INTERIOR BOARD OF LAND APPEALS

Paradise Energy, LLC, and Cimarron Operating Company, LC

163 IBLA 222 (October 21, 2004)

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PARADISE ENERGY, LLC &
CIMARRON OPERATING CO., LC

IBLA 2002-208, 2002-209 Decided October 21, 2004

Appeals from decisions of the Utah State Office, Bureau of Land Management, refusing to accept competitive bids for oil and gas leases UTU-79954 and UTU-79955 and non-competitive offers for oil and gas leases UTU-79966, UTU-79967, and UTU-79968.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Federal Onshore Oil and Gas Leasing Reform Act of 1987--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Noncompetitive Leases

Under section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 226(g)(2000), the Secretary shall not issue a lease or leases to an individual identified as vice president of a corporation on state corporation records who exercises control over drilling and reclamation and signs an application for permit to drill as vice president subsequent to the involuntary dissolution of that corporation, and the dissolved corporation thereafter fails or refuses to comply with long-standing plugging, abandonment, and reclamation requirements, regardless of whether he seeks the lease individually or on behalf of an unrelated entity. The bar to holding a lease remains in effect until the reclamation requirements are complied with.

APPEARANCES: Warren L. Jacobs, Spanish Fork, Utah, on behalf of appellants; Emily Roosevelt, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Paradise Energy, LLC, has appealed from a January 23, 2002, decision of the Utah State Office, Bureau of Land Management (BLM), stating that Paradise's competitive bids for oil and gas leases UTU-79954 and UTU-79955 and its non-competitive offers for leases UTU-79966 and UTU-79968 were not accepted because the bids/offers were signed by Warren L. Jacobs (Jacobs) as a managing member of Paradise, and that Jacobs had been a vice president of LAB Energy, Inc. (LAB Energy), which had failed to complete reclamation work on well No. 17-10 on lease U-56554 and well No. 14-12 on lease U-37742. The decision stated that Jacobs was prohibited from acquiring leases as an individual or as an officer of a business entity. Paradise's appeal has been docketed as IBLA 2002-208.

Cimarron Operating Company, LC (Cimarron), has appealed from a January 25, 2002, decision of the Utah State Office, BLM, stating that Cimarron's non-competitive offer for lease UTU-79967 was not accepted because it had been signed by Jacobs. Cimarron's appeal has been docketed as IBLA 2002-209.

On June 19, 2002, we granted appellants' petitions for stay of the BLM decisions. On August 27, 2004, we requested BLM to inform us concerning the status of the required reclamation work, as well as the status of a $25,000 cash bond in relation to well Nos. 17-10 and 14-12. Specifically, we requested that BLM inform us whether BLM had executed upon the bond, referenced in our August 27, 2004, order, and whether "the specified reclamation obligations had not been complied with."

BLM filed a Status Report on September 9, 2004, informing the Board that in 1989 BLM published a notice of invitation to bid the reclamation work for LAB Energy's well No. 17-10 and another well unrelated to these appeals. The bid notice was published in two newspapers, and was intended to invite the submission of bids for the subsurface (plugging) and surface reclamation for the two wells, which were covered by separate bonds. BLM received two bids covering both wells, one for $120,000 and one for $50,000. BLM estimated the cost of plugging well No. 17-10 to be approximately $64,184 in 1989 dollars. See Declaration of Raymond Allen McKee, Jr. (Declaration), at ¶ 10, Exh. 5 to BLM Status Report at 2. BLM stated that it did not solicit a bid for reclamation work on well No. 14-12, which required only surface reclamation work, explaining that subsurface reclamation is a higher priority than surface reclamation, and that BLM generally will not utilize a bond to pay for surface reclamation if the same bond applies to outstanding subsurface reclamation obligations. (Declaration at 2.) BLM stated further that it has not executed upon the LAB Energy bond because the estimated cost of plugging well No. 17-10 and the bid packages exceeded the available bond amount of $25,000. Consequently, BLM

explained that LAB Energy's statewide cash bond had been in suspense since 1989. BLM concludes: "For these reasons, full reclamation obligations on both well No. 17-10 and well No. 14-12 remain outstanding. These reclamation obligations give rise to the rationale in BLM's January 23, 2002, decision declining to accept the bids from Paradise Energy, LLC and Cimarron Operating Co., LC, pursuant to 30 U.S.C. § 226(g)." (Status Report at 3.)

