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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

DEVON ENERGY CORPORATION	*	**IBLA-2021-132**
	*	
	*	**Appeal of November 6, 2020 Letter Decommissioning of Oil and Gas Lease OCS-P-0166**

DEVON ENERGY CORPORATION'S STATEMENT OF REASONS

Pursuant to this Board's scheduling order of February 3, 2021, Devon Energy Corporation ("Devon") submits this Statement of Reasons supporting its challenge to the November 6, 2020, letter from Mr. Bruce H. Hesson, Regional Supervisor, Field Operations, Pacific OCS Region, Bureau of Safety and Environmental Enforcement ("BSEE") to Mr. Mark McDaniel, Devon Energy Corporation ("the Order").

INTRODUCTION

The Order treats Devon as responsible for all decommissioning of wells, platforms, and pipelines on lease OCS-P 0166 ("the Lease" or "Lease 0166"), Pacific Outer Continental Shelf ("OCS") Region, offshore Santa Barbara County, California. "Accordingly, Devon is hereby ordered to perform its accrued decommissioning obligations pursuant to the regulations at 30 C.F.R. Part 250, subpart Q." Order at 1. Administrative Record ("AR"), C-50. Involved are two production platforms, associated wells, and pipelines. Identical orders were sent to ConocoPhillips Company ("ConocoPhillips") (IBLA 2021-137), AR C-49 and Oxy U.S.A. Inc. ("Oxy") (IBLA 2021-138), AR C-51.

The Order contravenes the Lease and unlawfully applies a Departmental regulation retroactively to Devon. Devon itself has never been in the chain of title[1] and, by the time the relevant regulations took

[1] The acquisition history from Santa Fe to Devon was not direct. After it had received MMS approval in 1991 to assign its interest in Lease 0166 to Signal Hill, Santa Fe Energy Resources formed Monterey Resources, Inc. ("Monterey") in August 1996. In November 1996, Santa Fe Energy Resources, Inc.

effect, Devon's predecessor, Santa Fe Energy Company ("Santa Fe"), had not been in the chain of title for over six years. Lease 0166 produced oil and gas for 600 months; Santa Fe was in the chain of title for only forty-five. At both the beginning and end of Santa Fe's tenure, under lease and regulation a lessee had no accrued obligation to decommission facilities on the Lease: the obligation to decommission platforms did not "accrue" until the lease ended. MMS changed its position by regulation in 1997.[2] But substantive rules are, by definition, prospective only. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms"). The OCS Lands Act's grant of rulemaking authority, 43 U.S.C. § 1334(a)(1), contains no authority to make rules retroactive. The Order is contrary to law and the Lease.

FACTUAL AND PROCEDURAL BACKGROUND

Lease OCS-P 0166 was issued effective January 1, 1967. Phillips Petroleum Company ("Phillips") (predecessor to ConocoPhillips), Cities Service Oil Company (predecessor to Oxy), and Continental Oil Company (predecessor to ConocoPhillips) were the initial lessees, and from among them Phillips was designated the operator on January 25, 1967.[3] On February 8, 1967, Phillips provided the U.S. Geological Survey ("USGS") a "general plan" for developing the lease, including the drilling of test wells to determine the size of the potential field. On January 25, 1968, Phillips proposed development of

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conveyed and contributed all property and other assets to Monterey. In July 1997, Santa Fe Energy Resources, Inc. "spun off" Monterey by distributing all of Santa Fe's shares in Monterey to Santa Fe's shareholders. On February 9, 1998, Monterey changed its name to Texaco California, Inc. On June 28, 2002, Texaco California, Inc. merged into Chevron U.S.A. Inc. Santa Fe Energy Resources, Inc. continued to exist independently of Monterey from July 1997 through May 1999. In May 1999, Snyder Oil Corporation merged with and into Santa Fe Energy Resources, Inc., causing Santa Fe Energy Resources, Inc., to change its name to Santa Fe Snyder Corporation. In August 2000, Santa Fe Snyder Corporation merged into and became a wholly owned subsidiary of Devon Energy Corporation. Declaration of Mark B. McDaniel. Exhibit 1.

[2] Surety Bonds for Outer Continental Shelf Leases, 62 Fed. Reg. 27948, 27955 (May 22, 1997) (codified at 30 C.F.R. § 250.110(b)).

[3] *See* Serial Register Page, AR A-61 at 3.

the eastern part of the lease through platform Hogan. Exhibit 2. USGS approved it on February 14, 1968. Production began on June 10, 1968, the first production from the Pacific OCS Region.[4] On December 5, 1968, Phillips submitted a second plan to develop the western part of the lease through Platform Houchin. Exhibit 4. USGS approved the second plan on December 18, 1968.

The first change in ownership in the Lease was by an assignment which the Department approved on February 28, 1983. In that assignment Petro-Lewis Funds, Inc., obtained the 37.5% interest of Continental Oil Company (which in 1979 had changed its name to Conoco Inc., now Conoco Phillips Company ("ConocoPhilips")). In November 1983, Cities Service Oil Company assigned its 37.5% interest to Cities Service Oil and Gas Corporation (now OXY U.S.A. Inc. ("Oxy")). On July 2, 1987, the Minerals Management Service ("MMS") approved two more assignments of the Lease. One, from Petro-Lewis Funds, Inc. to American Royalty Producing Company ("American Royalty"), was approved retroactively to December 31, 1984. The other, from American Royalty to Santa Fe Energy Company ("Santa Fe"), was approved retroactively to April 30, 1987. *See* AR A-02. Next, effective April 1, 1988, Santa transferred a 3.75% interest to Maersk Energy Incorporated, reducing Santa Fe's share to 33.75%. *See* AR A-2.

By 1990, the lessees began to consider winding down operations from the platforms, though the platforms were still capable of producing oil and gas. As is often the case in the oil and gas business, an outside group believed it could continue to produce oil profitably from Hogan and Houchin for many years to come. That group, doing business under the name of Signal Hill Service, Inc. ("Signal Hill") bought Santa Fe's interest in the Lease and its assets under a Purchase and Sale Agreement effective July 1, 1990. *See* AR C-11 at sheet 5 (Agreement of Purchase and Sale at 2). Signal Hill struck similar deals with the other co-lessees.

The evidence setting out this course of events is filed in the Statement of Reasons submitted by ConocoPhillips in Docket 2021-137, and with ConocoPhillips' consent is incorporated by reference here.

[4] Memorandum from Regional Director, Pacific OCS Region to Associate Director, Offshore Minerals Management Service, Minerals Management Service at 2 (July 16, 1987). Exhibit 3.

By a "Decision" dated February 8, 1991, MMS approved the assignment of the lease to Signal Hill effective February 5, 1991. AR A-3. The assignment was approved without any provision under which the assignors agreed to be liable for decommissioning operations on the Lease. MMS's approval had the opposite effect, leaving such obligations to the assignee.

> By approval of this assignment, effective February 5, 1991, the assignee is subject to and shall fully comply with all applicable regulations now or to be issued under the Outer Continental shelf Lands Act, as amended (pursuant to 43 U.S.C. 1334(b) and 30 CFR 256.62).

Id. at 2. The assignee, not the assignors, agreed to be subject to future changes in the rules. MMS approved the assignment in February 1991 after months of negotiations between the proposed assignors and MMS regarding the issue of decommissioning in the future.

MMS repeatedly acknowledged that the assignment would relieve the proposed assignors of any liability for decommissioning, and thus requested that the proposed assignors *voluntarily* retain secondary liability in the event of a future default by Signal Hill. *See* ConocoPhillips' Statement of Reasons, Ex. D, Declaration of Marvin Smith ("Smith Decl.") ¶¶ 9-10. The proposed assignors refused this condition and informed MMS that they would prefer to commence abandonment of the Lease in the near term rather than agree to backstop Signal Hill's obligations years into the future. *Id.* ¶¶ 10-13.

Based on a desire to extend the productive life of the Lease, MMS agreed to yield and approve the assignment if Phillips, the Co-Owners and Signal Hill included specific contractual terms in their purchase agreement requiring Signal Hill to have certain financial security for any decommissioning obligations that might later accrue. *Id.* ¶¶ 13-14.

Reinforcing the emphasis on the assignee's liability, the Appendix to the Decision signed by MMS, Signal Hill, and Phillips, required Signal Hill to establish an "Abandonment Escrow Account" to be funded from future production revenues until it reached a "Target Balance" equal to the estimated abandonment costs for the Lease. *See* AR A-3 at. 3. Phillips' sole obligation under the Appendix was to require Signal Hill to maintain a letter of credit of $9.2 million in favor of Phillips. The letter of credit was to be maintained "until the Escrow Account contains a balance of at least $9,200,000 plus estimated

requirements to abandon the pipeline and onshore facilities." *Id*. at 4. MMS had the power to request Phillips to call on the letter of credit and deposit the funds in the Abandonment Escrow Account. [5]

Although MMS continued to approve approximately fifty sidetrack wells and other downhole activities by Signal Hill,[6] Signal Hill and its operator had a long-running dispute with MMS and BSEE over the adequacy of bonds and funds in the abandonment escrow account. These difficulties also arose with respect to Signal Hill's three oil and gas leases from the California State Lands Commission and a pipeline lease which allowed Signal Hill to bring its production from Lease 0166 to shore. On June 28, 2019, the Commission terminated the leases.[7] No longer able to transport its OCS production to shore, Signal Hill relinquished Lease 0166 on October 14, 2020. AR A-65. BOEM accepted the relinquishment the next day.[8] On November 19, 2020, BSEE issued the Order. This appeal followed.

LEASE AND REGULATORY PROVISIONS

The initial OCS regulations from the Bureau of Land Management addressed assignments. Editorial Revision of Regulations, 19 Fed. Reg. 8835, 9041-46 (Dec. 23, 1954) (codified at 43 C.F.R. Part 201). Exhibit 7. Authorizing leases to be assigned, the regulations provided assignments were "deemed to be effective on and after the first day of the lease month following its filing" unless BLM approved an earlier date at the parties' request. "The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment." 43 C.F.R. § 201.60 (1955).

Lease 0166 specifically addressed the lessee's obligations to decommission. Upon the surrender or termination of the lease, the lessee remained responsible for certain accrued obligations and to abandon

[5] This Board became familiar with this arrangement over twenty years ago. Pac. Operators Offshore, Inc., 154 IBLA 100, 102 (2000).

[6] See attached Borehole Report showing approvals after Signal Hill became lessee. Exhibit 5. Devon adopts Oxy's argument on the impossibility of decommissioning the Lease while leaving post-1991 sidetracks unaddressed.

[7] California State Lands Commission Press Release "The State Lands Commission terminated three offshore oil and gas leases and a pipeline right of way lease," (June 28, 2019). Exhibit 6.

[8] A-61, BOEM Serial Register Page for Lease OCS-P 0166 at 6.

wells: termination "is effective, subject to the continued obligation of the Lessee … to make payment of all accrued rentals and royalties and to abandon all wells on the area[.]" AR A-1 § 5. When the Lease ended, the lessee was given "1 year thereafter [to] remove … all structures … other than improvements needed for producing wells or for drilling or producing on other leases and other property permitted by the Lessor to be maintained on the area." *Id.* § 6.

When MMS approved Santa Fe's assignment into the Lease in 1988, the regulations continued to provide that assignors were liable for obligations "accruing prior to the approval of the assignment," and assignees for those "subsequent to the effective date of an assignment[.]" 30 C.F.R. § 256.62(d-e) (1988). Exhibit 8. This remained true when MMS approved Santa Fe's assignment to Signal Hill in 1991. *Id.* (1991). Neither regulation expressly addressed decommissioning.

On June 6, 1988, MMS Director William Bettenberg stated the agency's position that, under 30 C.F.R. § 256.62, "if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions." Exhibit 9.

On October 6, 1993, MMS Director Thomas Fry issued Notice to Lessees ("NTL") 93-2N, taking the opposite position. "The obligations to plug and abandon wells, remove platforms and other facilities, and to clear the seafloor of obstructions accrue when a well is drilled or used, a platform of other facility is installed or used, or an obstruction is created." Exhibit 10. After approval of an assignment, "the assignor continues to be liable to DOI/MMS for the performance of these obligations with respect to wells, structures, or obstructions in existence and not plugged or removed at the time of the assignment." *Id.* at 2.

Effective August 20, 1997, the Department adopted a final rule after and notice and comment, adding a new 30 C.F.R. § 250.110(b). The new subsection provided that the obligation to decommission "accrues to the lessee when the well is drilled, the platform or other facility is installed, or the obstruction is created[.]" *Id.* § 250.110(b)(1).

ARGUMENT

No statute dictates who is liable for OCS lease decommissioning. Authority for the Order can come from two sources only: Lease 0166 itself or an OCS regulation. *See Noble Energy, Inc. v. Salazar*, 671 F.3d 1241, 1245 (D.C. Cir. 2012) (remanding to agency to determine whether discharge of duty to decommission under the lease also discharged duty under regulation).

On three occasions this Board has addressed the liability of prior assignors of OCS leases when the final lessee, through discharge in bankruptcy or otherwise, has failed properly to remove structures from terminated leases.[9] *See Energen Resources Corp.*, 188 IBLA 374 (2016); *Devon Energy Production Co., LP*, 188 IBLA 268 (2016); and *Anadarko Petroleum Corp.*, 187 IBLA 77 (2016), recon. denied, *Anadarko Petroleum Corp. (On Reconsideration)*, 188 IBLA 127 (2016). The three adopted six propositions of law. ***First***, with respect to former lessees who left the lease chain of title *after* 1997, the 1997 rules applied and made the former jointly and severally liable for decommissioning. *See Devon Energy*, 188 IBLA at 272. ***Second***, whenever former lessees can be held liable, they are liable for the full amount of decommissioning, not just the amount decommissioning would have cost if the work had been done when their assignments were approved. *Id.* at 274-75. ***Third***, former lessees are liable even when BSEE waived supplemental bonding by the company that defaulted on decommissioning. *Id.* ***Fourth***, BSEE is not required to seek decommissioning from lessees in reverse chronological order in the chain of title. *See Energen Resources*, 188 IBLA at 377. ***Fifth***, where the lease terms incorporated regulations issued "in the future" (after the effective date of the lease) as additional terms of the lease, a former lessee could be liable even if it left the chain of title before 1997. *See Anadarko Petroleum*, 187 IBLA at 87-90.

None of these propositions, however, addresses the issue presented here: whether a lessee-assignor whose assignment was approved before August 20, 1997, can be held liable for decommissioning an OCS lease in light of the lease with no "future regulations" clause. Only the ***sixth proposition*** does: that even under the regulations in effect when a lessee left the chain in 1984, its

[9] *EP Energy E&P Co., L.P.*, 188 IBLA 156 (2016), is not germane. The lessee was "the sole lessee during the entire Lease term[,]" meaning the effect of an assignment was not at issue. *Id.* at 157.

obligation to decommission still had accrued.[10] *See Anadarko Petroleum*, 187 IBLA at 86-87. The Board reached that conclusion without discussing the Department's contrary definition of what the term "accrued" meant or explaining why decommissioning (out of all the obligations in the lease) was the only one that survived assignment. The Board explicitly declined to address that definition when denying Anadarko's request for reconsideration. *Id.* (*On Reconsideration*), 188 IBLA at 132-33.

