



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Montana State Office
5001 Southgate Drive

Billings, Montana 59101-4669
<http://www.mt.blm.gov/>

In Reply To:

SDR-922-07-03
3160 (922.WL)
MTM89105
MTM89108
MTM89120
MTM89121
MTM89122
MTM89123
MTM89124
MTM89125

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 24, 2007

DECISION

Mr. James E. Torske)
Attorney at Law)
314 North Custer Avenue)
Hardin, Montana 59034)

SDR No. 922-07-03

AFFIRMED

Raymond J. Weigel through his attorney, James E. Torske, requested a State Director Review (SDR) of the March 29, 2007, decision of the Miles City Field Office (MCFO) Assistant Field Manager (AFM) denying a request that a suspension of operations and production be approved effective February 25, 2005, for eight leases. The SDR request was considered timely filed on April 19, 2006, in accordance with 43 CFR 3165.3(b) and was assigned number SDR 922-07-03. Mr. Weigel requested an extension of time to file supporting documentation. The request was granted, and Mr. Weigel timely submitted the supporting documentation on May 11, 2007.

BACKGROUND

Mr. Weigel is the lessee of record for the following eight leases:

MTM89105	MTM89122
MTM89108	MTM89123
MTM89120	MTM89124
MTM89121	MTM89125

Each of these leases was issued effective May 1, 1999, for a period of 10 years. Mr. Weigel was granted a suspension of production and operations for the leases effective April 1, 2002, while the Bureau of Land Management (BLM) prepared the Statewide Oil and Gas Environmental Impact Statement (EIS) and Proposed Amendment of the Powder River and Billings Resource Management Plans (RMPs). The Powder River and Billings RMPs, as amended by BLM's 1994 Oil and Gas Amendment of the Billings, Powder River, and South Dakota RMPs, addressed conventional oil and gas development and limited coal bed natural gas (CBNG) exploration and development. Projections by industry indicated heightened interest in the exploration and development of CBNG. An EIS was needed to consider the impacts associated with amending the RMPs to provide for CBNG production. Until the EIS was completed, BLM restricted approvals of

drilling applications for CBNG to drilling and testing only, with no CBNG production allowed. The EIS was completed, and the suspensions of operations and production for these leases were terminated effective June 1, 2003.

Lawsuits were filed challenging the EIS. On February 25, 2005, the United States District Court of the District of Montana, Billings Division, issued an order indicating that the BLM will need to prepare a Supplement EIS (SEIS). A subsequent order dated April 5, 2005, ordered the BLM to prepare an SEIS. The order also allowed for limited development of CBNG within a specific geographic area of the Powder River Basin, but prohibited development outside of the geographic area. The leases in question are located outside of the geographic area allowed for development. On May 31, 2005, the United States Court of Appeals for the Ninth Circuit enjoined the BLM from approving any CBNG projects in the Powder River Basin of Montana.

Mr. Weigel filed a request with the MCFO for a suspension of operations and production for the eight leases on February 27, 2007. Mr. Weigel requested that the effective date of the suspensions be February 25, 2005. The suspensions were granted on March 29, 2007, with an effective date of February 1, 2007. Mr. Weigel's request that the effective date of the suspensions be February 25, 2005, was denied. In the denying the request, the MCFO AFM stated:

The supplemental environmental impact statement ordered by the United States District Court is to evaluate a phased development alternative of coal bed natural gas development. Conventional oil and gas development consistent with the 1994 Oil and Gas Amendment for the Powder River Resource Area Resource Management Plan is not affected by the order. Therefore, the lessees within the study area were not denied all of the beneficial use of their leases. If the intent of a lessee was to develop coal bed natural gas, then it was incumbent upon the lessee to request a suspension when he knew his leases were affected by the District Court order. A lessee is expected to understand its obligations under a lease and the applicable rules.

