

H-3104-1 - BONDS

Regional Solicitor's Memorandum (No. BLM.23.RM.0814),
 Dated January 20, 1987, "Effect of Assignment
 Approval on Assignee's Corporate Surety"



United States Department of the Interior

OFFICE OF THE SOLICITOR
 OFFICE OF THE REGIONAL SOLICITOR
 P.O. BOX 25007
 DENVER FEDERAL CENTER
 DENVER, COLORADO 80225

'87 JAN 21 AIC:UO

January 20, 1987

BLM.RM.0814

Memorandum

To: State Director, Colorado, Bureau of Land Management
 From: Regional Solicitor, Rocky Mountain Region
 Subject: Effect of Assignment Approval on Assignee's Corporate Surety

In your memorandum of December 1, 1986, you ask "whether or not an assignee's corporate surety is bound for all previous liability on a lease when an assignment is approved absent a rider specifically conditioning a bond to do so?" You state that the BLM is concerned that the language on the bond forms covers only "normal ongoing operations." You enclosed with your memorandum two bond forms, Form 3104-1 (June 1984) and Form 3104-8 (July 1984).

For the purpose of replying to your question, it is assumed that an assignee and its surety execute one or both of the above identified bond forms.

As I pointed out in my September 12, 1986 memorandum to your office, the assignee of an oil and gas lease assumes "all lease obligations." See 43 C.F.R. 3106.7-2 and Karis Oil Co., Inc., 58 IBLA 123, 1981. To reiterate that portion of the Karis decision quoted in the September 12 memorandum:

The bond that the assignee is required to provide is that which will cover any obligations arising under the lease to the same extent that the assignor's bond would have done. BLM should ascertain the adequacy of such bond before approving the assignment.

In other words, the BLM is to insure that the bond provided by the assignee will cover all obligations existing at the time of the assignment because the assignee assumes responsibility for them.

We have carefully read both bond forms. We find there is no language limiting coverage either to "normal ongoing operations" or to subsequent operations. To the contrary, Form 3104-1 provides:

NOW, THEREFORE, if the said principal, his heirs, executors, administrators, successors, or assigns shall fully comply with all of the terms and conditions of said lease or any extension thereof authorized by law, use all reasonable precautions to prevent damage to the land, leave the premises in a safe condition upon the termination of said lease, and compensate the entryman, patentee, or surface owner, if any, for damages to the land as required by law, then this obligation shall be null and void; otherwise to remain in full force and effect.

The language in Form 3104-8 is more concise, but to the same effect. That form provides:

NOW, THEREFORE, if said principle [sic] shall in all respects faithfully comply with all of the provisions of the leases referred to hereinabove, then the above obligations are to be void; otherwise to remain in full force and effect.

In other words, the bond forms provide that if the principal does not comply with all lease terms, which includes correcting any preexisting deficiencies, the surety is obligated to do so.

To summarize, an assignee assumes all of the obligations incurred ~~by the assignor as well as the benefits which have accrued to the assignor.~~ The assigned lease requires the assignee to correct conditions not consistent with the lease terms. If it does not, it is in default. If it is in default, that default is covered by the terms of the bonds and the surety must pay for correcting the problems if the principal does not.

You point out that the Colorado State Office and perhaps other offices are using a rider to insure assumption of prior liabilities by a surety. Such riders are not necessary and should not be used. The use of such riders only clouds what is now the plain and unambiguous language of the bond forms.

If you have further questions regarding this matter, please contact the undersigned.


Lowell L. Madsen
For the Regional Solicitor

CC:
Associate Solicitor, Energy and Resources

H-3104-1 - BONDS

CO-943A(MN)
3104/3106

12/1/86

Memorandum

To: Regional Solicitor, Rocky Mountain Region

From: State Director, Colorado

Subject: Effect of Assignment Approval on Assignee's Corporate Surety

We request you extend the guidance given in your response of September 12, 1986, to our Craig District Office to the question of whether or not an assignee's corporate surety is bound for all previous liability on a lease when an assignment is approved absent a rider specifically conditioning a bond to do so.

We are concerned that the language in our bond forms (Enclosures 1 and 2) does not extend on assignee's bond to cover other than normal ongoing operations. Enclosures 3, 4, and 5 are the riders we are using to ensure assumption of prior liability. However, Enclosure 3 is not often used. We have had instances where an assignee is able to provide a corporate surety bond but the surety refuses to execute one of these riders. ~~We also know~~ From conversations we have had with various sureties' agents that they generally assume their principals' bond coverage does not extend to anything, other than normal ongoing operations, which occurred prior to when the principals acquired interests in leases. We wonder what would happen in the situation where an assignee is obtaining interest in a lease that has considerable rehabilitation to be done and/or an amount of royalty liability which far exceeds the face amount of the bond, especially where this agency is not aware of such default in royalties.

We do understand that, where a lease has terminated, expired, been relinquished or cancelled and a new lease has been issued, neither the new lessee nor any assignee of that lessee can be held responsible for prior liability.

A considerable amount of time and effort is spent by both State and District Offices to secure District Office concurrence to assignment approval and requirement and approval of riders from assignees. If we do not need these riders, we can alter our procedures and spend the time saved more productively.



H-3104-1 - BONDS

executes an assignment. The BLM should inspect the lands only for the purpose of determining whether the bond offered by the assignee is adequate to cover existing as well as potential problems.

You ask whether an assignor continues to be responsible for deficiencies that existed prior to approval of the assignment. According to the above-cited regulation and case, the answer to this question is no.

You state that holders of operating rights are claiming they are not responsible for lease deficiencies that existed prior to BLM approval of the operating agreement. Even though the holder of operating rights may have its own individual bond, which the BLM may call upon when necessary, the lessee of record has the ultimate responsibility for compliance with the terms of the lease. Hence, if the operator or its surety are unable to satisfy the obligations of the lease, the BLM has recourse against the lessee of record and may require it to take care of any problems that exist on the lease.

If you have additional questions regarding this matter, please contact the undersigned.


Lowell L. Madsen
For the Regional Solicitor
Rocky Mountain Region

cc: Associate Solicitor, Division of Energy and Resources