There is also authority on which BSEE surely will rely that lessees have a regulatory obligation to decommission independent of the obligation under the Lease. *See Noble Energy, Inc. v. Jewell*, 650 Fed. App'x. 9, 11 (D.C. Cir. 2016), *aff'g*, 110 F. Supp.3d 5 (D.D.C. 2015). In that case, however, the lessee responsible for abandoning the lease was the original lessee, who remained the owner of record long after August 20, 1997. *Id.* at 10 ("In 1979, Noble Energy, Inc. acquired a lease granting it the right to drill for, develop, and produce natural gas on submerged lands off the coast of California."). The regulations in question were not applied to a lessee who long before had left the chain of title. *Noble Energy* does not support this Order.

I. At the Effective Date of the Assignment of Santa Fe's Lease, No Decommissioning Obligations Had Accrued with Respect to Lease 0166.

When MMS approved the assignment of Santa Fe's interest in the Lease to Signal Hill, on February 5, 1991, Santa Fe was not in breach of any accrued obligation. MMS had not asked Santa Fe to begin removing Platforms Hogan and Houchin. MMS knew Signal Hill intended to use the platforms for many more years; and MMS undertook a program through the Abandonment Escrow Account to assure Signal Hill would have funds available to abandon the lease when the time came. That program would have been unneeded if MMS could look to the assignors to fund decommissioning.

Approval of the assignment meant that Santa Fe was responsible only for obligations that had already accrued. The Department had already interpreted "accrual" of obligations duties to occur when

[10] The sixth proposition is a dictum because it was unnecessary considering the principal holding. Memorandum, Mill Site Location and Patenting Under the 1872 Mining Law, 2003 WL 26613333, at 24* (IBLA 2003); *see also* Amoco Prod. Co., 94 Interior Dec. 129 (IBLA 1986) (striking as dicta language from a prior decision).

the time for the performance of those obligations became due. The Department had never viewed an obligation to accrue before the time for performance had come—certainly not, as here, twenty-nine years before the time for performance had come.

A. Under Lease 0166, Decommissioning Obligations Did Not Accrue Until the Lease Had Terminated.

In sections 5 and 6, Lease 0166 addresses the lessee's obligations to decommission facilities and abandon the lease. Section 5 addresses when a lessee may surrender all or part of Lease 0166. The lessee may do so by filing a "written relinquishment[.]" The relinquishment is effective "as of the date of filing[.]" AR A-01 at 4. The relinquishment is "subject to the continued obligation of the Lessee ... to make payment of all accrued rentals and royalties and to abandon all wells on the area ... to the satisfaction of the Oil and Gas Supervisor." Section 6 requires the lessee remove all structures "within a period of 1 year" after the lease expires or when terminated, if earlier. *Id.* There are two exceptions. One is if the structure is needed "for drilling or producing on other leases[.]" The other is if "the Lessor" permits it "to be maintained on the area." *Id.*

When Santa Fe received assignment of the Lease in 1988, the regulation governing assignments of OCS leases provided:

> (d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.
>
> (e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

30 C.F.R. § 256.62 (1988). The rule remained the same when Santa Fe's assignment to Signal Hill was approved in 1991. *Id.* (1991). The plain reading of the regulation was that obligations "accruing" before MMS approved the assignment remained with the assignor, those accruing afterward belonged only to the assignee. The plain reading of the rule was consistent with the Department's understanding of the effect of an assignment upon an OCS lease interest: In "a complete transfer from the lessee to an assignee, …

[t]he assignee simply takes over the entire obligation of the lessee." *Continental Oil Co.*, 74 Int. Dec. 229, 236 (1967).

The Bureau of Land Management's original OCS leasing regulations started the practice of limiting an assignor's liability for obligations to those "accruing prior to the approval of the assignment." Exhibit 7 (43 C.F.R. § 201.60 (Dec. 23, 1954)). Obligations arising after assignment were not the assignor's responsibility given how the regulations treated an assignment for only a portion of the full lease.

> When an assignment is made of all of the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. The assignee become a lessee of the Government as to the segregated tracts and is bound by the terms of the lease as though he had obtained the lease from the United States in his own name, and the assignment after its approval will be the basis of a new record.

Id. (43 C.F.R. § 201.63(a)) (emphasis added). Using Lease 0166 as an illustration, if Platforms Hogan and Houchin had been emplaced, then the portion with Houchin had been assigned, the assignee would be bound as if he were the original lessee. Being treated as if the original lessee, the assignee would be responsible all obligations. The assignor would not be deemed the original lessee after the assignment was approved, eliminating any legal fiction that the assignor retained liability for Houchin because the assignor had originally emplaced it.

In *Anadarko Petroleum* the Board observed "that regulation makes no mention of any termination of an assignor's *accrued* obligations as the result of an assignment." 187 IBLA at 86 (footnote omitted) (emphasis added). Without more, however, that observation does not resolve the issue, for the OCS Lands Act does not define when any obligations, let alone those of lease abandonment, "accrue." Nor did the regulations prior to 1997. But that does not mean that the Department had no understanding of what the term meant. Quite the contrary, it had an understanding well-informed by both common law tradition and by interpretation under the OCS Lands Act and the Mineral Leasing Act.

B. "Accrual" of obligations under common law.

"'When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals.'" *Mobil Oil Expl. and Producing Se, Inc. v. United States,* 530 U.S. 604, 607-08 (2000) (quoting *United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996) (plurality opinion (internal quotation marks omitted)). Under the common law applicable to contracts, a cause of action does not accrue until the date the contract is breached. *Bjorklund v. N. Am. Companies for Life & Health Ins.*, 72 F. App'x 550, 551 (9th Cir. 2003) (citing *Cochran v. Cochran*, 56 Cal. App. 4th 1115, 1120 (1997)). Stated differently, it accrues when all the essential elements forming the basis for the claim have occurred, *Impro Products v. Block*, 722 F.2d 845, 850–51 (D.C. Cir. 1983), or "when the wrong occurs and a party sustains injuries for which relief could be sought," *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 780 (9th Cir. 2002).

A party cannot be said to be in breach of a contract until there is a failure to perform an obligation agreed to in the contract. *See Sharpe v. F.D.I.C.*, 126 F.3d 1147, 1153 (9th Cir. 1997) ("failure to perform the express terms of the … agreement is a breach"). The only decommissioning obligation Santa Fe agreed to in the lease is conditioned on the lease's termination. Specifically, under Section 6 of Lease 0166, the lessee has no duty to abandon the lease and remove platforms before the lease has terminated:

> Sec. 6. Removal of Property on Termination of Lease. Upon the expiration of this lease, or the earlier termination thereof as herein provided, the Lessee shall within a period of 1 year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing on other leases and other property permitted by the Lessor to be maintained on the area.

AR A-01 at. 4.

These common law notions of accrual are readily applicable here. When MMS's approval of Santa Fe's lease assignment took effect in 1991, Santa Fe, by leaving the two platforms in place, neither violated an agency directive nor breached Section 6 of the Lease. The Lease had not expired or been terminated. With respect to the platforms and wells then existing, Santa Fe had not failed "to perform an obligation agreed to in the contract," or gone beyond "the date the contract is breached," or "commit[ted]

an act that injures a [government] plaintiff's business." The time to perform the obligation to decommission had not come due.

That the time to decommission had not come due is doubly clear from the second sentence of Section 6, which allows the Director to permit the structures to remain. If the "obligation" to remove had already arisen, one would never know it, because Section 6 allows for the opportunity to leave the structures in place. Whether the lessee had breached an obligation to remove the structures would be an open question—open long after the structures were initially emplaced. Thus, under familiar common law principles, the obligation to remove a platform under Section 6 does not "accrue" before operations are finished and the Lease has ended.

C. Accrual of obligations under the OCS Lands Act

With respect to OCS leases specifically, the Department follows "the established concept of an assignment as a transfer which substitutes one lessee for another and creates a new contractual relationship between the assignee and the United States[.]" *Continental Oil Co.*, 74 Int. Dec. at 238. But because the assignor remains liable for obligations accrued before the effective date of the approval, the Department has conceived of its approval as "result[ing] in the creation of a contractual relationship involving at least three parties, of which the United States is one, and, in order for that assignment to constitute an enforceable agreement, it is necessary not only that it result in a valid contract between assignor and assignees, but that it *should also result in valid contracts between the United States and each of those parties*." *Id.* at 244 (emphasis added). In other words, there is one private contract between assignor and assignee, one (the lease contract) between the assignee and the Department, and one between the assignor and the Department. And, as this Board has recognized, part of that new contract between the assignor and the United States is a novation extinguishing the assignor's lease relationship. *Petroleum, Inc.*, 161 IBLA 194, 210 (2004) (the "Department regards an assignment of record title as effecting a kind of novation, whereby the assignor's contractual relationship with the lessor is

extinguished and the approved assignee is substituted fully for the assignor, becoming the new lessee, or record title holder of the lease.") (MLA lease).

This understanding of when lease abandonment obligations "accrue" is in fact the one followed by the MMS until 1993. Director William Bettenberg's position in 1988 is directly on point.

> Dear Mr. Cooley:
>
> We are responding to your letter dated April 26, 1988, in which you requested a written position from the Minerals Management Service (MMS) regarding responsibilities of a lessee-assignor and the lessee-assignee after a complete assignment is effective.
>
> The departmental regulations are clear regarding the assignment of oil and gas leases issued pursuant to section 8 of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1337). The regulations provide that "[s]ubject to the approval by the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under §256.35(a) of this part to hold a lease." 30 CFR §256.62. The departmental regulations applicable to the assignment of OCSLA oil and gas leases also correctly describe the liabilities for lease obligations which are chargeable to the assignor (Id. §256.62(d)) and the assignee (Id. §256.62(e)). The regulations are very explicit, stating that the assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment and that the assignee shall be liable for all obligations under the lease subsequent to the effective date of the assignment.
>
> It is our position that if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions. . . .

Exhibit 9. A long-serving, distinguished, and well-informed civil servant, Director Bettenberg understood that the obligation to abandon wells and remove facilities did not accrue prior to MMS approval of the initial assignment. Therefore, the agency had no basis to, and would not, "proceed against the original lessee-assignor to perform those functions."

To some in MMS's regional offices, the Director's position was not the most expedient. When a new MMS Director, Mr. Barry A. Williamson, was appointed in 1989, the MMS Gulf of Mexico Regional Office asked that Director Bettenberg's views be reconsidered. Now serving as the agency's Associate Director for Offshore Minerals Management, Mr. Bettenberg responded for the Director in a memorandum received by the Regional Director on November 3, 1989.

> […] [Y]our office questioned the correctness of the Director's interpretation of 30 CFR 256.62(d) and (e) which was transmitted to Amoco Production Company (Amoco) in a letter dated June 6, 1988. That letter stated:
>
> > It is out position that if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions.
>
> Your memorandum expressed the belief that the correct interpretation of 30 CFR 256.62(d) and (e) would hold that:
>
> > …the assignor is responsible for the plugging and abandonment of wells and removal of facilities installed prior to assignment in the event of default by an assignee.
>
> […] While we understand your interest in seeing a different interpretation placed on the provision of 30 CFR 256.62(d) and (e), we must reaffirm the position expressed in the Director's letter...Once the Secretary's designee unconditionally approves the assignment of a lease, the assignee must be looked to for the fulfillment of 'all' obligations under the lease.
>
> […] It may be necessary, in some instances, for the current lessee to remove certain facilities prior to the approval of the assignment. For leases containing wells and other facilities that may involve substantial abandonment expense, the assignor may choose to agree in writing to remain liable for the abandonment of all wells and facilities and the clearance of well and platform sites.... [I]t must be clear that the assignor has retained responsibility for abandonment or clearance actions voluntarily as a term of the lease assignment transaction in consideration of other benefits gained from the assignment.

See Exhibit 11.

Prior to 1993, when the Regional Office persuaded yet another Director to reject the earlier view in NTL No. 93-2N, there is ample ground to sustain the view that the Department understood the obligation to remove a platform did not "accrue" when it was first emplaced or the obligation to permanently abandon a well did not "accrue" when the well was spudded. Although the Board declined to consider Director Bettenberg's interpretation, *Anadarko Petroleum Corp.*, 187 IBLA at 86 n. 14, it is the only one consistent with the Department's prior interpretation of when obligations "accrued."

Moreover, *Continental Oil*'s "three contracts" analysis from 1967 illuminates Associate Director Bettenberg's commentary in 1989. As *Continental Oil* explains it, the original lessee and the Department are in privity through contract number 1: the lease. The original lessee and a third party then create a contract number 2: the contract of assignment, to which the Department is not a party. Then the private

parties bring their assignment to the Department for approval. Upon approval, the Department agrees to a novation, substituting the assignee for the original lessee in contract number 1. Then the Department and the assignor create a contract number 3: a contract in which the Department's "quid" is its release of the assignor from future accruing obligations under the lease; in return, the assignor's "pro quo" is the promise to remain responsible to the Department for accrued obligations. This agreement is not a continuation of the lease, for that relationship was novated by the Department's approval. It is a new agreement between the Department and the assignor. It is this contract number 3 to which Mr. Bettenberg referred when he gave the Regional Office the option of seeking the assignor's special agreement to remain responsible for platform abandonment—not because it was an accrued obligation, but because the agency had the discretion to condition its approval of the assignment (with the assignor's consent). Hence, the Associate Director wrote:

> To guard against issues of liability that might arise during abandonment, it must be clear that the assignor has retained responsibility for abandonment or clearance actions voluntarily *as a term of the lease assignment transaction* in consideration of other benefits gained from the assignment.

Exhibit 11, page 2 (emphasis added). The "lease assignment transaction"—not the lease itself—is what we have called "contract number 3" under *Continental Oil*.

So, the sum of the analysis so far is this. Santa Fe's assignment of the Lease was approved effective February 5, 1991. Upon approval, Santa Fe was no longer in privity with the United States under the Lease. It agreed as part of the contract created by approval of the assignment to remain responsible for obligations already "accrued;" but future obligations were released through the Department's approval of the novation. Far from seeking Santa Fe's special consent, MMS rejected the attempt of the Regional Office to impose such a condition on approval of the assignment. The Department had a clear understanding of what "accrued" obligations meant: obligations the time for performance of which had become due.