ARGUMENTS

Mr. Weigel references the letter from the MCFO AFM. Part of the justification for denial of the request the lease suspension be effective February 25, was that the injunction by the United States District Court did not affect conventional oil and gas development. Mr. Weigel argues that the area covered by the eight leases is exclusively an area identified as being prospective for CBNG exploration and development and not an area subject to conventional oil and gas development. A map indicating coal bed natural gas exploration and development prospects in the area of the eight leases was included to support the argument.

Mr. Weigel requests that the language in the letter granting the first suspension be considered. The letter acknowledged there were restrictions upon drilling applications "to drilling and testing only, with no production allowed until the Environmental Impact Statement (EIS) was completed."

Mr. Weigel argues that as a result of the litigation in the United States District Court, and given the history of controversy and opposition to CBNG development, the BLM had the statutory and regulatory authority to suspend operations and production on the date such activity was enjoined by the federal court. Mr. Weigel refers to Section 3103.4-4 of Title 43 of the Code of Federal Regulations which authorizes BLM to direct or consent to a suspension of operations and production. Mr. Weigel argues that it would be reasonable to conclude the federal court order was equivalent to the authorized officer directing suspension of all operations and production. Based on these arguments, Mr. Weigel requests that the suspensions of operations and production for the eight leases be effective February 25, 2005, and be given credit for the rentals paid since February 25, 2005.

DISCUSSION

We reviewed the map provided by Mr. Weigel and agree that the eight leases are in an area that is prospective for CBNG exploration and development. We do not dispute any of the coal bed natural gas exploration and development prospects in the area as shown on the map. However, there is nothing included on the map to indicate that the area is "exclusively" a CBNG area and not an area subject to conventional oil and gas development. Even if the map were to somehow indicate the lack of conventional oil and gas development prospects, it does not change the fact that the conventional oil and gas development was not affected by the court order. It is the lessee's responsibility to determine if the court order affects his plans.

We agree that there are restrictions on the development of CBNG on the eight leases. That is why the original suspensions of operations and production were granted and why these new suspensions of operations and production were granted. We also agree that the federal court order could be interpreted as equivalent to the authorized officer directing suspension of all operations and production for CBNG development. However, the order only pertains to CBNG development and does not preclude conventional oil and gas development.

As is stated in the MCFO AFM's letter, the supplemental environmental impact statement ordered by the United States District Court is to evaluate a phased development alternative of coal bed natural gas development. Conventional oil and gas development consistent with the 1994 Oil and Gas Amendment of the Powder River Resource Area Resource Management Plan is not affected by the order. Therefore, the lessees within the study areas were not denied all beneficial use of their leases. The lessees are allowed to develop conventional oil and gas resources. Since conventional oil and gas development within the study area is allowed, the BLM did not direct a suspension of operations and production. Directing a suspension in this situation would have unnecessarily taken rights away from the lessees. Instead, the BLM allowed lessees to request suspensions of operations and production if the court order restricted their plans for the leases.

If all beneficial use of the leases had been denied, the BLM would have directed a suspension of operations and production effective the date of the court order. However, since the suspensions were not directed, the effective date of the suspensions is discretionary. Consistent with 43 CFR 3165.1(c),

the BLM has specified the effective date of the suspensions of these eight leases, and all other suspensions of leases within the SEIS study area, to be the first day of the month in which the application for a suspension was filed.

DECISION

The decision of the MCFO AFM denying the request that a suspension of operations and production be approved effective February 25, 2005, for the eight leases is affirmed.

APPEAL RIGHTS

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and 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 also 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.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 4.21, the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay **must** also be submitted to each party named in the Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

/s/ Theresa M. Hanley

Theresa M. Hanley
Deputy State Director
Division of Resources

Enclosure

1-Form 1842-1 (1 p)

cc:

WO-310, LS, Rm. 501

All BLM State Offices

Miles City Field Office

North Dakota Field Office

Great Falls Oil and Gas Field Station

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