



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Salt Lake City, UT 84145-0155
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CERTIFIED MAIL – Return Receipt Requested

DECISION

Vessels Coal Gas, Inc.	:	
% Ducker, Montgomery, Aronstein & Bess, P.C.	:	Protest against the inclusion of Parcels
Attorneys at Law	:	UTU0207-124, UTU0207-125, and
One Civic Center Plaza	:	UTU0207-126 in BLM's February 20,
1560 Broadway, Suite 1400	:	2007 Oil and Gas Lease Sale
Denver, CO 80202	:	

Protest Denied

On January 5, 2007, the Utah State Office of the Bureau of Land Management (BLM) provided notice that 79 parcels of land would be offered in a competitive oil and gas lease sale on February 20, 2007. Among those parcels were tracts UTU0207-124 (124), UTU0207-125 (125), and UTU0207-126 (126) (the "Subject Parcels"), all located in Carbon County, Utah. These parcels are the subject of a timely protest to their inclusion in the oil and gas lease sale filed February 5, 2007 by Vessels Coal Gas, Inc. (Vessels). Parcel 124 is located in parts of sections 25, 26, 34, and 35 of Township 12 South, Range 10 East, SLB&M, contains 960 acres, and is subject to Federal Coal Lease UTU 81893. Parcel 125 is located entirely within section 1, Township 13 South, Range 10 East, SLB&M, contains 665.35 acres, and is subject to Federal Coal Lease UTU 66060. Parcel 126 is located in part of section 30, Township 12 South, Range 11 East, SLB&M, contains 222.28 acres, and is subject to Federal Coal Lease UTU 79975. All three coal leases are included within the mine plan boundaries of the Aberdeen Coal Mine that is now operated by Utah American Energy, Inc. (Aberdeen Mine).

Because parcels 124, 125, and 126 were offered for the sole purpose of coal mine vent gas gathering, as stated in the Sale Notice, and not for oil and gas development, we find that Vessels' protest lacks sufficient merit to remove the subject lands from the February 2007 competitive lease sale. Therefore, the protest is denied and the State Director will issue leases for all the parcels that were sold.

Background

The Aberdeen Mine is a deep, underground coal mine with panels approximately 3,000 feet below the surface. As the mine reaches deeper levels, coal degasification¹ has increased dramatically, subsequently

¹ Degasification is the process by which methane is released from the coal due to fracturing caused by the mining operations and the draining of water from the coalbed thereby creating an area of reduced pressure in the mine. Attempts to remove the methane through the ventilation wells prior to mining have failed because the coal does not contain enough permeability or porosity to allow the gas to flow to the well bores without fracturing.

increasing the risks of both insufficient oxygen for the miners and the possibility of explosions and fire. In response to Mine Safety and Health Administration (MSHA) requirements to reduce methane concentrations and its associated hazards, the mine operators have installed a system of special ventilation wells that carry the gas to the surface where it is discharged into the atmosphere as a waste product. It is estimated that the Aberdeen Mine has vented 5 to 10 billion cubic feet of mixed methane, hydrogen sulfide, and atmospheric gas into the environment.

The Environmental Protection Agency (EPA) classifies mine vent gas as a significant atmospheric pollutant, a greenhouse gas 20 times as potent as carbon dioxide, and identifies this gas as Ventilation Air Methane (VAM). EPA has developed a specific program, known as the Coalbed Methane Outreach Program, designed to promote the profitable recovery and use of VAM. VAM is created at the mine face where coalbed methane is mixed with other gases in the mine, making its properties much different than the naturally occurring, more pure methane produced from the un-mined subsurface. Not only is the methane content much lower than natural methane (EPA measures some samples as low as 1 to 2 percent methane), but VAM also contains high proportions of nitrogen, oxygen, carbon dioxide, and carbon monoxide that, if present at all, are minor constituents of natural methane.

The Vessels protest focuses on the special stipulations included in the proposed leases. In its protest, Vessels contends that many of these special stipulations: 1) are not necessary to protect coal operations; 2) ensure that only one party will be able to effectively bid on the proposed leases; 3) are anti-competitive and inconsistent with Mineral Leasing Act of 1920; and 4) constitute an improper, illegal and unwise delegation of BLM regulatory authority to a private company. Vessels also contends that the special stipulations improperly exempt the lessee from subscribing to a cooperative or unit plan. Finally, Vessels argues that the special stipulations improperly exempt the lessee from applicable bonding requirements.

Vessels' arguments are conclusory and do not provide legal support sufficient to warrant removal of the Subject Parcels from the sale. The arguments are addressed below.