C. "Accrual" of obligations under the Mineral Leasing Act.

Provisions of the MLA are "pertinent to a consideration of assignments of OCS leases." *Continental Oil*, 74 Int. Dec. at 234. The question of accrued obligations under a lease was addressed in the opinion of Solicitor Nathan R. Margold, approved by Assistant Secretary (later Secretary) Oscar L. Chapman, "Liability for Rent Accruing under Canceled Oil and Gas Exchange Lease," 57 Int. Dec. 438 (1942). There the lease was one issued under the Act of August 21, 1935, allowing the exchange of onshore prospecting permits "issued for 'wild-catting,'" *id.* at 441, for oil and gas leases. In relevant part, the lease required the payment of rental at the start of each lease year. For added security, however, the Act also required the lessee either to post a $1,000 bond "90 days before the due date of the next unpaid annual rental" or to prepay the rent itself "not less than 90 days prior to its due date." *Id.* at 438. If a lessee failed to do either, the lease was subject to cancellation. *Id.* In the matter at hand, the lessee had failed to do either, and the Department moved to cancel. But "because of the inherent lag in administration," the cancellation did not occur until after the start of the new lease year. *Id.* at 439. The question presented was whether the lessee owed the rent for the new lease year even though the lease was canceled. *Id.*

In answering no, Solicitor Margold found that the lease form in question did not expressly preserve the obligation to pay rent after the lease came to an end. "This question must be answered in the negative because an oil and gas exchange lease does not provide for the survival, after cancelation, of future liability. The termination of such a lease releases the lessee from all future obligations under it[.]" *Id.* (citations omitted). Because the lease was terminated for a breach occurring "prior to the accrual of such rent . . . the Government cannot consider such rent as a debt due it." *Id.* at 440. In reaching this conclusion, Solicitor Margold saw—like the courts at common law—that an obligation did not accrue until the other party was in a position to enforce it.

The meaning of "accrued" was also central to the Department's interpretation of the statutory right to relinquish onshore oil and gas leases under section 30(b) of the Mineral Leasing Act. 30 U.S.C.

§ 187b. Enacted four years after Solicitor Margold's opinion was issued, that section provides that a lessee may relinquish its rights in a lease:

> subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment.

30 U.S.C. § 187b. In *Humble Oil & Ref'g Co.*, 64 Int. Dec. 5 (1957), the question was whether the obligation to pay rent had "accrued" within the meaning of the section under the following facts. The five leases in question were issued effective July 1, 1951. Rent was due on the first day of each new lease year. "[O]n July 1, 1954, at 9:30 a.m., relinquishments of each of the leases were received in the mail center of the Office of the Secretary[.]" *Id.* at 6. BLM demanded rent for the 1954 lease year. Humble Oil argued no rent was due: "the relinquishments were received simultaneously with the accrual of the advance rents and not *after* the rental accrued[.]" *Id.* (emphasis in original). Because of the novelty of the issue, the Department sought the views of the Comptroller General of the United States. *Id.* at 7. The Acting Comptroller General interpreted section 187b to make the relinquishment effective "coincident with the first moment of the day." Comptroller General Op. B-123158, 36 Comp. Gen. 481 (1957). Accordingly, "since the relinquishments became effective at the same moment it cannot be said that the fourth year's rental had already accrued." *Id.* at 482. Speaking with the authority of the Secretary, 64 Int. Dec. at 8, Acting Solicitor Edmund T. Fritz agreed.

Solicitor Margold's opinion and Acting Solicitor Fritz's appellate decision make clear the operation of the relinquishment provision in a manner directly relevant to the issue before the Board now. Key to the operation of section 187b is its distinction between obligations "accrued" and "obligations thereafter accruing." The relinquishment releases the lessee of its obligations with exceptions. Two exceptions govern obligations already accrued: "all accrued rentals and royalties," and "breach[es] of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment." If the

obligation properly to abandon the leased area were an accrued obligation of the lease when the equipment was initially installed, then the statute would not need to say anything further: lease abandonment would be covered by the last sentence. But Congress wrote the text separately to require that the lessee also properly abandon wells on the leased land. Otherwise, the obligation to abandon the wells would be released with other "obligations thereafter accruing." The treatment of "accrued" and "thereafter accruing" obligations under section 187b is especially pertinent here, because the relevant language of section 187b is paralleled in Section 5 of Lease 0166: the lessee may surrender the lease before it expires or is terminated, but "subject to the continued obligation of the Lessee and his surety to make payment of all accrued rentals and royalties [Mr. Margold's "accrued obligations"] and to abandon all wells on the area [Mr. Margold's "thereafter accruing" obligations]" AR A-01 at 4.

It should now be apparent why both Sections 5 and 6 of the Lease 0166 specifically address lease abandonment activities as opposed to merely stating more generally that the lessee "remains responsible for all obligations accrued under the lease prior to termination or surrender." It is because, to use the language chosen by Solicitor Margold, the obligation to abandon the lease is a "thereafter-accruing" liability. 57 Int. Dec. at 439. And because "termination of such a lease releases the lessee from all future obligations under it," *id.*, it is necessary for Sections 5 and 6 of the Lease explicitly to "provide for the survival, after cancellation[, surrender, or termination], of future liability." *Id.*

The logic behind this reading of "accrued" was followed by the BLM and by this Board—at least until the Department amended its onshore assignment rules in 2001 to "specify the responsibilities of assignors and assignees for reclamation and other lease obligations." 66 Fed. Reg. 1883 (Jan. 10, 2001). *Petroleum, Inc.*, 161 IBLA 194 (2004), elaborated on this reading. The issue there was whether BLM could make existing lessees with "record title" responsible for lease abandonment when their sublessees—holders of operating rights only—became insolvent. *Id.* at 209. The Board held owners of record title responsible.

> When it signs a Federal lease, the United States enters into a contract with a lessee. The lessee may enter into a sublease or contract with others [allowing them] to

> exercise operating rights[,] but until the lessee extricates itself from the contract by an approved transfer of record title, or by relinquishment or cancellation, the lessee is in privity with the United States."

Id. at 210. The Board then turned to the Rocky Mountain Mineral Law Foundation's LAW OF FEDERAL OIL AND GAS LEASES (2002) because it was "useful in explaining the logic of BLM's approach to lease interest transfers." *Id.* "The 'Department regards an assignment of record title as effecting a kind of novation, whereby the assignor's contractual relationship with the lessor is extinguished and the approved assignee is substituted fully for the assignor, becoming the new lessee, or record title holder of the lease.'" *Id.* at 210-11 (quoting LAW OF FEDERAL OIL AND GAS LEASES § 10.02[4], 10-8).

D. The Preamble of Lease 0166 does not support the Order.

In addition to its express provisions, Lease 0166 is also "subject to … all lawful and reasonable regulations of the Secretary of the Interior … when not inconsistent with any express and specific provisions herein, which are made part hereof[.]" BSEE is likely to contend that this "subject to" clause incorporates future regulations, such as the 1997 regulations. For this to be correct, however, the lessee would have to have agreed not only to be subject to regulations adopted in the future, but also future-adopted regulations with retroactive effect. Devon has explained above why the regulations are not lawful if they are retroactive, and it will explain in Part IV below why the 1997 regulations, if applied here, would be unlawfully retroactive. It will now explain why the Lease's preamble does not provide for either outcome.

In *Mobil Oil Expl. & Prod. SE, Inc. v. United States*, 530 U.S. 604, 615 (2000) ("*Mobil Oil*"), the OCS lease had "subject to" language which expressly incorporated certain "future" regulations, but also "all other applicable statutes and regulations[.]" *Id.* In context, it was clear to the Court that "'all other applicable … regulations' … must include only statutes and regulations already existing at the time of the contract[.]" *Id.* at 816. Therefore, when the Preamble made Lease 0166 "subject to" lawful and

reasonable regulations without expressly mentioning future regulations, it was incorporating into the Lease only those regulations in effect on the date the Lease was issued.[11]

Lease 0166, therefore, differs fundamentally from the lease at issue in *Anadarko Petroleum*. There, as the Board itself emphasized, the lease was subject not only to regulations in force on the effective date, but also to "'all regulations issued pursuant to [OCSLA] *in the future*[.]'" 187 IBLA at 79 (emphasis in the original). It is therefore clear that the Preamble does not make part of Lease 0166 a future regulation, let alone a future regulation with retroactive effect. Nothing, in sum, in Lease 0166 left Santa Fe with accrued liability for decommissioning when MMS approved the assignment to Signal Hill effective February 5, 1991.

II. BSEE's 1993 Re-Interpretation Is Unlawful.

In *Anadarko Petroleum*, the Board relied chiefly on the 1997 regulations to hold an assignor who left the chain of title in 1984 liable for decommissioning, an error we address in Part III below. But the Board also said that "even if the Board were to disregard the current regulations, we would conclude appellant must carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease." *Anadarko Petroleum*, 187 IBLA at 85. We respectfully suggest that the quoted statement begs rather than answers the question of when liability to decommission "accrues." We have demonstrated the Board failed to consider common law understandings of accrual, as well as Department precedents under the OCS Lands Act and the MLA. To bolster the Board's unexplained conclusion, BSEE will urge here that two developments in 1993 show the Department had changed its position.

One is MMS Director Thomas Fry's issuance of NTL No. 93-2N, announcing for the first time the view that the "obligation to plug and abandon wells, remove platforms and other facilities, and to clear the seafloor of obstructions accrue when a well is drilled or used, a platform or other facility is

[11] To avoid confusion, Devon clarifies what it is not saying here. It is not saying that BSEE cannot adopt conservation regulations that apply to existing leases. It is saying that regulations issued after the effective date of Lease 0166 are not "made part hereof" for the purpose of knowing the scope of what has been incorporated into the lease contract.

installed or used, or an obstruction is created." NTL No. 93-2N, Notice to Lessees and Operators of federal Oil and Gas Leases in the Outer Continental Shelf, "Liability of Assignors, Assignees and Co[-]lessees for Plugging of Wells and Removal of Property on Termination of an Outer Continental Shelf Oil and Gas Lease (October 6, 1993), Exhibit 10. The other is a response to public comments in the 1993 rule amending the regulations on surety bonds. Although the final rule did not revise 30 C.F.R. § 256.62(d), the preamble revealed for the first time a new understanding of what it means for an obligation to accrue under that provision.

> [C]urrent rules at § 256.62(d) provide that assignors remain "liable for all obligation under the lease accruing prior to the approval of the assignment." These obligations, **accrued but not yet due for performance**, including those of sealing wells, removing platforms, and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed.

Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS), 58 Fed. Reg. 45255, 45257 (Aug. 27, 1993) (emphasis added). Exhibit 12. The Board is not bound to accept either document as authoritative, and would be arbitrary to apply them now to uphold the Order.

A. The 1993 Statements Do Not Bind the Board

Obviously, a Notice-to-Lessees does not bind the Board, unless it is the product of notice and comment rulemaking. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015) ("For our purposes, it suffices to say that the critical feature of interpretive rules is that they are issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. The absence of a notice-and-comment obligation makes the process of issuing interpretive rules comparatively easier for agencies than issuing legislative rules. But that convenience comes at a price: Interpretive rules do not have the force and effect of law and are not accorded that weight in the adjudicatory process.") (internal quotation marks and citations omitted). NTL 93-2N was not such a rule, just a statement of the views of the Director, MMS. Nor is the Board bound to follow a statement approved by an Assistant Secretary in a preamble to a rule. This Board has the authority to reject interpretations published in the Federal Register, even when the publication follows from a notice-and-comment process. The Board so held in

Black Butte Coal Co., 109 IBLA 254, 261 (1989) ("Publication in the Federal Register does not suggest that the matter published was meant to be a regulation" and publication does not raise interpretations "to the status of an amendment of the regulation"). Second, there is nothing authoritative about this particular statement. The subsection on which the Assistant Secretary commented was not even proposed for change. *Compare* 58 Fed. Reg. 45255, 45262 (1993) (final rule did not amend 30 C.F.R. § 256.62(d)) *with* 55 Fed. Reg. 2388, 2390 (1990) (proposed rule did not propose to amend 30 C.F.R. § 256.62(d)). Therefore, the Assistant Secretary's comment was not by a person who originally drafted the regulatory language at issue; it provides no special insight on which the Board may rely. The Board routinely reviews agency interpretations for consistency with the rules they purport to interpret. *E.g.*, *Amoco Production Co*, 112 IBLA 77, 82 (1989) (quoting *Conoco, Inc.*, 110 IBLA 232, 242-43 (1989)).[12] That review is precisely what Devon seeks here.

These propositions follow from the relationship of Assistant Secretarial authority to that of this Board, as explained in *Blue Star, Inc.*, 41 IBLA 333 (1979). Under delegations of authority from the Secretary, each Assistant Secretary has within her sphere the authority of the Secretary, subject to the Secretary's superintendence. *Id.* at 335. The Board, too, has the authority of the Secretary, subject to her superintendence, with respect to (in relevant part) "appeals . . . from the decisions rendered by Departmental officials relating to ... the use and disposition of mineral resources ... in the submerged lands of the Outer Continental Shelf[.]" 43 C.F.R. § 4.1(b)(2)(ii). Had the Assistant Secretary approved the Order before Devon had filed its notice of appeal, the Board would be without authority here. 41 IBLA at 335-36. The Assistant Secretary did not approve the Order before Devon filed the notice, and the Board is vested with the authority to dispose of Devon's appeal free of the encumbrance of an

[12] *Conoco Inc.* was later reversed by the Fifth Circuit, not because interpretations are binding, but because the Department had treated the interpretation as if it were binding without first following notice and comment rulemaking. *Phillips Petroleum Co. v. Johnson*, 22 F.3d 616, 619 (5th Cir. 1994). The Board still follows the rule and has held interpretations non-binding and rejected them when inconsistent with the regulations. *Black Butte Coal Co., et al.*, 109 IBLA 254, 261-62 (June 16, 1989); *Charles J. Rydzewski*, 55 IBLA 373, 379 (June 29, 1981).

Assistant Secretary's statement in 1993. *The Moran Corp*., 120 IBLA 245, 252 (1991) (if the Assistant Secretary has not approved the decision before an appeal is filed with the Board, the Assistant Secretary loses jurisdiction). [13]

The new view is that emphasized above in boldface font from the preamble: obligations accrue *before* they are due for performance. An ingenious argument, to be sure, but as we saw above in *Humble Oil & Ref'g Co.*, a relinquishment of leases, deemed by law to have occurred nanoseconds before the payment of rental was due, meant the rent had not "accrued." The Department did not say "the obligation to pay rent had accrued, but was not yet due for performance;" it said the obligation had not "accrued." NTL 93-2N stands settled usage of language on its head. It does not say the same thing twice (a tautology, like "red is scarlet"), but says instead an anti-tautology: obligations accrue <u>before</u> they accrue.

At least two federal circuits have already addressed agency-created anti-tautologies—when agencies give words the opposite of their normal meaning. Before remanding a case to an agency, the District of Columbia Circuit has observed that "[w]e cannot affirm the Commission's current reading of the contract.... The deference owed the Commission does not require us to 'accept an agency interpretation that black means white.'" *Town of Boylston v. F.E.R.C.*, 21 F.3d 1130, 1134 (D.C. Cir. 1994) (quoting *Nat'l Fuel Gas Supply Corp.*, 811 F.2d 1563, 1572 (D.C. Cir. 1987) (quotations omitted)). *See also Consolidated Gas Supply Corp. v. F.E.R.C.*, 745 F.2d 281, 291 (4th Cir. 1984).

