that the base lease would be drained, because it was in a position to have notice of drainage from its knowledge of the offending well's production. Cowden Oil & Gas Properties, 126 IBLA at 42; see also 5 Williams and Myers, Oil and Gas Law § 824 (2000). It made no effort to meet this burden.

We affirm BLM's decision that Great Western was a common lessee in the Sec. 15 case alleging drainage from the base lease, for reasons as modified above. We also affirm BLM's finding that Great Western owes compensatory royalties from 1987. ^{10/}

[2] Second, we address appellants' contention that they do not own the operating rights from the producing Parkman formation in the offended leases and could not have caused a protective well to be drilled. Every Federal lessee of record carries the obligation to protect the lessor from drainage. The United States as lessor has the right to enforce that obligation, either by requiring the lessee to drill a well or pay compensatory royalty. The fact that appellants are not operating rights owners does not alter this outcome. 43 CFR 3100.2-2, 3162.2(a).

[3] Third, we turn to appellants' argument that the DSD's decision should be reversed based upon his statement that "BLM policy for making a paying well determination only requires the cash flow to become positive during the life of the well." (SDR No. WY-98-1 at 1.) This conceptual

^{10/} Because appellants do not raise them, we do not address issues surrounding the 1987 date from which BLM assesses royalties, or BLM's authority to establish a debt liability to the United States for compensatory royalties prior to this date.

disagreement provides no reason for us to reverse BLM. ^{11/} The argument does not pertain to specific facts of either drainage case, BLM's reservoir and economic analyses, or whether BLM's underlying conclusions are wrong as to the present drainage cases. "Where an appeal to the Board presents, in essence, a request for an advisory opinion, we properly decline to rule on that issue." Bowers Oil and Gas, Inc., 152 IBLA 12, 18 (2000) (citations omitted).

[4] Moreover, to the extent we were to extrapolate a more specific argument with respect to the facts of this case on the basis of appellants' request for DSD review, we would not be persuaded by appellants' argument there. In that September 15, 1997, request, appellants argued that BLM's economic analyses were reversible solely because they were based on a seven or nine year payout. In Burlington Resources Oil and Gas Co., 146 IBLA at 343, this Board rejected the argument, on the basis of specific data analysis, that a well should be deemed uneconomic if the payout "would take more than 14 years at a rate of return of far less than Burlington's minimum economic criteria of 25 percent." Without reconsidering that rate or the significance of payout times in any case, we find that appellants have done nothing to prove their point by simply asserting that no prudent operator would drill a well expecting a seven or nine year payout time. They submit no support for this proposition, and no reason for us to revisit BLM's conclusions.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 5, 1997, decision, SDR No. WY-98-1, is reversed in part, affirmed as modified in part, and affirmed in part, consistent with this decision.

Lisa Hemmer
Administrative Judge

I concur:

James L. Burski
Administrative Judge

^{11/} Neither BLM's decision nor appellants' SOR identifies a particular policy. BLM may be referring to Instruction Memorandum (IM) 89-12 Change 2 regarding minimum acceptable rate of return guidelines, discussed in Burlington Resources Oil and Gas Co., 146 IBLA 335, 340 (1998). Appellants make no specific reference to or complaint regarding this policy.