1. BLM properly included the special stipulations due to the unique nature of vent gas gathering and to ensure mine safety.

Vessels fails to appreciate that the leases for the Subject Parcels are not conventional oil and gas leases. The January 5, 2007 notice to potential bidders published before the sale clearly stated the leases were for mine vent gas only and special stipulation No. 1 grants only "the exclusive right for the surface capture of ventilated mine gas. . . ." While protection of coal operations was one purpose of the special stipulations, the paramount concern not only for the BLM but also for the operator of the Aberdeen Mine is mine safety related to the removal of the dangerous and explosive gases. Consequently, BLM entered into several discussions with the mine operator to develop an adequate set of stipulations that would prevent the vent gas lessee from activities that could restrict the flow of mine ventilation and thereby endanger the safety of the mine and its miners. Because the ventilation wells are the property of the mine operator, special stipulation No. 1 provides that no right to the wells passes to the lessee. The other special stipulations were designed, not for protection of coal operations, but to limit the use of the ventilation wells by the vent gas lessee and, in the interest of mine safety, to ensure that the responsibility for well operation remains solely with the mine operator. The remainder of the special stipulations are designed to negate those clauses of the printed form lease that grant oil and gas development rights and instead create a lease solely for the purpose of mine vent gas capture. Because Vessels fails to recognize the scope of the special stipulations, its argument that the stipulations are unnecessary to protect coal operations lacks sufficient merit.

While Vessels contends that the special stipulations provide that only one party could effectively bid on the proposed leases, the bidding that occurred during the February 20, 2007 auction rebuts Vessels' contention. With the special stipulations attached, the minimum bid for a parcel at the oral auction sale

was \$2.00 per acre. At the auction Parcel 124 sold for \$12.00 per acre, parcel 125 sold for \$7.00 per acre, and parcel 126 sold for the minimum bid of \$2.00 per acre. Although Oso Oil & Gas Properties, Inc. (Oso) was the successful bidder on all three sale parcels, other bidders actively participated, indicating that Oso was clearly not the only competitor for the leases.

Vessels argues that special stipulations are inconsistent with the Mineral Leasing Act of 1920. However, because VAM is artificially created in the mine and discharged through a mechanical ventilation system at the earth's surface, it does not meet the definition of natural gas found in 43 CFR §3000.0-5 (a):

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions. (Emphasis added)

Thus, the pollutant VAM is not subject to leasing or regulation under the Mineral Leasing Act of 1920. VAM, if it is a resource with commercial value, is more appropriately subject to the authority of the Federal Land Policy and Management Act (FLPMA) Section 102 (a) (8) and (9), and Section 302 (b). Consequently, BLM has chosen to modify the standard form 3200-24, Offer to Lease and Lease for Geothermal Resources, removing as much as practical any references to the rights commonly associated with an oil and gas lease. Additional lease stipulations were devised following months of review by BLM's Fluid and Solid Minerals Branches, together with advice from the owners and operators of the Aberdeen Mine. The purpose of the additional stipulations is to clearly strip all oil and gas operational rights from the offered lease and to make mine operations and safety the paramount concern. The lease, so modified, was offered during the February 20, 2007 competitive sale, and in the Sale List published on January 5, 2007, parcels 124, 125, and 126 were identified in bold face type with the notice that the "lease is for Mine Vent Gas only."

Vessels' argument that the special stipulations "constitute an improper, illegal, and unwise delegation of BLM regulatory authority to a private for-profit company," is based primarily on the requirement of special stipulation No. 3 which provides that the "lease shall be issued and become effective only under the completion of an explicit agreement with the mine operator." The mine operator designed, built, operates, and owns the ventilation system that removes the VAM from the mine and is responsible for the safety of the miners working 3,000 feet below ground. Discharging VAM to the atmosphere is permitted by the Aberdeen Mine's Federal coal leases without further BLM regulation or the requirement to place the VAM into a marketable condition. The only way a potential vent gas lessee can capture the VAM is by attaching equipment to the property of the Aberdeen Mine, thereby creating a potential risk to the health and safety of the miners. After several discussions with the Aberdeen Mine operator, Special stipulation No. 3 was added to assure the Aberdeen Mine operator that the ultimate vent gas lessee would be financially viable, have adequate expertise in VAM capture, install the best possible equipment, including safety measures, and adhere to the Aberdeen Mine's operational requirements. This operational nexus between the mine operator and the vent gas lessee makes an agreement between the two parties a necessary and proper stipulation to the lease. Such a stipulation does not improperly delegate BLM authority to a private party, but simply ensures that the vent gas lessee will operate in a manner consistent with mine safety. That Oso and the mine operator have an arrangement does not preclude Vessels, or any other entity, from seeking such an agreement. Vessels admits that it has tried to enter into an agreement with both Oso and the mine operator. The fact that no agreement was reached is irrelevant because neither Oso nor the mine operator is under any obligation to conduct business with Vessels. Because Vessels fails to recognize the valid property rights of the Aberdeen Mine operators, the argument that special stipulations constitute a delegation of BLM's regulatory authority lacks sufficient merit to remove the parcels from the sale.