[13] A useful analog is to consider the effect of interpretations of the Solicitor of the Interior. Only those interpretations expressed in the form of M-Opinions bind the Board. Memorandum, Binding Nature of Solicitor's M-opinions On the Office of Hearings and Appeals, 2001 WL 36646110 (IBLA 2001). Legal opinions expressed by the Solicitor in other forms do not bind the Board. If that were not so, then the Solicitor of the Interior could sign an answer to a statement of reasons and bind the Board to his argument. Just as the Board cannot review an agency "decision" approved by an Assistant Secretary, it cannot review an interpretation expressed in an M-Opinion. But decisions approved by an Assistant Secretary are decisions in particular cases, not "interpretations" of law. *See Robert L. Bayless Producer*, 177 IBLA 83, 85 (2009) (holding Board lacked decision to review BLM cancellation of oil and gas leases because the Secretary had directed that "particular" action, finding "The Secretary did not issue a policy statement, but instead specifically directed BLM to take a particular action in particular cases.")

Nor does the anti-tautology escape review just because it lurks within a preamble. "[L]anguage in the preamble of a regulation is not controlling over the language of the regulation itself." *Wyo. Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 53 (D.C. Cir. 1999). A preamble is "not an operative part" of the rule. *Nat'l Wildlife Fed'n v. EPA*, 286 F.3d 554, 569-70 (D.C. Cir. 2002). While a preamble can inform the meaning of a rule, it is not binding because it is not itself subject to notice and comment. *Peabody Coal Co. v. Dir., Office of Workers' Comp. Programs*, 764 F.3d 1119, 1124-25 (9th Cir. 2014). "[T]he preamble . . . is not binding and cannot be read to conflict with the language of the regulation itself." *Peabody Twentymile Mining, LLC v. Sec'y of Labor*, 931 F.3d 992, 998 (10th Cir. 2019).

Therefore, when the Board wrote in *Anadarko Petroleum* that "even if the Board were to disregard the current regulations, we would conclude appellant must carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease," 187 IBLA at 85, that conclusion is inapplicable here because, on this record, the only basis for supporting this reasoning is that decommissioning obligations "accrued before they accrued." After failing to discuss all the prior contradictory authority under the common law, the OCSLA, and the MLA, the Board would be open to judicial reversal for relying on this "unusually raw *ipse dixit*." *Indep. Petroleum Ass'n of Am. v. DeWitt*, 279 F.3d 1036, 1042 (D.C. Cir. 2002).

The Board has the authority to apply a regulation and determine its proper scope. As we will demonstrate below, the 1997 regulation cannot be applied to former lessees who, like Santa Fe, were no longer in privity with the United States on August 20, 1997. To do so would be to apply the 1997 regulation retroactively, and the Department lacks Congressional authority to create retroactive rules under the OCS Lands Act. Nothing in the 1997 regulation expressly states that it reaches back to those no longer in privity on that date, and the Board is empowered to so hold. Neither Director Fry's 1993 NTL nor the 1993 preambular comment on the meaning of 30 C.F.R. § 256.62(d) is a duly promulgated regulation, and "the Board clearly has the authority to declare invalid a Departmental regulation which has not been duly promulgated." *Mesa Petroleum Co.*, 111 IBLA at 203 n.2.

B. The 1993 Interpretation Reverses Settled Expectations

Prior to 1993, the word "accrued" in the Department's regulations on assignments had a well-understood meaning, as we have shown above at length. OCS lessees relied on it. Santa Fe and Signal Hill's other assignors specifically relied on it, because they had to obtain the supervision of the Director of MMS to end the attempt of the Pacific Regional Director to force the assignors to agree to accept responsibility for abandonment of the Lease. In the end, the assignments to Signal Hill were approved with only an interim measure agreed to by lease operator Phillips to have Signal Hill maintain a letter of credit. Phillips fulfilled its sole commitment.

The Board should not uphold BSEE's attempt to reverse a settled interpretation and disrupt Devon's expectation, because no court will countenance it. Courts do not defer to a new interpretation … that creates 'unfair surprise' to regulated parties." *Kisor v. Wilkie*, __ U.S. __, 139 S. Ct. 2400, 2418 (2019). "That disruption of expectations may occur when an agency substitutes one view of a rule for another." *Id.* For example, in *Christopher v. Smithkline Beecham Corp.*, 567 U.S. 142 (2012), the Court found the agency's changed interpretation would "impose potentially massive liability on respondent for conduct that occurred well before that interpretation was announced." *Id.* at 155-56. The Court not only declined to defer to the agency's new interpretation, but also rejected the interpretation as "quite unpersuasive." *Id.* at 159. There is nothing persuasive about BSEE's interpretation that obligations have always "accrued" long before they "accrued" as that term has been used in the common law and in prior agency practice.

And this is the key distinction between Director Fry's NTL 93-2N and Director Bettenberg's letter to Mr. Jackson Cooley. Both were issued with the intention of announcing industry-wide interpretations. See Exhibit 9, third sheet (Mr. Cooley's April 26, 1988, letter requesting, because of "interest throughout the oil and gas industry," that "the Department of the Interior and the Minerals Management Service take a definite written position"). The similarities end there. First, the Bettenberg letter fits the prior explanations of the effect of an assignment in the 1954 rules, the *Continental Oil*

decision, decisions interpreting "accrued" under the Mineral Leasing Act, and this Board's decision in *Petroleum, Inc.*. The Fry NTL does not fit any prior explanations of the effect of an assignment or the meaning of "accrued;" nor does it point to any prior agency practice with which it purports to be consistent. Second, lessees relied on the prior explanations and the Bettenberg letter's interpretation, and did so expressly in the assignment at issue here. The NTL would be an unmistakably retroactive change imposing "massive liability" on Devon, contrary to *Christopher v. Smithkline Beecham*.

III. The Board May Not Apply the 1997 Regulation Retroactively to Santa Fe.

The issue here is not whether the 1997 rules apply to leases issued prior to the effective date of the rules, the question the Board addressed in *Anadarko Petroleum*, 187 IBLA at 87-90. Rather, the issue is whether the rule can be applied to Devon, as successor to another former lessee who was no longer party to a lease, having left the relationship of privity with the government as a result of the assignment and novation, prior to the effective date of the 1997 rule. The prohibition against retroactive regulations tells us that the answer is "no."

A. No statute permits the Department to adopt retroactive OCS regulations.

The Supreme Court has held that agencies may not adopt retroactive rules without explicit congressional authorization. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The 1997 regulation was promulgated[14] under the authority of Section 5 of OCS Lands Act, 43 U.S.C. § 1334(a). Section 5 does not authorize Interior to adopt retroactive rules governing OCS leases. To the contrary, it expressly states that rules and regulations "shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter." *See* 43 U.S.C. § 1334(a) (emphasis added). The statement that a rule applies as of its effective date "does not even arguably suggest that it has any application to conduct that occurred at an earlier date." *Landgraf v. USI Film Products*, 511 U.S. 244, 257 (1994).

[14] As the Supreme Court has often emphasized, "interpretive rules … do not have the force and effect of law." *Perez v. Mortgage Bankers Assn.*, 575 U.S. 92, 97 (2015) (emphasis in original). "No binding of anyone occurs merely by the agency's say-so." *Kisor v. Wilkie*, 139 S.Ct. at 2420.

B. The assignment negates BSEE's attempt to incorporate the 1997 regulation.

It is true that under Lease 0166, the lease is subject to "all lawful and reasonable regulations of the Secretary of the Interior (hereinafter referred to as the Secretary) when not inconsistent with any express and specific provisions herein, which are made a part hereof." The 1997 regulations were obviously not in force in 1967, and the preamble does not expressly incorporate lawful rules entered after the issuance of the lease.

Turning again to *Continental Oil*'s three-contract analysis, on August 20, 1997, Santa Fe was not a party to the lease—"contract number 1." With respect to Lease 0166's leased area, Santa Fe was a party only to "contract number 3," an agreement the Department has implied under *Continental Oil* by operation of its approval of the assignment. Like Lease 0166 and unlike the lease at issue in *Anadarko Petroleum*, "contract number 3" has no provision that the assignor will be subject to future regulations under the OCS Lands Act. The whole purpose of the novation was to free Santa Fe not only from obligations under the lease which had not yet accrued, but also from the application of new obligations created by future rules. If contract number 3 does not mean that, then it means nothing.

C. The application of the 1997 Rule to Santa Fe is impermissibly retroactive.

BSEE's attempt to apply the 1997 rule to Devon under contract number 3 is an impermissible exercise in retroactive rulemaking. A regulation is being applied retroactively when it "impairs rights a party possessed when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed." *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 859 (D.C.Cir. 2002) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994)). This involves a "commonsense, functional judgment about 'whether the new provision attaches new legal consequences to events completed before its enactment.'" *Martin v. Hadix*, 527 U.S. 343, 357-58 (1999) (quoting *Landgraf*, 511 U.S. at 270). "The conclusion that a particular rule operates 'retroactively' comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event." *Landgraf*, 511 U.S. at 270.

As applied to an OCS lease assignor whose assignment was approved prior to August 20, 1997, the new definition of "accrue" attaches significant legal consequences to the Secretary's approval of a lease assignment, thereby increasing a party's liability for past conduct, and imposing new duties. It thus violates the prohibition against retroactive regulations.

The Supreme Court's decision in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994), is instructive on this point. In *Rivers*, a group of black garage mechanics filed a complaint alleging they had been discharged on the basis of race in violation of 42 U.S.C. § 1981, which sets forth a statement of equal rights that all people shall have the same right "to make and enforce contracts." *Id.* at 301; 42 U.S.C. § 1981. That phrase was undefined in the statute. While the suit was pending, the U.S. Supreme Court issued a decision holding that the term "make and enforce contracts" "does not apply to conduct which occurs after the formation of a contract and which does not interfere with the right to enforce established contract obligations." *Rivers*, 511 U.S. at 301. Based on this decision, the district court dismissed the § 1981 claims. *Id*. While the matter was on appeal, Congress passed the Civil Rights Act of 1991, § 101 of which expressly provides that § 1981's prohibition against racial discrimination in the making and enforcement of contracts applies to all phases and incidents of the contractual relationship, including discriminatory contract terminations. *Id*. at 302. The mechanics filed a supplemental brief arguing that § 101 applied to their case. *Id*. at 302-03. The U.S. Supreme Court granted certiorari.

The mechanics argued that § 101 should apply to their case because it was "restorative" of the understanding of § 1981 that prevailed before the court issued its interpretation. *Id*. at 304-05. They further argued that there should be a presumption in favor of retroactive application of restorative statutes. The Court rejected both arguments. *Id*. at 308 (emphasis added). The Court further declined to adopt a presumption in favor of retroactive application of restorative statutes: "[n]otwithstanding the equitable appeal of petitioners' argument, we are convinced that it cannot carry the day." *Id*. at 310.

The factors articulated in *Landgraf*—fair notice, reasonable reliance, and settled expectations—further weigh in favor of finding a retroactive effect. *Landgraf*, 511 U.S. at 265. "Considerations of

fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Id.* Moreover, settled expectations are particularly important when dealing with contract rights—a matter "in which predictability and stability are of prime importance." *See id. at* 271, n. 25. They are of such importance that the U.S. Supreme Court has on more than one occasion held that statutory changes affecting contract rights are not to be applied retroactively. *See, e.g., United States v. Sec. Indus. Bank*, 459 U.S. 70, 79-82 (1982) (declining to apply retroactively an amendment to the bankruptcy laws to abrogate liens acquired before the amendment was enacted); *Claridge Apartments Co. v. Comm'r*, 323 U.S. 141, 163-65 (1944) (declining to apply retroactively a section of the Bankruptcy Act so as to require a reduction in depreciation allowances claimed for tax purposes, and noting that the function of the bankruptcy law amendment "was to give relief to parties undertaking reorganization, not simply to impose new and different taxes upon them, much less to do so with respect to transactions long since settled both as to taxes and as to reorganization."). The change in the definition of "accrue" also alters the expectations of liability much like a change to a statute of limitations—another modification the U.S. Supreme Court has determined does not apply retroactively to claims existing at the date of the amendment. *See United States v. St. Louis, S. F. & T. R. Co.*, 270 U.S. 1, 3 (1926) (declining to apply retroactively a reduction in the statute of limitations from six-years to three-years to any cause of action for payment for transportation services existing at the date of the amendment).

In sum, the Department lacks statutory authority to enact a retroactive rule.[15] The preamble of Lease 0166 does not apply future regulations to assignors after the Department has approved the assignment. If it is valid at all, the 1997 regulation can apply only to those who on August 20, 1997, were in privity with the United States through the lease agreement. To apply that rule to those no longer in privity on that date is to apply the rule retroactively and impermissibly.

[15] Because the 1997 can be applied prospectively only, BSEE's inevitable reliance on *Noble Energy, Inc. v. Jewell*, is unavailing. But *Noble Energy* is inapposite for an additional reason. Under the regulation in force when MMS approved Santa Fe's assignment, Signal Hill took on the unaccrued obligation to decommission the Lease. The lessee in *Noble Energy* at the time of well abandonment was the original lessee. 110 F. Supp. 3d at 8. The holding therefore sheds no light on assignments of lease interests.

CONCLUSION

In light of the reasons set forth above, Devon respectfully requests the Board reverse the Order and determine Devon is not responsible for decommissioning activities at Lease 0166.

Respectfully submitted this third day of June, 2021.

/s/ Poe Leggette
L. Poe Leggette
pleggette@bakerlaw.com
Shanisha Y. Smith
sysmith@bakerlaw.com
BAKER & HOSTETLER LLP
811 Main Street, Suite 1100
Houston, Texas 77002
Telephone: (713) 751-1600

Attorneys for Devon Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2021, service of the foregoing **DEVON ENERGY CORPORATION'S STATEMENT OF REASONS** was made in accordance with the applicable rules as noted, to the following:

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203

Via Email Only *IBLA@oha.doi.gov*

U.S. Department of the Interior
Office of the Solicitor - Minerals Division
Attn: Heewon Kim, Esq.
1849 C. Street NW, MS 5358
Washington, DC 20240

Via Email Only heewon.kim@sol.doi.gov

/s/ Poe Leggette
Poe Leggette

Exhibit 1

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

DEVON ENERGY CORPORATION	*	**IBLA-2021-132**
	*	
	*	**Appeal of November 6, 2020 Letter Decommissioning of Oil and Gas Lease OCS-P-0166**

DECLARATION OF MARK B. MCDANIEL

I, Mark B. McDaniel, am over the age of 21 and state the following based on facts and information personally known to me:

1. Devon Energy Corporation is a publicly traded corporation and Devon Energy Production Company, L.P. is its wholly owned operating limited partnership (collectively "Devon"). Devon is an independent oil and gas producer, currently focusing on exploration and production in New Mexico, North Dakota, Oklahoma, Texas, and Wyoming.

2. I have been employed by Devon since May 2005. At all times during my employment with Devon, I have worked as an in-house attorney and currently serve as a Senior Counsel. While my responsibilities have varied over my employment at Devon, I am generally responsible for certain exploration and production legal services including certain litigation, governmental audits, administrative appeals, regulatory, public lands, royalty, tax, leases and contracts, business development, claims, access, surface, environmental and title issues. I work regularly with Devon's management and provide legal support to its land, regulatory, division orders, operations, drilling, exploration, accounting, audit, government affairs, marketing, corporate, and shared services functions.