On September 20, 2004, Paradise and Cimarron, acting through Jacobs as "managing member," filed a request for clarification of BLM's response, stating that the bond had been submitted as a "statewide bond," and so covers both wells. Paradise and Cimarron state that because the statewide bond was submitted as a certificate of deposit and has been earning interest since 1984, Paradise "may desire to submit a revised bid for reclamation for both the No. 17-10 and No. 14-12 test wells, assuming both the $25,000 bond, and accumulated interest, is made available for reclamation work." Jacobs adds that to his knowledge, "LAB has never agreed with the BLM's plugging procedures and/or recommendations for the No. 17-10 test well, and that the BLM plugging procedures are excessive and without merit."

On September 23, 2004, BLM responded with a "Supplement to BLM's Status Report," stating that the statewide bond was in the form of three U.S. Treasury Notes, which "had matured and were being held as cash in BLM's suspense account." Further, BLM states that it is irrelevant whether Jacobs disagrees with BLM's "plugging procedures and/or requirements" for the No. 17-10 well, since those requirements "are derived directly from the minimum standards found in Onshore Oil and Gas Order No. 2, Drilling Operations, and are no different than that which would be required of any operator on federal oil and gas leases." (Supplement at 2.)

Jacobs appears on behalf of both Paradise and Cimarron in their appeals and related filings. In support of the appeals, Gary L. Schwendiman, identifying himself as "former 'Registered Agent', 'Secretary', and 'Treasurer' of LAB Energy," filed an affidavit verifying that "Jacobs did not own any interest, percentage of ownership, or stock of any kind in LAB Energy, Inc.;" that LAB Energy received a "Certificate of Involuntary Dissolution" on September 30, 1986; that "Jacobs was not an 'Officer or Director' of LAB Energy after 'Involuntary Dissolution,' or after the 1987 effective date of the Reform Act;" and that "Jacobs was not an 'Officer or Director' of LAB Energy during the 'Incident of Noncompliance,' or when the 'noncompliance action' became effective in March 8, 1988." (Schwendiman's Mar. 12, 2002, affidavit, filed in both cases.)

Paradise and Cimarron filed an "Appeal" and "Reasons for Appealing" in each case. Paradise and Cimarron state that "Jacobs was employed as a landman

and geologic technician" by LAB Energy; that Schwendiman named Jacobs as a "Vice President, and one of three required directors in [LAB Energy's] Corporation Annual Report; that "Jacobs does not recall his election as Vice President and Director of LAB Energy, Inc.;" that "**Jacobs has never owned any interest or voting stock in LAB Energy, Inc.**;" that "Jacobs was laid off from LAB Energy, Inc., directly after the company became insolvent and directly after Involuntary Dissolution;" and that Jacobs was "not an **Officer** or **Director** or employed by LAB Energy, Inc. during the '**Incident of Noncompliance**' or when the '**Noncompliance Action'** became effective." (Paradise SOR at 2; Cimarron SOR at 1-2.) [1/]

Paradise and Cimarron rely upon excerpts from a February 4, 1992, memorandum from the Assistant Solicitor, Onshore Minerals, responding to a memorandum from the Director, BLM, dated August 23, 1990, requesting an interpretation of section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), 30 U.S.C. § 226(g) (2000), albeit not involving identical facts. The opinion addressed, inter alia, the presumptions of control contained in 43 CFR 3400.0-5(rr)(3). Based upon that memorandum, Paradise and Cimarron contend that there is no presumption of control because Jacobs owned less than a 20 percent interest in LAB Energy, which, according to the memorandum, would make it more difficult to establish the requisite degree of control, absent piercing or disregarding the corporate form. However, they realize that disregarding the corporate form is authorized to prevent the use of fictional corporations from circumventing reclamation requirements.

