



United States Department of the Interior

OFFICE OF THE SOLICITOR
Field Office, Southwest Region
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*Case File
10335*

August 26, 1991

REFERENCE NO.

BLM.SA.0989

MEMORANDUM

TO: Deputy State Director, Bureau of Land Management,
Mineral Resources, Santa Fe, New Mexico

FROM: Gayle E. Manges, Field Solicitor
Southwest Region

SUBJECT: Status of Oil and Gas Leases NM-0468128 and SF-079065

You have requested this office's opinion on the status of oil and gas lease NM-0468128 and SF-079065 as it concerns the following particular questions:

1. Who is(are) the current record title holder(s) of the leases?
2. Can Southland Royalty Company be held liable for plugging the abandoned Gallup wells on the leases?
3. Because Paramount Petroleum has disappeared, does the BLM, now become the record title holder?
4. What is the effect of Paramount Petroleum's fraudulent bond on the validity of the lease?

The background to this case as you have related it to our office, is as follows:

As a result of various mesne conveyances and mergers, Southland Royalty Company (Southland) was recognized by the BLM in 1978 as the owner of 100% of the record title interest in the two subject leases. On October 17, 1980, the BLM approved an assignment of 100% record title interest in the leases from Southland to Paramount Petroleum Corporation (Paramount). On July 1, 1981 the BLM approved an assignment of operating rights in NM-0468128 from Paramount to Southland under the terms of which Southland received operating rights to all formations except for the Gallup formation, the operating rights to which were reserved by Paramount. A similar conveyance of operating rights in SF-079065 was approved by the BLM on August 1, 1980.

The two leases are currently held by production from formations other than the Gallup. The producing wells are being operated by Southland. None of the Gallup formation wells have produced since prior to 1982, and the BLM desires that they now be properly plugged and abandoned.

Violations of federal regulations and orders concerning the Gallup wells resulted in the levying of civil penalties and assessments by the BLM against Paramount. Paramount was not responsive, however, and, beginning in 1986, refused all mail (certified, and regular) sent by the BLM. To date, civil penalties in excess of \$100,000 have been levied against Paramount and have unsuccessfully been turned over to the Denver Service Center for collection. Efforts to locate the Texas-based corporation or its officers through the Texas Secretary of State's office have proved unsuccessful. It is reported that one of Paramount's former officers is now being held in a Texas prison on fraud charges, although the company, itself, has dissolved.

Prior to Paramount's disappearance, the BLM unsuccessfully attempted to negotiate with Paramount to have Paramount assign all of its interest in the lease to Southland in returned for a reduction in penalties. The BLM also attempted to collect on Paramount's bond but discovered that the bond was fraudulent.

Because of Paramount's lease violations and fraudulent bond, the BLM considered cancelling the leases but ultimately did not because of concerns for Southland's interest in the lease and the fact that Southland's wells are producing.

Based on an analysis of the above facts, this office concludes as follows:

1. While it is true that if a lessee, as in this case, fails to comply with any of the provisions of the Mineral Leasing Laws, the regulations issued thereunder, or the lease, the lease can be cancelled, such cancellation does not occur by operation of law. Because the leases contain wells capable of production in paying quantities, they may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. sec 188(b)(1988); 43 CFR 3108.3(b). Since no judicial cancellation proceedings have been initiated or concluded, Paramount remains the record title owner of the two leases in question.

2. Although Southland used to be the record title lessee of the two leases, the United States released it from continuing liability when it approved the assignment of record title from Southland to Paramount. 43 CFR 3106.7-2. When Southland acquired operating rights in the lease as to all formations except the Gallup, it was required to maintain bond coverage but only as to its obligations under the lease rights transferred. Under the regulations in effect at the time of the transfers, the BLM was authorized to approve transfers of operating rights (subleases) as to separate zones or deposits. 43 CFR 3106.3-2(1980) and (1981).

Accordingly, Southland has no legal responsibility for operations conducted in the Gallup formation and cannot be compelled to plug the Gallup wells.

3. The disappearance of Paramount, combined with its lease violations, failure to pay assessments and civil penalties, and fraudulent bond, are all grounds for lease cancellation. If cancelled, all record title in the lease would revert to the United States, as lessor. As pointed out in our answer to your first question, however, cancellation can only be accomplished by judicial proceedings.

The BLM may pursue this avenue, bearing in mind, however, that if Southland is determined to be a bona fide purchaser, its rights may not be cancelled. 43 CFR 3108.4. We are not aware of any information which would show that Southland was aware of Paramount's fraudulent activities at the time Southland purchased its interest and, therefore, Southland most likely is a bona fide purchaser.

In effect, the only rights which the BLM would be able to cancel are Paramount's record title and operating rights to the Gallup formation. These rights could be put up for bid at a lease sale, although, as a practical matter, it is questionable whether anyone would want to bid on the lease as long as the Gallup wells remain unplugged. It is therefore recommended that the BLM pursue the plugging of the abandoned wells through the New Mexico Oil and Gas Reclamation Fund, as it is currently doing, before pursuing potentially complicated judicial cancellation proceedings.

4. Pursuant to 43 CFR 3104.7, Paramount's default in failing to provide a valid bond may subject the leases to cancellation under 43 CFR 3108.3. Again, lease cancellation is not automatic as indicated by the use of the discretionary word "may" and the fact that even if such discretion is exercised, cancellation can only be accomplished by judicial proceedings.

If you have any further questions regarding this opinion, please direct them to Margaret Miller of this office.

~~Gayle E. Manges~~

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CC:
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