3. I have access to certain corporate business records of Devon and as part of my job responsibilities review Devon's business records and publicly available records to ascertain Devon's predecessors in interest and the previous and current owners of certain oil and gas leases, wells, properties, assets, and interests.

4. The business records of Devon and the public records that I have reviewed reflect the following concerning OCS-P00166:

a. On January 1, 1967, federal Offshore Lease OCS-P00166, 1995.46 acres, located offshore California, was issued, dated and effective. The record title owners name Phillips Petroleum Company as operator. The record title owners were Phillips Petroleum Company 25%; Continental Oil Company 37.5%; and Cities Service Oil Company 37.5%. *See* Serial Register Page, dated March 1, 2021, attached hereto as Decl. Ex. A (hereinafter "*SRP*"), p. 1. In 1977, Cities Service Oil Company changed its record title name to Cities Service Company. In 1979, Continental Oil Company changed its name to Conoco Inc. *See* SRP, p. 3

b. On February 28, 1983 (effective January 1, 1983), Conoco Inc. conveyed its 37.5% interest to Petro-Lewis Funds, Inc. *See* SRP, p. 4. On November 15, 1983 (effective August 31, 1983), Cities Service Company changed its record title name to Cities Service Oil and Gas Corporation. *See* SRP, p. 4.

c. On June 22, 1987, an Assignment, Bill of Sale and Conveyance, dated effective December 31, 1984 from Petro-Lewis Funds, Inc., a Colorado corporation as Assignor, and American Royalty Producing Company, a Colorado general partnership, as Assignor, executed by all parties on May 18, 1987, was filed with the MMS. The Assignment to American Royalty Producing Company was approved by MMS on July 2, 1987. *See* Decision dated July 2, 1987, and enclosures attached hereto as Decl. Ex. B (hereinafter "*MMS 1987 Decision*").

d. On June 22, 1987, an Assignment, Bill of Sale and Conveyance, dated effective March 1, 1987 from American Royalty Producing Company, a Colorado general partnership and Petro-Lewis Funds, Inc., a Colorado corporation as Assignor, and Santa Fe Energy Company, as Assignee, executed by all parties on April 30, 1987 was filed with the MMS. The Assignment to Santa Fe Energy Company was approved by MMS on July 2, 1987. *See* MMS 1987 Decision.

e. Effective April 30, 1987, the record title owners were Phillips Petroleum Company 25%; Santa Fe Energy Company 37.5%; and Cities Service Oil and Gas Corporation 37.5%. *See* SRP, p. 5.

f. On April 20, 1988 (effective April 1, 1988), Cities Service Oil and Gas Corporation changed its record title name to OXY USA Inc. See SRP, p. 5.

g. On July 13, 1988 (effective April 1, 1988), Santa Fe Energy Company transferred a 3.75% working interest to Maersk Energy Incorporated, and the record title owners were Phillips Petroleum Company 25%; Santa Fe Energy Company 33.75%; OXY USA Inc. 37.5%; and Maersk Energy Incorporated 3.75%. *See* SRP, p.5.

h. On January 8, 1990, Articles of Merger were filed with the Delaware Secretary of State merging Santa Fe Energy Company, a Texas corporation, into Santa Fe Natural Resources, Inc., a Delaware corporation. *See* Articles of Merger, attached hereto as Decl. Ex. C., and December 12, 1990 entry on page 5 of the SRP noting merger effective January 11, 1990. On January 11, 1990, Restated Certificate of Santa Fe Natural Resources, Inc. was filed with the Delaware Secretary of State changing its name to Santa Fe Energy Resources, Inc., a Delaware corporation. *See* Restated Certificate, attached hereto as Decl. Ex. D.

i. An Agreement for Purchase and Sale, dated October 31, 1990, was entered between Santa Fe Energy Resources, Inc., as Seller, and Signal Hill Services, Inc. as Buyer, with an Effective Time of July 1, 1990 and Closing set for November 30, 1990. On December 31, 1990, the parties entered an Amendment No. 1 to Agreement for Purchase and Sale to increase the Purchase Price, change the payment terms, and extend the Closing to February 15, 1991.

j. Assignments from the record titles owners Phillips Petroleum Company 25%; Santa Fe Energy Company 33.75%; OXY USA Inc. 37.5%; and Maersk Energy Incorporated 3.75% to Signal Hill Service, Inc. 100% were approved by MMS on February 2, 1991 (effective February 5, 1991). Signal Hill Services, Inc. named Pacific Operators, Inc. as operator *See* Decision dated February 8, 1991, and enclosures attached hereto as Decl. Ex. E. and SRP, p. 6.

k. On November 1, 1996, a Conveyance and Contribution Agreement was entered between Santa Fe Energy Resources, Inc. ("*Santa Fe*") and Monterey Resources, Inc. ("*Monterey*") in which Santa Fe divested and Monterey assumed all of Santa Fe's California onshore and offshore business, including all assets and liabilities attributable to periods before or after the effective date. Monterey went public with an IPO and was spun off from Santa Fe in 1997.

l. On February 9, 1998, the Certificate of Amendment of Certificate of Incorporation of Monterey Resources, Inc. was filed with Delaware Secretary of State changing the name from Monterey Resources, Inc. to Texaco California Inc. *See* Certificate of Amendment, attached hereto as Decl. Ex. F.

m. On May 5, 1999, a Certificate of Merger and Name Change was filed with the Delaware Secretary of State merging Snyder Oil Corporation, a Delaware corporation, into Santa Fe Energy Resources, Inc. and changing name to Santa Fe Snyder Corporation, a Delaware corporation. *See* Certificate of Merger, attached hereto as Decl. Ex. G.

n. On August 29, 2000, a Certificate of Merger was filed with the Delaware Secretary of State merging Santa Fe Snyder Corporation into Devon Merger Co., a Delaware corporation, with the survivor Santa Fe Snyder Corporation changing its names to Devon SFS Operating, Inc., a Delaware corporation. *See* Certificate of Merger, attached hereto as Decl. Ex. H. Devon SFS Operating, Inc. was a subsidiary of Devon Energy Corporation.

o. On June 28, 2002, a Certificate of Merger of Texaco California Inc. with and into Chevron U.S.A. Inc. was filed with Delaware Secretary of State. *See* Certificate of Merger, attached hereto as Decl. Ex. I.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 2, 2021, in Oklahoma City, Oklahoma.

MARK B. MCDANIEL

OCS-P00166

Current Status RELINQ Southern California **Sale#** P3 **Sale Date** DEC 15, 1966

Bonus Bid	Initial Acreage	Current Acreage	Per Acre Amt.	Royalty Rate	Rental
21189000.000	1995.480000	1995.480000	10618.50	16.6666667	5.00

Original Lessee(s):

Phillips Petroleum Company	25.00000 %
Continental Oil Company	37.50000 %
Cities Service Oil Company	37.50000 %

Description:

That portion of block 6710 as shown on CBD dated June 01, 2011. Protraction NI11-04 officially filed on September 23, 2011.

LINE/INTERSECTIONS **TANGENT/ARC CENTERS**

5 U.S.C. 552(b)(9).

That portion of block 6660 as shown on CBD dated June 01, 2011. Protraction NI11-04 officially filed on September 23, 2011.

LINE/INTERSECTIONS **TANGENT/ARC CENTERS**

5 U.S.C. 552(b)(9).

* * * * * * UNCLASSIFIED * * * * * *

OCS-P00166

Current Status RELINQ Southern California Sale# P3 **Sale Date** DEC 15, 1966

5 U.S.C. 552(b)(9).

That portion of block 6711 as shown on CBD dated June 01, 2011. Protraction NI11-04 officially filed on September 23, 2011.

LINE/INTERSECTIONS **TANGENT/ARC CENTERS**

5 U.S.C. 552(b)(9).

01-JAN-1967	Date of lease: 01/01/1967. Expected expiration date: 12/31/1971.
01-JAN-1967	Cities Service Oil Company designates Phillips Petroleum Company as operator.
01-JAN-1967	Continental Oil Company designates Phillips Petroleum Company as operator.
01-JAN-1967	Effective date.
01-JAN-1967	Phillips Petroleum Company designates Phillips Petroleum Company as operator.

OCS-P00166

Current Status RELINQ Southern California **Sale#** P3 **Sale Date** DEC 15, 1966

25-JAN-1967	Phillips Petroleum Company designated operator.	
10-JUN-1968	Well No. A-4 Order 4 Discovery. First Production Date.	
07-FEB-1969	Suspension of drilling and production by the Secretary of the Interior.	
01-APR-1969	Suspension lifted.	
01-DEC-1969	Decision extending primry term of lease (53 days) to 02/22/72.	
31-DEC-1969	Appeal filed.	
05-JAN-1970	Appeal carried to Washington Office.	
30-SEP-1971	IBLA 70-495 affirmed Decision of 12/1/69.	
27-SEP-1977	Record title interest is now held as follows, effective 07/01/1977:	
	Continental Oil Company	37.50000 %
	Phillips Petroleum Company	25.00000 %
	Cities Service Company	37.50000 %
27-SEP-1977	Cities Service Company designates Phillips Petroleum Company as operator.	
27-SEP-1977	Continental Oil Company designates Phillips Petroleum Company as operator.	
01-JUL-1979	Continental Oil Company name changed to Conoco Inc.	

OCS-P00166
Current Status RELINQ Southern California **Sale#** P3 **Sale Date** DEC 15, 1966

28-FEB-1983	Record title interest is now held as follows, effective 01/01/1983:	
	Phillips Petroleum Company	25.00000 %
	Petro-Lewis Funds, Inc.	37.50000 %
	Cities Service Company	37.50000 %
28-FEB-1983	Cities Service Company designates Phillips Petroleum Company as operator.	
28-FEB-1983	Petro-Lewis Funds, Inc. designates Phillips Petroleum Company as operator.	
28-FEB-1983	Phillips Petroleum Company designates Phillips Petroleum Company as operator.	
15-NOV-1983	Record title interest is now held as follows, effective 08/31/1983:	
	Phillips Petroleum Company	25.00000 %
	Petro-Lewis Funds, Inc.	37.50000 %
	Cities Service Oil and Gas Corporation	37.50000 %
15-NOV-1983	Phillips Petroleum Company designates Phillips Petroleum Company as operator.	
02-JUL-1987	Record title interest is now held as follows, effective 12/31/1984:	
	Phillips Petroleum Company	25.00000 %
	Cities Service Oil and Gas Corporation	37.50000 %
	American Royalty Producing Company	37.50000 %
02-JUL-1987	Phillips Petroleum Company designates Phillips Petroleum Company as operator.	

OCS-P00166
Current Status RELINQ Southern California **Sale#** P3 **Sale Date** DEC 15, 1966

02-JUL-1987 Record title interest is now held as follows, effective 04/30/1987:

Phillips Petroleum Company	25.00000 %
Santa Fe Energy Company	37.50000 %
Cities Service Oil and Gas Corporation	37.50000 %

20-APR-1988 Cities Service Oil and Gas Corporation changed name to OXY USA Inc., effective April 1, 1988.

13-JUL-1988 Phillips Petroleum Company designates Phillips Petroleum Company as operator.

13-JUL-1988 Record title interest is now held as follows, effective 04/01/1988:

Phillips Petroleum Company	25.00000 %
Santa Fe Energy Company	33.75000 %
Oxy USA Inc.	37.50000 %
Maersk Energy Incorporated	3.75000 %

12-DEC-1990 Santa Fe Energy Company merged into Santa Fe Natural Resources, Inc., and changed its name to Santa Fe Energy Resources, Inc. effective January 11, 1990.

05-FEB-1991 Signal Hill Service, Inc. designates Pacific Operators, Inc. as operator.

08-FEB-1991 Signal Hill Service, Inc. designates Pacific Operators, Inc. as operator.

19-FEB-1991 Pacific Operators, Inc. approved as Designated Operator effective 2/19/91. Phillips Petroleum Company remained operator after assignments were approved 2/8/91 until' Pacific Operators, Inc. posted Operator's Bond.

20-FEB-1991 Pacific Operators, Inc. posted a $50,000 Mineral Lessee and Operator's bond.

OCS-P00166

Current Status RELINQ Southern California **Sale#** P3 **Sale Date** DEC 15, 1966

05-FEB-1992	Record title interest is now held as follows, effective 02/05/1991:	
	Signal Hill Service, Inc.	100.00000 %
24-JAN-1994	ROYALTY RATED REDUCTION OF SLIDING SCALE RATE 4.17 TO TO 1/6TH. EFFECTIVEF 1/1/94.	
06-JAN-1995	ROYALTY RATE REDUCTION OF SLIDING SCALE RATE 4.17 TO 1/6TH EFFECTIVE 1/1/95.	
01-AUG-1996	Net Revenue Share(50%) Minimun - Not Less than $500 (Term Life of the Lease)	
03-MAR-1998	POOI Appealed their base level bond requirement ($500,000).	
16-JUL-1998	MMS Director denied POOI's appeal.	
22-JAN-2003	Pacific Operators Offshore, Inc. changed its name to Pacific Operators Offshore, LLC	
15-OCT-2020	Relinquishment accepted. Lease relinquished effective 14-OCT-2020.	

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
PACIFIC OCS REGION
1340 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90017

In Reply Refer To:
MMS - Mail Stop 300

JUL 2 1987

DECISION

Petro-Lewis Funds, Inc.
American Royalty Producing Company
Assignors

Oil and Gas Lease OCS-P 0166

American Royalty Producing Company
Santa Fe Energy Company
Assignees

ASSIGNMENTS APPROVED

Assignments were filed on June 22, 1987, on oil and gas lease OCS-P 0166, whereby:

1) Petro-Lewis Funds, Inc. assigned all of its interest to American Royalty Producing Company, effective December 31, 1984; and

2) American Royalty Producing Company assigned all of its interest to Santa Fe Energy Company, effective April 30, 1987.

OCS-P 0166 - All those portions of Block 52N 63W and of the North 1/2 of Block 51N 63W lying seaward of a line three geographical miles distant from the coastline of California (as said coastline is defined in the Submerged Lands Act of 1953) containing 1995.48 acres, more or less, as shown on Official Leasing Map, California Map No. 6B, Channel Islands Area.

EXHIBIT
tabbies
B

Current record title interest, interest as of December 31, 1984, and resulting ownerships after approval of these assignments are as follows:

	Prior Status	Interest as of 12/31/84	Resulting Ownership
Cities Service Oil and Gas Corporation	37.5%	37.5%	37.5%
Phillips Petroleum Company	25.0%	25.0%	25.0%
Petro-Lewis Funds, Inc.	37.5%	-0-	-0-
American Royalty Producing Company	-0-	37.5%	-0-
Santa Fe Energy Company	-0-	-0-	37.5%

Acceptable evidence of the qualifications of the assignees to hold the transferred interests and the authority of the officials executing the applications for approval and assignment documents have been furnished. By approval of these assignments, effective December 31, 1984, and April 30, 1987, the assignees are subject to and shall fully comply with all applicable regulations now or to be issued under the Outer Continental Shelf Lands Act, as amended (pursuant to 43 U.S.C. 1334(b) and 30 CFR 256.62).