Paradise and Cimarron argue that the focus of FOOGLRA "is repeated and willful violators of the reclamation act," citing H.R. Rep. No. 100-495, 100th Cong., 1st Sess., reprinted in 1987 U.S. Code Cong. & Admin. News 2315-1521, 2313-1528, and maintain that they do not meet this description. (Paradise SOR at 4; Cimarron SOR at 4.) In its Supplemental SOR (SSOR), Cimarron denies that Jacobs is a repeated and willful violator of the reclamation act. (Cimarron SSOR at 1.)

[1/] While Paradise and Cimarron fail to explain the relevance of the information, they state that in 1995 Jacobs was appointed "managing member" of Falcon Energy, LLC (Falcon), and that in 1997 he was appointed as a "manager" of Cimarron; that Falcon operated the "Hamblin Wash – Federal #19-1 test well," the location of which "was plugged and abandoned * * * and all required reclamation work was completed," and that "[t]his location was recontoured, topsoil was respread, scarified, and the location was reseeded as required by BLM regulations;" and that Cimarron operated the "Dye #1 test well," the location of which was "plugged and abandoned, recontoured, topsoil was respread, scarified, and reseeded as required by State of Utah regulations." (Paradise SOR at 2; Cimarron SOR at 2.)

Paradise, again through Jacobs, asserts that it was formed on January 14, 2000, and that Jacobs has a 25 percent voting ownership in the company. Paradise states that Jacobs is currently a leasing agent for Hewitt Energy Group, in Sanpete County, Utah. Paradise represents that LAB Energy's "named former officers and directors (excluding Jacobs, who is not named) are not members and have never been members of Paradise and have no interest, percentage of ownership, or voting ownership in Paradise." (Paradise SOR at 5.) Jacobs makes the same representation with respect to Hewitt Energy Group, Inc., and has attached a notarized statement from the President of Hewitt Energy Group, Inc., supporting this assertion. (Paradise SOR at 5.)

In its SOR, Cimarron states that K.C. Shaw, registered agent and office manager of Cimarron, will verify that Jacobs has no interest, percentage of ownership, or voting interest in Cimarron. (Cimarron SOR at 5.) Cimarron states that it has attached a notarized statement from Shaw, general manager of Cimarron Operating Company, LC, to this effect. Therein, Shaw states that Cimarron is not the "fiction of separate corporate existence," that it has no association with LAB Energy, and that it should not be penalized for any issues BLM may have with LAB Energy or with its former officers or directors." (Letter from K.C. Shaw to the Board, dated Mar. 19, 2002.) Moreover, Shaw states that "Jacobs was acting at the time of lease nomination as a land consultant for Cimarron." Id. [2/]

The record discloses that May 1, 1973, is the anniversary date of lease U-56554, on which well No. 17-10 is situated, and that September 1, 1977, is the anniversary date of lease U-37742, on which well No. 14-12 is situated. Both leases were issued subject to the terms and provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 181, et seq. (2000), as amended, and "all reasonable regulations of the Secretary of the Interior now or hereafter in force."

On May 1, 1973, the regulations prescribing the lessee's obligation to plug and abandon wells, tender bonds, and protect the surface had been in effect since 1942. Under 30 CFR 221.53, the USGS Oil and Gas Supervisor had the

> authority to shut down any operation and place under seal any property or equipment for failure to comply with the oil and gas operating regulations in [Part 221,] or orders issued under this part, to enter upon any leasehold and perform any operation that the lessee fails to perform when ordered so to do in writing, and to recommend

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[2/] In its SOR, Cimarron stated that "in February 14, 2000, [Jacobs] was appointed as a Manager of Cimarron Operating Company, LC." (Cimarron SOR at 2.)

