



RETURN RECEIPT REQUESTED

September 19, 1991

MTM-77022
SDR-922-91-21
3160 (922.B)

CERTIFIED-RETURN RECEIPT REQUESTED

Decision

REStana Oil & Gas, Inc.)	
P. O. Box 612)	<u>SDR No. 922-91-21</u>
Shelby, MT 59474)	

AFFIRMED

On September 6, 1991, a State Director Review (SDR) request was timely filed by REStana Oil & Gas, Inc. (REStana) concerning a Lewistown District Office (LDO) decision dated August 7, 1991. In this decision, the LDO stated that the Madison formation underlying Federal lease No. MTM-77022 was being drained by the McKee No. 1 well located in the SW¹/₄SE¹/₄, sec. 9, T. 34 N., R. 2 W., Toole County, Montana. They subsequently assessed REStana compensatory royalties in the amount of 32.53 percent of the production of the McKee No. 1 well, beginning February 1, 1989, and continuing until the Federal lease is protected or the McKee No. 1 well ceases production.

REStana did not raise any geologic, engineering, or economic issues in their SDR request and, consequently, we did not evaluate the technical merits of the case. REStana's objections to the assessment are summarized in the final paragraph of their SDR request:

REStana does not deny the stated fact that drainage to the above captioned Federal lands may be occurring due to the production of natural gas from the McKee #1, nor does it wish to do so. However, REStana does (1) deny having owned the lease during the period of alleged drainage in accordance to the official records contained in the office of the State of Montana Oil & Gas Conservation Commission; (2) does deny having been advised fully and completely as to the extent of the case and as to the degree the same had progressed; (3) does deny having been served with notice as provided under 43 CFR 3165.3(a); and, (4) does deny being granted the right, privilege and benefit of "due process" by reason of (1), (2), and (3) above.

Each of REStana's contentions are addressed as follows:

1. REStana did not own the lease during the entire period of drainage.

This assertion is correct in part. The assessment period began on February 1, 1989, while the assignment of the lease to REStana was not effective until March 1, 1991. However, the drainage assessment period does not end until the lease is protected, relinquished, or the offending well is plugged. According to the Montana Board of Oil and Gas Conservation, the McKee No. 1 well had not been plugged as of September 12, 1991, but was shut-in. If and when this well is placed back on production, REStana will be responsible for the payment of any compensatory royalties due.

2. REStana had not been fully advised as to the extent of the drainage case.

REStana states on page 1 of its SDR request that:

"At the time Federal Lease M-77022 was acquired by REStana, Mr. Henry Alker [the former lessee] advised REStana that he was in correspondence and working with the BLM on a small matter involving the question of drainage by the McKee #1 well but that he expected to have the same resolved shortly. REStana has not since heard from Mr. Alker regarding the matter and had supposed the same to be resolved."

No documentation was provided confirming this statement and, even if it were, it would have no bearing on this decision. Had it chosen to do so REStana could have contacted the BLM at any time to determine the status of the drainage demand against the lease.

3. REStana did not receive notice per 43 CFR 3165.3(a).

The LDO notified the lessee of record, Henry A. Alker, on October 25, 1990, of his duty to protect the lease from drainage, or provide evidence showing that paying protective well could not be drilled. Mr. Alker was given 60 days to respond to this letter. This response period was extended an additional 60 days on January 8, 1991, to allow Mr. Alker the opportunity to pursue an agreement to protect the lease. However, no such agreement was formed. On March 1, 1991, lease No. MTM-77022 was assigned to REStana pursuant to the following:

"The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer...After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations..." (emphasis added).

43 CFR 3106.7-2.

The LDO, on August 7, 1991, issued a decision letter to the lessee of record, REStana, stating that REStana was being assessed compensatory royalty. This letter was sent via certified mail and notified REStana of their appeal rights concerning the decision. It also provided detailed procedures for requesting a SDR.

The regulations at paragraph 3165.3(a) require that written notice be served by personal service or certified mail to the operating rights owner or operator, as appropriate. This was done for both the October 25, 1990, and August 7, 1991 letters, and we, therefore, determine that the notice provisions of paragraph 3165.3(a) have been satisfied.

4. REStana has not been granted the right, privilege, and benefit of "due process."

The drainage casefile indicates that the LDO correctly followed applicable procedures and regulations concerning the processing of this case. REStana argues that it had not received due process, owing to the fact that it had not been a party to earlier correspondence requiring protection for the lease. However, by executing the assignment, REStana assumed all lease rights and responsibilities including the requirement to respect existing lease obligations. Further, when REStana was given the option to appeal LDO's decision, i.e., "due process," it exercised its right to request an SDR.

We conclude that the LDO's decision of August 7, 1991, did not infringe on REStana's right to due process.

The decision of the LDO is herein affirmed. This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and the enclosed Form 1842-1 (Enclosure 1). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the decision appealed from is in error.

/s/ Thomas P. Lonnie
 Thomas P. Lonnie
 Deputy State Director
 Division of Mineral Resources

1 Attachment
 1-Form 1842-1 (1 p)

cc:
 WO(610), LS, Rm. 501
 Lewistown DO