Richard L. Wilhelmsen
Regional Supervisor
Office of Leasing and Environment

RECORDING REQUESTED BY:

Timothy J. Lewy

WHEN RECORDED RETURN TO:

Timothy J. Lewy
Lewy & Errea
900 Mohawk Street
Bakersfield, CA 93309

ASSIGNMENT, BILL OF SALE AND CONVEYANCE

THIS ASSIGNMENT, BILL OF SALE AND CONVEYANCE (this "Assignment"), dated effective as of March 1, 1987 at 7:00 a.m., local time (the "Effective Time"), is from AMERICAN ROYALTY PRODUCING COMPANY, a Colorado general partnership ("ARPCO"), and PETRO-LEWIS FUNDS, INC., a Colorado corporation ("PLF"), both having an address at 717 Seventeenth Street, Denver, Colorado 80202, to SANTA FE ENERGY COMPANY, a Texas corporation ("Assignee"), having an address at 1616 South Voss Road, Suite 1000, Houston, Texas 77057. ARPCO and PLF are herein collectively called "Assignor."

FOR $10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor hereby transfers, grants, conveys, and assigns to Assignee the following (all of which are herein called the "Interests"):

All of the right, title and interest of Assignor and Nominee in and to the leases, licenses, permits and other agreements described in Exhibit A (herein called the "Leases"), insofar as the Leases cover and relate to the land described in Exhibit A (herein called the "Land"), and in and to all the property and rights incident thereto (the "Related Property"), including equipment, personal property, product purchase and sale contracts, rights-of-way, easements and wells relating thereto (but excluding the property described in Exhibit A-1).

TO HAVE AND TO HOLD the Interests unto Assignee and its successors and assigns forever, subject to all existing burdens on the Interests, including without limitation those reflected in Exhibit A. Assignor agrees that, as to any claim which has been asserted by a third party (and of which Assignee has given notice to Assignor) prior to April 30, 1989 and which relates to a burden, defect or encumbrance arising by, through or under Assignor but not of record as of the execution date of this Assignment, Assignor will warrant and defend Assignee's title to the Interests.

The parties agree that to the extent required to be operative, the disclaimers of certain warranties contained in this section are "conspicuous" disclaimers for the purposes of any applicable law, rule or order. Except as specifically described above, the Interests are assigned to Assignee without recourse, covenant or warranty of any kind, express, implied or statutory. WITHOUT LIMITATION OF THE GENERALITY OF THE IMMEDIATELY PRECEDING SENTENCE, ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES AS TO PERSONAL PROPERTY AND FIXTURES (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS. Assignor also expressly disclaims and negates any implied or express warranty as to the accuracy of any of the information furnished with respect

to the existence or extent of reserves or the value of the Interests based thereon or the condition or state of repair of any of the Interests (it being understood that all reserve estimates on which Assignee has relied or is relying have been derived by individual evaluation of Assignee) and as to the prices that Assignor or Assignee is or will be entitled to receive from production of oil, gas or other substances from the Interests.

Assignee hereby assumes and agrees to pay, perform and discharge its proportionate share of all obligations with respect to the Leases and the agreements and other matters reflected in Exhibit A, including without limitation any obligations in connection with the plugging and abandonment of wells and the restoration of the surface of the leased premises.

The references herein to liens, encumbrances, burdens, defects and other matters shall not be deemed to ratify or create any rights in third parties.

Unless provided otherwise, all recording references herein and in Exhibit A are to the official real property records of the counties in which the Interests are located.

This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one assignment. To facilitate recording, the counterpart to be recorded in a given county may contain only those portions of Exhibit A that describe property located in that county. Assignor and Assignee have each retained a counterpart of this Assignment with a complete Exhibit A.

This Assignment shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

EXECUTED on April 30, 1987, to be effective for all purposes as of the Effective Time.

AMERICAN ROYALTY PRODUCING COMPANY,
American Royalty Producing Company

G. Bruce Williams
By G. Bruce Williams, as Attorney-in-Fact

ATTEST:

Assistant Secretary

(S E A L)

PETRO-LEWIS FUNDS, INC.

By
Vice President

SANTA FE ENERGY COMPANY

By
J. R. Womack,
Vice President - Land

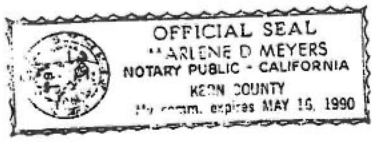
APPROVED
Richard L. Wilhelmsen
Regional Supervisor
Office of Leasing and Environment
Pacific OCS Region
Minerals Management Service

DATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On this 30th day of April, in the year 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared G. BRUCE WILLIAMS who proved to me on the basis of satisfactory evidence that he is the Attorney-in-Fact of AMERICAN ROYALTY PRODUCING COMPANY, the Colorado general partnership that executed the within instrument, and acknowledged to me that said general partnership executed the same.

WITNESS my hand and official seal.



Marlene D. Meyers, Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On this 30th day of April, in the year 1987, before me, Marlene D. Meyers, a Notary Public of said State, duly comissioned and sworn, personally appeared RICHARD E. BENNETT, known to me to be the person who executed the within instrument as Vice President of PETRO-LEWIS FUNDS, INC., a Colorago corporation, on behalf of the corporation, and acknowledged to me that such corporation executed the same.

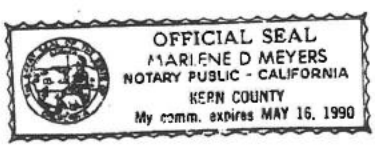
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Marlene D. Meyers, Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On this 30th day of April, in the year 1987, before me, Marlene D. Meyers, a Notary Public of said State, duly comissioned and sworn, personally appeared J. R. WOMACK, known to me to be the person who executed the within instrument as Vice President of SANTA FE ENERGY COMPANY, a Texas corporation, on behalf of the corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Marlene D. Meyers, Notary Public

EXHIBIT "A"

PLC PROPERTY NUMBER: OF-NS-01-800-01
PROPERTY NAME: Carpinteria Blocks 51 and 52
FIELD: Carpinteria
COUNTY: Offshore STATE: California

PLC Lease Number	Lessor	Lessee	Lease Date	Recording Book/Page	Leasehold Interest
OF-NS-01-001	United States of America, by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management (OCS-P-0166)	Continental Oil Company, et al	1/1/67		37.50%

Insofar and only insofar as said lease covers and pertains to:

All those portions of Block 52 North 63 West and of the N/2 of Block 51 North 63 West lying seaward of a line three geographical miles distant from the coastline of California (as said coastline is defined in the Submerged Lands Act of 1953) containing 1995.48 acres, more or less, as shown on official leasing map, California Map No. 6B, Channel Islands Area.

Subject to the following:

CONTRACT NUMBER:

1. Double "CP" Group Operating Agreement dated November 30, 1966, by and among Phillips Petroleum Company, Pan Petroleum Company, Inc., Continental Oil Company, and Cities Service Oil Company, as amended by Amendment of Operating Agreement dated August 3, 1967, Agreement dated January 17, 1969, Letter Agreement dated June 12, 1979, and Amendment to Joint Operating Agreement dated March 13, 1985;

2. Equipment Lease Agreement dated March 6, 1967, between Western Offshore Drilling and Exploration Co. and Continental Oil Company;

3. Geological Study Agreement dated May 15, 1967, by and among Continental Oil Company, Pan Petroleum Company, Inc., Cities Service Oil Company, and Phillips Petroleum Company;

4. Sale of Data Agreement dated September 20, 1967, between Continental Oil Company, et al, and Pan Petroleum Company, Inc.;

5. Gas Sale and Purchase Agreement dated January 25, 1968, between Continental Oil Company, as Seller, and Pacific Lighting Service Company, Buyer, as amended;

6. Gas Sale and Purchase Agreement dated November 29, 1973, between Continental Oil Company, as Seller, and Pacific Lighting Service Company, Buyer;

7. Crude Oil Purchase Contract dated July 1, 1986 by and between Petro-Lewis Corporation as Seller and Texaco Trading and Transportation Inc. as Buyer.

The above described interest entitles the owner thereof to the following interest:

Operating Interest.	37.50%
Net Revenue Interest.	31.25%

EXHIBIT A-1

PERSONAL PROPERTY EXCLUDED FROM THE SALE

Security Deposits with Utility Companies Totalling Approximately $88,000

Office Furnishings and Related Equipment

Property Summary by Category

	Estimated Value
Sound Masking System	$35,500
Halon	8,600
Ice Makers, Refrigerators & Microwave	5,130
2 Ton Mini Mate A/C	3,500
Subtotal	$52,730
Conference Rooms (3) Furnishings	$34,475
Reception Area Furnishings	14,625
Art	16,335
Antiques	7,747
Pitney Bowes Mail System	6,583
Lounge Furnishings	9,773
Tab Filing System	15,409
Training Room Furnishings	12,206
	$117,153
Total	$169,883

California Oil and Gas Industry Log, Production History and Well History Files

MJ System fiche log, well history files and Munger daily activity reports.

P.I. Cartridge fiche production history files and West Coast Region daily and weekly reports.

Technical Data Maps, Studies and Rights and Obligations Pursuant to Joint Venture Exploration Agreements Associated with Undeveloped Acreage Not Included on Exhibit A, or with Exploration Efforts in Areas At Least One Mile from Properties Described On Exhibit A.

All right, title, and interest in and to that certain Production Payment reserved for the benefit of Partnership Properties Co. and described in that certain Assignment, Bill of Sale and Conveyance, dated August 2, 1984, from Partnership Properties Co. to Sunbank Energy, Inc., et al, which assignment covered lands located in Sections 2, 11, and 12, T26S, R20E. MDB&M Kern County, California.

542 CA 01K - Petro-Lewis Corporation (Partnership Properties Co.) owns a continuing option to purchase up to 2,000 barrels per day of crude oil attributable to Tracts 1 and 2 of the Long Beach Unit, Wilmington Field, pursuant to Letter Agreement dated March 20, 1986, between Century Resources Development Inc. and Partnership Properties Co., as amended.

All titled vehicles not specifically included on that Bill of Sale to Assignee executed by Assignor contemporaneously herewith are excluded from the sale.

ASSIGNMENT, BILL OF SALE AND CONVEYANCE

THIS ASSIGNMENT, BILL OF SALE AND CONVEYANCE (this "Assignment"), dated as of December 31, 1984, 11:00 a.m., Mountain Standard Time (the "Effective Time"), is from PETRO-LEWIS FUNDS, INC., a Colorado corporation ("Assignor") to AMERICAN ROYALTY PRODUCING COMPANY, a Colordo general partnership ("Assignee"). Assignor and Assignee each have an address at Petro-Lewis Tower, 717 Seventeenth Street, Denver, Colorado 80202.

For $100.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor hereby transfers, grants, conveys and assigns to Assignee the following, (all of which are herein called the "Interests"):

1. The undivided interests described in Exhibit A attached hereto and made a part hereof in and to the entire estates created by the leases, licenses, permits and other agreements described in Exhibit A (herein called the "Leases"), insofar as the Leases cover and relate to the lands described in Exhibit A (herein called the "land"); the royalty, overriding royalty, net profits and mineral fee interests, production payments and all other interests, property, and rights described in Exhibit A; together with corresponding undivided interests in and to the property and rights incident thereto, including to the extent transferable, all agreements, production purchase and file contracts, leases, permits, rights-of-way, easements, licenses, farmouts, options and orders in any way relating thereto; and

2. Corresponding undivided interest in and to all of the personal property, fixtures and improvements now or as of the Effective Time appurtenant to the Leases insofar as they cover the land or used or obtained in connection with the operation of the Leases insofar as they cover the Land or with the production, treatment, sale or disposal of hydrocarbons or water produced therefrom or attributable thereof.

TO HAVE AND TO HOLD the Interests unto Assignee and its successors and assigns forever.

Provided, however, that this Assignment (and the special warranty of title set forth below) is in all respects subject to the royalties provided in the Leases, the terms and provisions of the Leases, and those other burdens imposed thereon or relating thereto that are reflected in Exhibit A or in the calculations used to determine the Working Interest and Net Revenue Interest figures set forth in Exhibit A, including without limiations, overriding royalties, production payments and other interest or production described in Exhibit A.

This Assignment is executed without warranty of any kind, either express or implied, except PLF specially warrants and agrees to defend the title to the Interests against the lawful claims and demands of all persons claiming the same or any part thereof by, through and under such party, but not othherwise.

Assignor also hereby grants and transfers to Assignee its successors and assigns, to the extent so trans-

ferable, the benefit of and the right to enforce the covenants and warranties, if any, which Assignor is entitled to enforce with respect to the Interests against Assignor's predecessors in title to the Interests.

The parties agree that to the extent required to be operative, the disclaimers of certain warranties contained in this section are "conspicuous" disclaimers for the purposes of any applicable law, rule or order. Except as expressly set forth above, the Interests are assigned to Assignee without recourse, covenant or warranty of any kind, express, implied or statutory. WITHOUT LIMITATION OF THE GENERALITY OF THE IMMEDIATELY PRECEDING SENTENCE, ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES AS TO PERSONAL PROPERTY AND FIXTURES (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS. Assignor also expressly disclaims and negates any implied or express warranty as to the accuracy of any of the information furnished with respect to the existence or extent of reserves or the value of the Interests based thereon or the condition or state of repair of any of the Interests (it being understood that all reserve estimates on which Assignee has relied or is relying have been derived by individual evaluation of Assignee) and as to the prices that Assignor or Assignee are or will be entitled to receive from production of oil, gas or other substances from the Interests.

Assignee hereby assumes and agrees to pay, perform and discharge its proportionate share of all obligations under the Leases, the agreements and other burdens reflected in Exhibit A.

The references herein to liens, encumbrances, burdens, defects and other matters are for the purpose of defining the nature and extent of Assignor's special warranty and shall not be deemed to ratify or create any rights in third parties.

Unless provided otherwise, all recording references in Exhibit A are to the official real property records of the parishes in which the Interests are located, except that with respect to federal oil and gas leases affecting areas of the Outer Continental Shelf, such references are to the real property records of the parishes located adjacent to the areas covered by such leases.

Separate assignments of the Interests may be executed on officially approved forms by Assignor to Assignee, in sufficient counterparts to satisfy applicable statutory and regulatory requirements. Those assignments shall be deemed to contain all of the exceptions, reservations, warranties, rights, titles, power and privileges set forth herein as fully as though they were set forth in each such assignment. The interests conveyed by such separate assignments are the same, and not in addition to, the Interests conveyed herein.

This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one assignment. To facilitate recording this counterpart to be recorded in a given parish may contain only those portions on the Exhibits hereto that describes property located in that parish. Assignor and Assignee have each retained a counterpart of this Assignment with a complete Exhibit A.