> cancellation of the lease and forfeiture under the bond for noncompliance with the applicable law, lease terms and regulations.

7 FR 4132, 4138 (June 2, 1942). [3]

Concerning the conduct of lease operations, 30 CFR 221.9 provided further that

> the supervisor shall require * * * plugging and abandonment of any well or wells no longer used or useful in accordance with such plan as may be approved or prescribed by him, and upon failure to secure compliance with such requirement, perform the work at the expense of the lessee, expending available public funds, and submit such report as may be needed to furnish a basis for appropriate action to obtain reimbursement.

7 FR 4132, 4133-34 (June 2, 1942). A specific provision dealing with well abandonment, 30 CFR 221.34(a), has been in effect since 1942:

> The lessee shall promptly plug and abandon or condition as a water well any well on the leased land that is not used or useful for the purposes of the lease, but no productive well shall be abandoned until its lack of capacity for further profitable production of oil or gas has been demonstrated to the satisfaction of the supervisor. Before abandoning a well the lessee shall submit to the supervisor a statement of reasons for abandonment and his detailed plans for carrying on the necessary work, together with duplicate copies of the log, if it has not already been submitted. A well may be abandoned only after receipt of written approval by the supervisor, in which the manner and the method of abandonment shall be approved or prescribed. Equipment shall be removed and premises at the well site shall be properly conditioned immediately after plugging operations are completed on any well.

7 FR 4132, 4136 (June 2, 1942).

The regulations further required the lessee "to carry on all operations and maintain the property at all times in a safe and workmanlike manner, having due

[3] The regulations at 30 CFR Part 221 were promulgated effective June 2, 1942 (7 FR 4132), and were redesignated 43 CFR Part 3160 effective Aug. 12, 1983 (48 FR 36583).

regard for the preservation and conservation of the property and for the health and safety of employees." 30 CFR 221.37 (7 FR 4132 (June 2, 1942)). 30 CFR 221.32 additionally provided:

> The lessee shall not pollute streams or damage the surface or pollute the underground water of the leased or other land. If useless liquid products of wells cannot be treated or destroyed or if the volume of such products is too great for disposal by usual methods without damage, the supervisor must be consulted, and the useless liquids disposed of by some method approved by him.

7 FR 4132, 4135 (June 2, 1942). [4/]

Sufficient bonding has been required of lessees since 1942 as well. At the time of issuance of both the 1973 and 1977 leases to LAB Energy, 30 CFR 221.18 provided:

> The lessee shall comply with the terms of the lease, and of the regulations in this part and any amendments thereof, and with the written instructions of the supervisor, shall take all reasonable precautions to prevent waste, damage to formations or deposits containing oil, gas, or water or to coal measures or other mineral deposits, and injury to life or property, and before drilling or other operations are started, shall have submitted a satisfactory bond.

7 FR 4132, 4134 (June 2, 1942).

The bond on leases U-56554 and U-37742 was attached on March 8, 1988. Similar regulations prescribing the duties of the lessee, including those regulations redesignated from 30 CFR Part 221 to 43 CFR Part 3162, were in effect on the date the bond was attached. Specifically, concerning plugging and abandonment, 43 CFR 3162.3-4(a) stated:

> [t]he lessee shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying

[4/] 30 CFR 221.32 was redesignated 43 CFR 3162.4-1 on Aug. 12, 1983. 48 FR 36583.

> quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

Subparagraph (c) of that same section prescribed further:

> No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the lessee, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months. Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be rehabilitated or restored in accordance with a plan first approved or prescribed by the authorized officer.

The 1942 version of 30 CFR 221.34 was amended and redesignated 30 CFR 221.29 in 1982 (47 FR 47765 (Oct. 27, 1982)), and 30 CFR 221.29 was redesignated in 1983 as 43 CFR 3162.3-4. 48 FR 36583 (Aug. 12, 1983).