2. The special stipulations do not improperly exempt the vent gas lessee from the need to subscribe to a cooperative or unit plan when in the public interest.

Vessels argues that the special stipulations improperly exempt the vent gas lessee from cooperative or unit plans. Again, Vessels confuses a lease that is offered solely for the purpose of capturing mine vent gas with a standard oil and gas lease and the operational features thereof. Under 43 CFR §§ 3105.2-2 and 3105.2-3 (c), cooperative agreements are considered when a lease cannot be developed or operated independently when an established well-spacing program is in effect. Public interest requirements are dependent upon the drilling and completion of at least one well in the cooperative agreement area or formation. The mine vent gas leases convey no interest in the coalbeds, no rights to gas in place, nor any right to drill wells or develop the hydrocarbon resources within the lease boundaries. Capture of mine vent gas is only authorized at the discharge point of the Aberdeen Mine's ventilation wells. Production of mine vent gas is entirely dependent upon the operation of the mine ventilation system. No well-spacing program exists for the ventilation wells and the addition or removal of ventilation wells is dependent on the requirements of mine ventilation only. That Vessels fails to recognize the difference in purpose of a lease solely for vent gas capture and a lease for oil and gas does not support its argument that the special stipulations improperly exempt the lessee from the need to subscribe to a cooperative development plan.

3. BLM properly applied bonding requirements.

Vessels argues that special stipulation No. 6 improperly exempts the vent gas lessee from applicable bonding requirements. The lands covered by the vent gas leases are split-estate lands not subject to the Stock Raising and Homestead Act (SRHA). The United States holds title to the minerals, while the surface is owned by private individuals. As stated in Stipulation No. 6 and acknowledged by Vessels in their argument, the ventilation wells and reclamation of any surface damage is covered by the bonds of the Aberdeen Mine. However, Vessels misreads the regulation in 43 C.F.R. § 3104.1 when Vessels state, that the gathering equipment necessary to capture the VAM and installed on the land surface must be bonded "to ensure the reclamation of these facilities and improvements and the restoration of affected surface lands." First, the regulation that Vessels cites applies only where a bond is required, "prior to the commencement of surface disturbing activities related to drilling operations. . . ." Because the mine vent gas leases do not allow drilling activities, this situation cannot occur and consequently is not germane to the case at hand. Second, and more significant to the Subject Parcels, is the fact that the surface is privately owned. BLM has no regulatory authority to authorize the use of the surface premises or to require bonding for any surface activity that is not related to the coal mining operations without the lands being subject to the SRHA. This is made clear by the language of the granting clause of the printed lease form as modified by special stipulation No. 1 to remove all rights of surface use within the lease, and to provide that rights to the VAM are limited to that of gathering, transportation, preparation, and sale of the material. Because the regulation cited by Vessels does not apply to the vent gas leases their argument that BLM must bond surface operations lacks merit.

4. Conclusion

For the reasons stated above, BLM denies Vessels protest, and leases will be issued to the successful bidder for Parcels UTU0207-124, UTU0207-125, and UTU0207-126.

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 Part 4 and Form 1842-1 (copy attached). If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this Decision. 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 the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay 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 be submitted to each party named in this Decision, to

the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor² (see 43 CFR § 4.413) at the same time the original documents are filed in 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 of 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.

You will find attached to this Decision a "Competitive Oil and Gas Lease Sale Results" which lists the successful bidder for the protested parcels at the February 2007 sale. The successful bidder is an adverse party who must be served with any pleadings.

JS

/s/ Jeff Rawson

Selma Sierra
State Director

Enclosures (3)

1. Appendix A, Notice of Lease Sale
2. Appendix B, IM No. 2005-176
3. Appendix C, Form 1842-1
4. Appendix D, Competitive Oil and Gas Lease Sale Results

bcc: Office of the Regional Solicitor
Reading File
Central Files

DFCook:dfc(03/02/07)vent gas protest decision

Vent Gas Protest Decision April 9 edits DC-SA

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