

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
2850 YOUNGFIELD STREET
COLORADO STATE OFFICE
LAKEWOOD, COLORADO 80215-7093
August 10, 1999

In Reply Refer To:
3100/3160 (CO-934) P

Instruction Memorandum No. CO-99-033
Expires: 09/30/00

To: All Field Offices

From: Deputy State Director, Resource Services

Subject: Procedure to Designate an Oil and Gas Operator for a Lease or Single Well

DISTRIBUTION: All Bureau of Land Management (BLM) Colorado Field Office managers and staff that work on issues related to exploration, development, or production of oil and gas on federal leases.

ISSUE: A recent Interior Board of Land Appeals (IBLA) decision (IBLA 95-579, [at 145 IBLA 136], hereafter referred to as "IBLA decision," Attachment 1), determined that "Since BLM no longer approves the designation of operator, neither is its assent needed to terminate an operator's status." Operators are allowed to terminate their operator status ". . . when its rights to do so, under the lease, have terminated." BLM may not be cognizant of third-party agreements that provide such rights, and consequently, not aware of the termination of those rights. Or, an operator may be operating a well based on the authority granted by the ownership of operating rights. When the operator transfers these operating rights, the authority to operate a well may also cease.

BLM is left in the position of not knowing when or under what circumstances the operator of a federal well ceases to be the operator. In such cases, how will BLM proceed to secure lease compliance for the well?

BACKGROUND: Reference is made to the IBLA decision and the corresponding background provided therein and Instruction Memorandum Washington Office (WO) No. 87-151, Designation of Operator (Attachment 2). Without a formal operator designation process, the circumstances that lead to a situation where no responsible operator is identified for an

existing oil and gas well are common. For example, third-party agreements that provide the authority for a company to operate a well without benefit of holding lease operating interests (working interest) are standard industry practice. Farmout agreements allow non-operating right holders to act as the operator and commonly provide for lease operating rights (OR) to be earned at future stages in the life of a well or, the agreement is terminated if certain events do not occur.

Another example is the transfer of OR. Companies often hold OR for specific periods of time and may also operate a well based on the ownership of these rights. When OR are transferred to another party, the authority to operate a well may also cease. The rights associated with record title (RT) do not include the right to operate on the lease once the OR are severed entirely.

In each of these instances it is conceivable the BLM may be left without a recognized operator and must timely determine alternative means to secure lease compliance. Under standard lease terms and conditions, the term "lessee" is used throughout and identified as the responsible party for lease compliance. Regulation at 43 CFR 3106.7-2 holds a transferee of record title responsible for the performance of all lease obligations and Section 12 of the standard lease terms and conditions holds the lessee ultimately accountable for returning lease premises to the lessor in an acceptable condition. In accordance with Title 43 CFR 3100.0-5(i), a lessee is defined as, ". . . a person or entity holding *record title* in a lease issued by the United States (emphasis added)."

Operator liability is also a legitimate component of this issue. The liability for a well may lie with not only the lease interest holder(s), but with past and present operators. The IBLA decision alluded to the potential of operator liability however, demands for liability performance from operators not holding lease interests are a matter for BLM legal interpretation or the courts, and will not be considered in this instruction.

OBJECTIVE: When an existing operator for a well provides sufficient evidence to BLM they no longer maintain authority to operate or are not responsible for lease compliance, BLM must secure a replacement. BLM must develop procedure to determine if one of the existing OR holder(s) desire to operate or alternatively, require the lease RT holder(s) to timely identify an operator for a well. If no lease interest holder comes forward or no operator is designated, BLM must invoke its authority under the lease terms and conditions to secure responsibility and compliance for the well.

Once an operator is identified, appropriate bonding must be in place for that party to operate the well. Section 3 of the lease terms and conditions and 43 CFR 3162.3 specifically require adequate bonding from a new operator and BLM must ensure such bonding exists.

ACTION REQUIRED: When BLM is notified by the existing operator of a well that they no

longer are authorized or responsible to perform well activities, the jurisdictional BLM Field Office will immediately notify the State Office (CO-934, Bond Coordinator) via a memorandum. The existing operator should state in their notification to the BLM Field Office that their authority or responsibility to operate has terminated and provide a basis for the claim. An adequate basis would include a statement describing the effect of a farmout or operating agreement or the transfer of all owned lease ORs. If no basis is provided, BLM field offices should inquire and promptly inform the State Office of the response received from the existing operator. The basis provided by the existing operator should be included in the memorandum to the State Office.

The State Office (Bond Coordinator) will issue a demand letter (Attachment 3 with Attachment 4, CSO Form 1840-6) to the RT holder(s) requiring the designation of an operator within 60 days. The automated lease record in LR 2000 will be noted accordingly. It is incumbent upon the RT holder(s) to query the OR holder(s) to determine if an OR holder desire to operate the well. Barring an affirmative reply from an OR holder(s), the RT holder(s) must then designate an operator.

If no operator is identified within 60 days, the majority RT holder will be advised that they are responsible for well operations, considered the operator for the well and, if not maintaining bond coverage or consent of surety or obligor for the well, required to post adequate bond coverage in accordance with Section 3 of the standard lease terms and conditions and 43 CFR 3162.3. Also, the RT holder(s) will be notified that adequate bond coverage must be provided or the lease will be subject to cancellation.

The Field Office will be advised of the outcome of the demand to the RT holder(s). Field Offices will direct all subsequent correspondence relating to the subject well or lease to the operator officially identified by the State Office in a memorandum to the Field Office.

BUDGET IMPLICATIONS: Normal and customary budget and work associated with the implementation of Title 43 CFR Parts 3100 and 3160.

CONTACT PERSON: Oil and gas operational questions may be addressed to Hank Szymanski at 303/239-3797, and bonding, lease maintenance, or procedural questions may be addressed to either Martha Maxwell at 303/239-3768 or Kathy Toth at 303/239-3769.

Signed by:
Dave Strunk
Acting Deputy State Director,
Resource Services

4 Attachments:

- 1 - Interior Board of Land Appeals decision (IBLA 95-579) at 145 IBLA 136
- 2 - WO-IM-87-151, Designation of Operator

3 - Demand Letter

4 - Form CSO 1840-6