The applicable regulation in effect prior to bond attachment in this case required the authorized officer "[b]efore approving operations" to "determine that the lease is in effect, that the operator is authorized to conduct such operations, that acceptable bond coverage has been provided and that the proposed plan of operations is sound both from a technical and environmental standpoint." 43 CFR 3161.2 (48 FR 36584 (Aug. 12, 1983)). Further, 43 CFR 3162.5-1(b), [5] in effect on the date of bond attachment, provided that the lessee

> shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the authorized officer. Upon the conclusion of operations, the lessee shall restore or rehabilitate the

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[5] Previously 30 CFR 221.34, after amended in 1982 (see 47 FR 47765 (Oct. 27, 1982)). 30 CFR 221.3-4 was redesignated as 43 CFR 3162.5-1(b) at 48 FR 36583-86 (Aug. 12, 1983).

> disturbed surface in a manner approved or reasonably prescribed by the authorized officer.

47 FR 47765 (Oct. 27, 1982). Consequently, applicable regulations in effect at the time of lease issuance, as well as at the time of lease noncompliance and bond attachment, required the lessee to plug and abandon wells and restore the surface.

[1] It is undisputed that LAB Energy's noncompliance existed under the regulations at the time of bond attachment and subsequent to the enactment of section 5102(g) of FOOGLRA, effective December 22, 1987, [6] and on the respective dates the decisions were issued, January 23 and 25, 2002. Section 5102(g) provides in pertinent part:

> The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, <u>during any period in which, as determined by the Secretary of the Interior</u> or Secretary of Agriculture, <u>such entity has failed or refused to comply</u> in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirements or other standard concerned an oil or gas lease may be issued to such entity under this chapter. [Emphasis supplied.]

Regulations implementing section 5102(g) of FOOGLRA include 43 CFR 3162.3-4 (concerning the manner and circumstances in which a well is to be plugged and abandoned) and 43 CFR 3162.5-1 (concerning compliance with environmental obligations, including reclamation of disturbed surfaces). <u>See</u> 47 FR 47765 (Oct. 27, 1982), redesignated at 48 FR 36583-86 (Aug. 12, 1983).

Under 43 CFR 3102.5-1, meeting the terms of section 5102(g) of FOOGLRA and the regulations promulgated thereto is a condition of qualifying "to actually or

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[6] FOOGLRA was enacted as part of Title V of the Omnibus Budget Reconciliation Act of 1987, 101 Stat 1330-259 (Dec. 22, 1987).

potentially own, hold, or control an interest in a lease or prospective lease." Under 43 CFR 3102.5-1(f), such "compliance" requires that "the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k))," be

> [i]n compliance with section 17(g) of the Act, [[7/]] in which case the signature on an offer, lease assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in §3400.0-5(rr) [[8/]] of this title, has failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized

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[7/] This is a reference to section 17(g) of the Mineral Leasing Act of 1920, as amended by section 5102(g) of FOOGLRA, both of which are codified at 30 U.S.C. § 226(g) (2000).

[8/] 43 CFR 3400.0-5(rr) provides in pertinent part:

"(3) Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

"(i) Ownership in excess of 50 percent constitutes control;

"(ii) Ownership of 20 through 50 percent creates a presumption of control; and

"(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

"(4) Entity means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

"(5) Holds and has held means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The holds and has held requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. Working interest includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop * * * will be exercised."

> officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

43 CFR 3102.5-1(f) (53 FR 28837 (June 17, 1988)).

That Jacobs is no longer the vice president of LAB Energy is not controlling because the violation at issue is a continuing one. The record shows clearly that noncompliance or refusal to comply in this case began at the time the bond was attached and continues to this date. There is nothing in the corporate records, as submitted to this Board, indicating that Jacobs was not a vice president at the time the bond was attached. Although Jacobs asserts that he was terminated after involuntary corporate dissolution owing to LAB Energy's failure to pay taxes, he remained the principal party communicating with BLM subsequent to the asserted corporate dissolution, and specifically held himself out as the authorized LAB Energy contact person on record in BLM files up to and including the date of bond attachment. At no time did LAB Energy advise BLM of the its dissolution, nor did Jacobs advise BLM that he no longer possessed authority as vice president of LAB Energy to deal with BLM concerning the leases at issue. In fact, the record shows the contrary. Notwithstanding the fact that the State of Utah issued LAB Energy its certificate of involuntary dissolution on September 30, 1986, Jacobs, in his capacity as vice president of LAB Energy, signed an Application for Permit to Drill (APD) on March 30, 1987, for the No. 17-10 well on lease U-56554, and BLM approved the APD with conditions on May 21, 1987.

We do not think that on the present record it can seriously be contended that Jacobs as vice president of LAB Energy, who signed the APD for well No. 17-10 in that capacity, lacked authority or sufficient control of the company to ensure compliance with applicable regulatory requirements, including the requirement that the wells be plugged and abandoned and the leases reclaimed as specified in the approved APD, steps not taken at the time of bond attachment. To the contrary, the record before the Board evidences that Jacobs as vice president and director actively participated in LAB Energy's business and exercised control over LAB Energy's operations. [9/] Given that Jacobs signed the APD to open well No. 17-10 as vice

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[9/] We note that the rebuttable presumption contained in 30 CFR 701.5(5), promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201, et seq. (2000), applying to officers and directors of surface mining companies based solely on percentage of ownership interest, was invalidated in National Mining Ass'n v. U.S. Dep't of the Interior, 177 F.3d 1, 6 (D.C. Cir. 1999). The Department later amended the regulations. See 30 CFR 701.5(5) (65 FR 79662 (continued...)

president of LAB Energy on March 30, 1987, subsequent to the 1986 involuntary dissolution, we reject any claim concerning his lack of authority after that event.

Appellants' reliance on the legal memorandum of the Assistant Solicitor, Onshore Minerals, is misplaced. That memorandum does not state that a party holding less than a 20 percent interest cannot be barred from holding a lease; rather, holding less than a 20 percent interest only means that there is a presumption of non-control. In determining in this case whether a presumption is overcome by evidence contained in the record, the focus is properly on whether the person or entity at issue had control over compliance with reclamation requirements. The record discloses that as vice president of LAB Energy, Jacobs was the corporation's authorized representative in dealing with BLM involving day-to-day corporate matters, including drilling and reclamation. On the facts presented herein, we hold that Jacobs in executing the APD as vice president of LAB Energy had control over compliance with conditions of the approved APD, including reclamation requirements. As such, Jacobs was and remains a "person" who fails to meet the criteria of section 5102 of FOOGLRA, since he is "under common control with [LAB Energy] during any period in which, as determined by the Secretary * * * , such entity has failed or refused to comply in any material respect with the reclamation requirements." [10/]

The failure of Jacobs and LAB Energy to comply with regulatory requirements covering the plugging and abandonment of wells and the reclamation of leases at the time of bond attachment, and the continued failure to comply to date, properly gave rise to BLM's decisions to reject the bids and offers at issue under section 5102(g) of FOOGLRA. As provided in section 5102(g) of FOOGLRA, the lease-bar remains in effect until the reclamation requirements are complied with.

[9/] (...continued)
(Dec. 19, 2000)).

[10/] This section constitutes "a total ban on the ability of the defaulting entity, and of 'any subsidiary, affiliate, or person controlled by or under common control with' the entity, to receive any new oil and gas leases assignments of oil and gas leases while outstanding cleanup work on the lease remains undone." (Thomas L. Sansonetti & William R. Murray, "A Primer on the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and Its Regulations," 25 (Vol. II) Land and Water Law Review 375, 411 (1990).

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

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James F. Roberts
Administrative Judge

I concur:

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Will A. Irwin
Administrative Judge