Notwithstanding anything to the contrart contained herein, the obligations and warranteis contained herein of each corporation that is included in the term "Assignor" relate only to each such party and that portion of the Interests conveyed by it, any no such party shall be liable for any act, omission or obligation of any other party hereto.

This Assignment shall bind and inure to the benefit of Assignor and assignee and their respective successors and assigns.

EXECUTED on May 18th, 1987, to be effective for all purposes as of the Effective Time.

ASSIGNOR:

PETRO-LEWIS FUNDS, INC., a Colorado corporation

Attest:

By: _____
J. Kenney Shipman
Secretary

By: _____
Richard E. Benentt
Vice President

ASSIGNEE:

AMERICAN ROYALTY PRODUCING COMPANY, a Colorado general partnership

American Royalty Producing Company

By: _____
G. Bruce Williams
Attorney-in-Fact

APPROVED

_____
Richard L. Wilhelmsen
Regional Supervisor
Office of Leasing and Environment
Pacific OCS Region
Minerals Management Service

DATE: _____

STATE OF Colorado)
) ss.
COUNTY OF Denver)

On this 18 day of May, in the year 1987, before me, Marlene D. Meyers, a Notary Public of said State, duly comissioned and sworn, personally appeared RICHARD E. BENNETT, known to me to be the person who executed the within instrument as Vice President of PETRO-LEWIS FUNDS, INC., a Colorado corporation, on behalf of the corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires.
March 6, 1989

Rebecca E. Davis
Rebecca E Davis, Notary Public
Address 717-17th Street
Denver CO 80202

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

On this 18 day of May, in the year 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared G. BRUCE WILLIAMS who proved to me on the basis of satisfactory evidence that he is the Attorney-in-Fact of AMERICAN ROYALTY PRODUCING COMPANY, the Colorado general partnership that executed the within instrument, and acknowledged to me that said general partnership executed the same.

WITNESS my hand and official seal.

My commission expires
March 6 1989

Rebecca E. Davis
Rebecca E. Davis, Notary Public
Address 717-17th Street
Denver CO 80202

EXHIBIT "A" - PART I - SUBPART A

PROPERTY NUMBER: OF-NS-01-800-01
PROPERTY NAME: Carpinteria Blocks 51 and 52
FIELD: Carpinteria
COUNTY: Offshore STATE: California

Lease Number	Lessor	Lessee	Lease Date	Book/Page/Entry	Interest Type
OF-NS-01-001	United States of America, by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management (OCS-P-0166)	Continental Oil Company, et al	1/1/67		37.50%/LI

Insofar and only insofar as said lease covers and pertains to:

All those portions of Block 52 North 63 West and of the N/2 of Block 51 North 63 West lying seaward of a line three geographical miles distant from the coastline of California (as said coastline is defined in the Submerged Lands Act of 1953) containing 1995.48 acres, more or less, as shown on official leasing map, California Map No. 6B, Channel Islands Area.

Subject to the following:

CONTRACT NUMBER:

1. Double "CP" Group Operating Agreement dated November 30, 1966, by and among Phillips Petroleum Company, Pan Petroleum Company, Inc., Continental Oil Company, and Cities Service Oil Company, as amended by Amendment of Operating Agreement dated August 3, 1967, agreement dated January 17, 1969 and Letter Agreement dated June 12, 1979;

2. Equipment Lease Agreement dated March 6, 1967, between Western Offshore Drilling and Exploration Co. and Continental Oil Company;

3. Geological Study Agreement dated May 15, 1967, by and among Continental Oil Company, Pan Petroleum Company, Inc., Cities Service Oil Company, and Phillips Petroleum Company;

4. Sale of Data Agreement dated September 20, 1967, between Continental Oil Company, et al, and Pan Petroleum Company, Inc.;

5. Gas Sale and Purchase Agreement dated January 25, 1968, between Continental Oil Company, as Seller, and Pacific Lighting Service Company, Buyer, as amended;

6. Gas Sale and Purchase Agreement dated November 29, 1973, between Continental Oil Company, as Seller, and Pacific Lighting Service Company, Buyer;

7. Crude Oil Processing and Refined Products Sale Agreement dated May 30, 1984 between U.S.A. Petroleum Company and Petro-Lewis Corporation, as amended;

8. Crude Oil Exchange Agreement dated June 1, 1984 between Mobil Oil Corporation and Petro-Lewis Corporation;

9. Marketing Agency and Purchase Agreement dated January 13, 1984 by and between Petro-Lewis Corporation, et al, and Anorient Petroleum Marketing Company, as amended.

The above described interest entitles the owner thereof to the following interest:

Operating Interest. . . . . - 37.50%
Net Revenue Interest. 31.25%

RECEIVED

MAY 29

Secretary of State

29th day of May, 1990

Joyce Hazeltine

SECRETARY OF STATE

State of DELAWARE

Office of SECRETARY OF STATE

I, Michael Harkins, Secretary of State of the State of Delaware, do hereby certify that the attached is a true and correct copy of

Certificate of Ownership

filed in this office on January 8, 1990

DEPARTMENT OF STATE · OFFICE OF THE SECRETARY OF STATE · 1835 · 1793 · 1970 · DELAWARE

Michael Harkins

Michael Harkins, Secretary of State

BY: M. Maguire

DATE: May 23, 1990

Form 130

EXHIBIT C

FILED

JAN 8 1990

SECRETARY OF STATE

1 PM

7300080233

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

SANTA FE ENERGY COMPANY

INTO

SANTA FE NATURAL RESOURCES, INC.
(pursuant to Section 253 of the General Corporation Law of the State of Delaware)

Santa Fe Natural Resources, Inc., a Delaware corporation (the "Corporation"), does hereby certify:

FIRST: That the Corporation is incorporated pursuant to the General Corporation Law of the State of Delaware.

SECOND: That the Corporation owns all of the outstanding shares of each class of the capital stock of Santa Fe Energy Company, a Texas corporation.

THIRD: That the Corporation, by the following resolutions of its Board of Directors duly adopted by unanimous written consent on December 29 1989, determined to and does merge into itself Santa Fe Energy Company on the conditions set forth in such resolutions:

WHEREAS, Santa Fe Natural Resources, Inc. (the "Corporation") is the legal and beneficial owner of 100 percent of the outstanding common stock, par value $100 per share (the "Common Stock"), of Santa Fe Energy Company, a Texas corporation (the "Subsidiary");

WHEREAS, said Common Stock is the only issued and outstanding class of stock of the Subsidiary; and

WHEREAS, the Corporation desires to merge into itself the Subsidiary.

NOW THEREFORE BE IT RESOLVED, that the Subsidiary merge into the Corporation, and assume all of the Subsidiary's liabilities and obligations;

RESOLVED FURTHER, that the certificate of incorporation of the Corporation shall be the certificate of incorporation of the surviving corporation;

RESOLVED FURTHER, that the President or any Vice President and the Secretary or any Assistant Secretary of this Corporation be and they hereby are directed to make, execute and

acknowledge a certificate of ownership and merger and articles of merger to evidence the merger of the Subsidiary into the Corporation and to file the certificate of ownership and merger in the office of the Secretary of State of Delaware and the articles of merger in the office of the Secretary of State of Texas and a certified copy of the certificate of ownership and merger in the Office of the Recorder of Deeds of the appropriate county in Delaware and to take such further actions as may be necessary to effect the purpose and intent of the foregoing resolutions; and

RESOLVED FURTHER, that the President or any Vice President and the Secretary or any Assistant Secretary of this Corporation be and each of them acting alone hereby are authorized and directed to take such further actions and file such additional documents or instruments, as may in their sole discretion be deemed necessary or reasonable in order to carry out the purposes and intent of the foregoing resolutions.

IN WITNESS WHEREOF, said Santa Fe Natural Resources, Inc. has caused its corporate seal to be affixed and this certificate to be signed by duly authorized officers, this 29th day of December 1989.

SANTA FE NATURAL RESOURCES, INC.

By: David M Adam
Name: David M. Adam
Title: Vice President and Treasurer

ATTEST:

By: E C Pierce
Name: E C Pierce
Title: Corp. Secretary
[SEAL]

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SANTA FE NATURAL RESOURCES, INC.", CHANGING ITS NAME FROM "SANTA FE NATURAL RESOURCES, INC." TO "SANTA FE ENERGY RESOURCES, INC.", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF JANUARY, A.D. 1990, AT 11 O'CLOCK A.M.

Edward J. Freel, Secretary of State

0774411 8100

991173204

AUTHENTICATION: 9720078

DATE: 05-03-99

EXHIBIT D

RESTATED CERTIFICATE OF INCORPORATION

OF

SANTA FE NATURAL RESOURCES, INC.

The original Certificate of Incorporation of Santa Fe Natural Resources, Inc. was filed with the Secretary of State of the State of Delaware on August 18, 1971. The original Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the corporation (hereinafter referred to as the "Corporation") is: Santa Fe Energy Resources, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 250,000,000, of which 50,000,000 shares shall be Preferred Stock, par value $.01 per share, and 200,000,000 shares shall be Common Stock, par value $.01 per share.

A. Preferred Stock. (1) The Preferred Stock may be issued from time to time in one or more series and in such amounts as may be determined by the Board of Directors. The voting powers, designations, preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, of the Preferred Stock of each series shall be such as are fixed by the Board of Directors, authority so to do being hereby expressly granted, and as are stated and expressed in a resolution or resolutions adopted by the Board of Directors providing for the issue of such series of Preferred Stock (herein called the "Directors' Resolution"). The Directors' Resolution as to any series shall (a) designate the series, (b) fix the dividend rate, if any, of such series, the payment dates for dividends on shares of such series and the date or dates, or the method of determining the date or dates, if any, from which dividends on shares of such series shall be cumulative, (c) fix the amount or amounts payable on shares of such series upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, (d) state the price or prices or rate or rates, and adjustments, if any, at which, the time or times and the terms and

conditions upon which, the shares of such series may be redeemed at the option of the Corporation or at the option of the holder or holders of shares of such series or upon the occurrence of a specified event, and state whether such shares may be redeemed for cash, property or rights, including securities of the Corporation or another entity; and such Directors' Resolution may (i) limit the number of shares of such series that may be issued, (ii) provide for a sinking fund for the purchase or redemption of shares of such series and specify the terms and conditions governing the operations of any such fund, (iii) grant voting rights to the holders of shares of such series, provided that each share shall not have more than one vote per share, (iv) impose conditions or restrictions upon the creation of indebtedness of the Corporation or upon the issuance of additional Preferred Stock or other capital stock ranking on a parity therewith, or prior thereto, with respect to dividends or distribution of assets upon liquidation, (v) impose conditions or restrictions upon the payment of dividends upon, or the making of other distributions to, or the acquisition of, shares ranking junior to the Preferred Stock or to any series thereof with respect to dividends or distributions of assets upon liquidation, (vi) state the time or times, the price or prices or the rate or rates of exchange and other terms, conditions and adjustments upon which shares of any such series may be made convertible into, or exchangeable for, at the option of the holder or the Corporation or upon the occurrence of a specified event, shares of any other class or classes or of any other series of Preferred Stock or any other class or classes of stock or other securities of the Corporation, and (vii) grant such other special rights and impose such qualifications, limitations or restrictions thereon as shall be fixed by the Board of Directors, to the extent not inconsistent with this Article FOURTH and to the full extent now or hereafter permitted by the laws of the State of Delaware.

(2) Except as by law expressly provided, or except as may be provided in any Directors' Resolution, the Preferred Stock shall have no right or power to vote on any question or in any proceeding or to be represented at, or to receive notice of, any meeting of stockholders of the Corporation.

(3) Preferred Stock that is redeemed, purchased or retired by the Corporation shall assume the status of authorized by unissued Preferred Stock and may thereafter, subject to the provisions of any Directors' Resolution providing for the issue of any particular series of Preferred Stock, be reissued in same manner as authorized by unissued Preferred Stock.

B. Common Stock. All shares of the Common Stock of the Corporation shall be identical and except as otherwise required by law or as otherwise provided in the resolution or resolutions, if any, adopted by the Board of Directors with respect to any series of Preferred Stock, the holders of the Common Stock shall exclusively possess all voting power, and each share of Common Stock shall have one vote.

FIFTH: The number of directors constituting the Board of Directors shall be fixed as specified in the Bylaws of the Corporation, but shall not be less than three or more than 15. The directors shall be divided into three classes, designated Class I, Class II and Class III. The initial term for directors in Class I shall expire at the annual meeting of stockholders to be held in 1991; the initial term for directors in Class II shall expire at the annual meeting of stockholders to be held in 1992; and the initial term for directors in Class III shall expire at the annual meeting of

stockholders to be held in 1993. Each class of directors shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors.

At the expiration of the initial term of each class of directors, and of each succeeding term of each class, each class of directors shall be elected to serve until the annual meeting of stockholders held three years from such expiration and until their successors are elected and qualified or until their earlier death, resignation, removal or retirement. Any increase or decrease in the number of directors constituting the Board shall be apportioned among the classes so as to maintain the number of directors in each class as near as possible to one-third the whole number of directors as so adjusted. Any director elected or appointed to fill a vacancy shall hold office for the remaining term of the class to which such directorship is assigned. No decrease in the number of directors constituting the Corporation's Board of Directors shall shorten the term of any incumbent director. Any vacancy in the Board of Directors, whether arising through death, resignation or removal of a director, or through an increase in the number of directors of any class, shall be filled by the majority vote of the remaining directors. The Bylaws may contain any provision regarding classification of the Corporation's directors not inconsistent with the terms hereof.

A director of the Corporation may be removed only for cause and only upon the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote at an election of directors, subject to further restrictions on removal, not inconsistent with this Article FIFTH, as may be contained in the Bylaws.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Restated Certificate of Incorporation applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article FIFTH unless expressly provided by such terms.

SIXTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The Board of Directors is authorized to alter, amend or repeal the Bylaws or adopt new Bylaws of the Corporation. The stockholders shall not repeal or change the Bylaws of the Corporation unless such repeal or change is approved by the affirmative vote of the holders of not less than 80% of the total voting power of all shares of stock of the Corporation entitled to vote in the election of directors, considered for the purposes of this paragraph A as a single class.

B. Election of directors need not be by written ballot unless the Bylaws so provide.

C. In addition to the powers herein or by statute expressly conferred upon the Corporation's directors, the Corporation's directors are hereby empowered to exercise all such powers and do all such acts and things as

may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of Delaware, this Restated Certificate of Incorporation, and any Bylaws adopted by the stockholders; *provided, however*, that no Bylaws hereafter adopted shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

D. No action shall be taken by the stockholders except at an annual or special meeting with prior notice and a vote. No action shall be taken by the stockholders by written consent.

SEVENTH: The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

EIGHTH: The Board of Directors is hereby authorized to create and issue, whether or not in connection with the issuance and sale of any of its stock or other securities, rights (the "Rights") entitling the holders thereof to purchase from the Corporation shares of capital stock or other securities. The times at which and the terms upon which the Rights are to be issued will be determined by the Board of Directors and set forth in the contracts or instruments that evidence the Rights. The authority of the Board of Directors with respect to the Rights shall include, but not be limited to, determination of the following:

(a) The initial purchase price per share of the capital stock or other securities of the Corporation to be purchased upon exercise of the Rights.

(b) Provisions relating to the times at which and the circumstances under which the Rights may be exercised or sold or otherwise transferred, either together with or separately from, any other securities of the Corporation.

(c) Provisions that adjust the number or exercise price of the Rights or amount or nature of the securities or other property receivable upon exercise of the Rights in the event of a combination, split or recapitalization of any capital stock of the Corporation, a change in ownership of the Corporation's securities or a reorganization, merger, consolidation, sale of assets or other occurrence relating to the Corporation or any capital stock of the Corporation, and provisions restricting the ability of the Corporation to enter into any such transaction absent an assumption by the other party or parties thereto of the obligations of the Corporation under such Rights.

(d) Provisions that deny the holder of a specified percentage of the outstanding securities of the Corporation the right to exercise the Rights and/or cause the Rights held by such holder to become void.

(e) Provisions that permit the Corporation to redeem the Rights.

(f) The appointment of a Rights Agent with respect to the Rights.

NINTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty by such director as a director; *provided, however*, that this Article NINTH shall not eliminate or limit the liability of a director to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article NINTH shall apply to, or have any effect on, the liability or alleged liability of any director of the Corporation for or with respect to any facts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

TENTH: The provisions set forth in Article FIFTH hereof may not be amended, altered, changed, repealed or rescinded in any respect unless such action is approved by the affirmative vote of the holders of not less than 80 percent of the total voting power of all shares of stock of the Corporation entitled to vote in the election of directors, considered for purposes of this Article TENTH as a single class; the amendment, alteration, change, repeal or rescission of this Article TENTH and Articles SIXTH, EIGHTH and NINTH hereof shall require both such 80 percent vote. The voting requirements contained in this Article TENTH and in Article SIXTH hereof shall be in addition to voting requirements imposed by law, other provisions of this Restated Certificate of Incorporation or any designation of preferences in favor of certain classes or series of shares of capital stock of the Corporation.

ELEVENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under §291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under §279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, has been executed by President of the Corporation and attested by its Secretary on this 11th day of January, 1990.

SANTA FE NATURAL RESOURCES, INC.

By: J. L. Payne
President

ATTEST:
D H Mouden
Secretary

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
PACIFIC OCS REGION
770 PASEO CAMARILLO
CAMARILLO, CA 93010

In Reply Refer To:
MMS--Mail Stop 7300

February 8, 1991

DECISION

OXY USA Inc.
Santa Fe Energy Resources, Inc.
Phillips Petroleum Company
Maersk Energy Incorporated
Assignors

Oil and Gas Lease OCS-P 0166

Signal Hill Service, Inc.
Assignee

ASSIGNMENTS APPROVED

Assignments have been filed for approval whereby OXY USA Inc., Santa Fe Energy Resources, Inc., Phillips Petroleum Company, and Maersk Energy Incorporated assigned all of their interest in oil and gas lease OCS-P 0166 to Signal Hill Service, Inc. Record title interests previously held and the resulting ownership follows:

OCS-P 0166 - All those portions of Block 52N 63W and of the N 1/2 of Block 51N 63W lying seaward of a line three geographical miles distant from the coastline of California (as said coastline is defined in the Submerged Lands Act of 1953) containing 1995.48 acres, more or less, as shown on OCS Official Leasing Map No. 6B, Channel Islands Area.

	Prior Status	Resulting Status
Signal Hill Service, Inc.	-0-	100.00%
OXY USA Inc.	37.50%	-0-
Santa Fe Energy Resources, Inc.	33.75%	-0-
Phillips Petroleum Company	25.00%	-0-
Maersk Energy Incorporated	3.75%	-0-

Phillips Petroleum Company will remain the Operator on the lease, until the Pacific OCS Office of Minerals Management Service approves Pacific Operators Inc. as Operator. Pacific Operators, Inc. will be required to post a $50,000 OCS Mineral Lessee's and Operator's Bond before being approved as Operator.

Authority of the officials executing the applications for approval and assignment documents have been furnished. By approval of this assignment, effective February 5, 1991, the assignee is subject to and shall fully comply with all applicable regulations now or to be issued under the Outer Continental Shelf Lands Act, as amended (pursuant to 43 U.S.C. 1334(b) and 30 CFR 256.62).

J. Lisle Reed

J. Lisle Reed
Regional Director

APPENDIX TO ASSIGNMENT OF OCS-P 0166

FROM PHILLIPS PETROLEUM COMPANY (SELLER)

TO SIGNAL HILL SERVICE, INC. (BUYER)

In consideration of Minerals Management Service (MMS) approval of said assignment, Seller agrees that it has required or will require the following contractual commitments concurrent with the sale of their interest in OCS-P 0166 to Buyer:

1. An Abandonment Escrow Account ("Escrow Account") will be established with a mutually acceptable bank as escrow agent.

   a. The Escrow Account will be funded from ninety percent (90%) of the revenues after deductions for royalties, operating costs (which shall include taxes measured by income), capital expenditure, debt service and provision for working capital reserve.

   b. The Escrow Account will be funded until it contains a "Target Balance", initially equal to the abandonment cost, as estimated by Noble Denton and Associates, Inc. in their report dated May 25, 1990, plus twenty-five percent (25%). This initial amount is $17.56 million.

   c. Every two years from the approval date of the assignment, the Escrow Agent will commission a third-party estimate of abandonment costs by a qualified engineering consulting firm. The Target Balance will be adjusted to the new estimate plus twenty-five percent (25%). Prior to commencement of abandonment activities, the Target Balance will not be adjusted below $9,200,000 plus estimated requirements to abandon the pipeline and onshore facilities without the consent of the MMS, which consent shall not be unreasonably withheld. However, subsequent to commencement of abandonment activities, during any two-year estimate period, the Target Balance will be reduced by the amount actually spent on Abandonment Services as defined below.

   d. Funds in the Escrow Account will be disbursed to the Buyer solely to pay costs of Abandonment Services, being defined as: "Any activity necessary to comply with laws, regulations and leasehold requirements related to the abandonment of wells, platforms, pipelines and onshore facilities, including but not limited to permitting, required studies, plugging of wells, removal of platforms, and removal and restoration of onshore facilities" or to pay taxes which are measured by income on interest from the escrowed monies or to pay taxes measured by income on deposits for which the deductions for such tax prior to deposit was insufficient. Abandonment will be conducted in accordance with MMS regulations codified at 30 CFR Part 250 and other applicable legal requirements.

   e. Noble Denton and Associates, Inc., or such other party as is mutually agreeable to the Buyer and the MMS, will be named as "Abandonment Agent". In the event the Buyer defaults on the abandonment obligations, the Abandonment Agent will receive funds from the Escrow Account and serve as prime contractor for abandonment. Abandonment Agent will be entitled to a reasonable and customary administration fee as prime contractor and for reasonable and customary fees for Abandonment Services actually performed by Abandonment Agent.

f. Buyer will be deemed to be in default on its abandonment obligations if Buyer has not complied with an order or directive relating to abandonment by MMS or other government agency or a court of competent jurisdiction. However, in the event the buyer contests such order or directive with MMS or other government agency or through judicial action, Buyer will not be deemed to be in default pending resolution of such dispute by MMS or other government agency or a court of competent jurisdiction.

g. Funds in the Escrow Account will be disbursed to the Abandonment Agent solely to pay Abandonment Services. Liability of the Abandonment Agent will be limited to funds available in the Escrow Account.

h. Buyer will be entitled to any funds remaining in the Escrow Account after all abandonment obligations are completed in accordance with MMS or other government agency regulations.

i. The Escrow Agent will provide an annual statement showing the current Target Balance and certify that the Escrow Account is fully funded or disclose the amount of the shortfall.

2. Immediately upon closing, Buyer will provide abandonment performance security for offshore well abandonment and platform removal services in the form of a bank Letter of Credit in the amount of $9,200,000 in favor of Seller.

a. The Letter of Credit will remain in force until the Escrow Account contains a balance of at least $9,200,000 plus estimated requirements to abandon the pipeline and onshore facilities.

b. At the request of the MMS, Seller will call the Letter of Credit if Buyer is in default as defined in paragraph 1.f. above. In the event the Letter of Credit is called, the funds will immediately be deposited in the Escrow Account.

c. Buyer will provide MMS with a copy of the Letter of Credit by March 1, 1991.

3. Seller will assign its related interest in Clean Seas, an oil spill cooperative, and Buyer's designated operator will be required to maintain membership in Clean Seas or its successors or assignees. Buyer and Seller will work with Clean Seas to assure that continuous coverage is maintained during the transition of assignment.

4. The effective date of this assignment will be February 15, 1991.

IN WITNESS WHEREOF, this Appendix and Supplement is executed this 6 day of February, 1991.

APPROVED

By: J. Lisle Reed
J. Lisle Reed
Regional Director
Pacific OCS Region, MMS

PHILLIPS PETROLEUM COMPANY, ASSIGNOR

By: M. B. Smith
M. B. Smith, Attorney-in-Fact

Attested to:

By: R. P. Larson

Title: Vice President

SIGNAL HILL SERVICE, INC., ASSIGNEE

By: R. L. Brown

Title: President

Original Signed Appendix to Assignment

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 02/09/1998
981051822 – 2653828

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

MONTEREY RESOURCES, INC.

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is

MONTEREY RESOURCES, INC.

2. The certificate of incorporation of the Corporation is hereby amended by striking out Article First thereof and by substituting in lieu of said Article the following new Article:

"1. The name of the corporation is TEXACO CALIFORNIA INC."

3. The amendment of the Certificate of Incorporation herein certified has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

Signed and attested to on February 6, 1998.

By: _____
S. A. Carlson
Vice President

Attest:

_____
R. E. Koch
Assistant Secretary

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EXHIBIT
tabbies
F

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"SNYDER OIL CORPORATION", A DELAWARE CORPORATION,

WITH AND INTO "SANTA FE ENERGY RESOURCES, INC." UNDER THE NAME OF "SANTA FE SNYDER CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF MAY, A.D. 1999, AT 11 O'CLOCK A.M.

Edward J. Freel, Secretary of State

0774411 8100M

991197550

AUTHENTICATION: 9750943

DATE: 05-18-99

EXHIBIT

tabbies

G

5-5-99

CERTIFICATE OF MERGER

Merger of Snyder Oil Corporation, a Delaware corporation
With and Into
Santa Fe Energy Resources, Inc., a Delaware corporation

Pursuant to the provisions of Section 251 of the Delaware General Corporation Law, the undersigned certifies as follows concerning the merger (the "Merger") of Snyder Oil Corporation, a Delaware corporation, with and into Santa Fe Energy Resources, Inc., a Delaware corporation, with Santa Fe Energy Resources, Inc. as the surviving corporation (the "Surviving Corporation").

1. The Agreement and Plan of Merger, dated as of January 13, 1999 (the Agreement and Plan of Merger being hereinafter referred to as the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by Snyder Oil Corporation and Santa Fe Energy Resources, Inc. in accordance with Section 251 of the Delaware General Corporation Law.

2. The Merger contemplated in the Merger Agreement and this Certificate of Merger will be effective immediately upon the filing of this Certificate of Merger

3. The name of the Surviving Corporation shall be Santa Fe Energy Resources, Inc. which shall be changed herewith to Santa Fe Snyder Corporation.

4. Article FIRST of the Restated Certificate of Incorporation of Santa Fe Energy Resources, Inc. is amended, effective as of the date hereof, to read in its entirety as follows:

"FIRST: The name of the corporation (hereinafter referred to as the "Corporation") is Santa Fe Snyder Corporation."

and that the first paragraph of Article FOURTH of the Restated Certificate of Incorporation of Santa Fe Energy Resources, Inc. is amended, effective as of the date hereof, to read in its entirety as follows:

"FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 350,000,000, of which 50,000,000 shares shall be Preferred Stock, par value $.01 per share, and 300,000,000 shares shall be Common Stock, par value $.01 per share."

The Restated Certificate of Incorporation of Santa Fe Energy Resources, Inc., as amended, in effect at the effective time of the Merger shall be the certificate of incorporation of the

Surviving Corporation.

5. The executed Merger Agreement is on file at the principal place of business of the Surviving Corporation, 1616 South Voss Road, Houston, Texas 77057.

6. A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of Snyder Oil Corporation or Santa Fe Energy Resources, Inc.

Dated this 5th day of May, 1999.

SANTA FE ENERGY RESOURCES, INC.

By: David L Hicks

Name: David L. Hicks

Title: Vice President — Law and General Counsel

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"DEVON MERGER CO.", A DELAWARE CORPORATION,

WITH AND INTO "SANTA FE SNYDER CORPORATION" UNDER THE NAME OF "DEVON SFS OPERATING, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-NINTH DAY OF AUGUST, A.D. 2000, AT 1:30 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE TWENTY-NINTH DAY OF AUGUST, A.D. 2000, AT 11:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Edward J. Freel, Secretary of State

0774411 8100M

001437100

AUTHENTICATION: 0646045

DATE: 08-29-00

EXHIBIT H

tabbies

CERTIFICATE OF MERGER

MERGING

DEVON MERGER CO.

INTO

SANTA FE SNYDER CORPORATION

Pursuant to Section 251 of the Delaware General Corporation Law, Santa Fe Snyder Corporation, a Delaware corporation, DOES HEREBY CERTIFY:

FIRST: That the names of the constituent corporations of the merger are Devon Merger Co. and Santa Fe Snyder Corporation, both of which are Delaware corporations.

SECOND: That an Agreement and Plan of Merger, pursuant to which Devon Merger Co. will merge with and into Santa Fe Snyder Corporation, has been approved, adopted, certified, executed and acknowledged, as amended, by each of the constituent corporations in accordance with Section 251 of the Delaware General Corporation Law.

THIRD: That the name of the surviving corporation is Santa Fe Snyder Corporation, changing to Devon SFS Operating, Inc.

FOURTH: That the Restated Certificate of Incorporation of Santa Fe Snyder Corporation shall be amended and restated as set forth in the Restated Certificate of Incorporation attached hereto as Exhibit A, and such Restated Certificate of Incorporation shall be the Certificate of Incorporation of the surviving corporation.

FIFTH: That the executed Agreement and Plan of Merger, as amended, is on file at an office of the surviving corporation, which is located at 20 North Broadway, Suite 1500, Oklahoma City, Oklahoma 73102-8260.

SIXTH: That a copy of the Agreement and Plan of Merger, as amended, will be furnished by the surviving corporation, on request and without cost, to any stockholder of either constituent corporation.

SEVENTH: That the merger will be effective at 11:59 p.m. on August 29th or upon filing of this Certificate of Merger, whichever is later.

IN WITNESS WHEREOF, Santa Fe Snyder Corporation has caused this Certificate of Merger to be executed on its behalf on August 29, 2000.

SANTA FE SNYDER CORPORATION

By: David L. Hicks

David L. Hicks
Vice President, Law and General Counsel

1070512_5

Exhibit A

Restated Certificate of Incorporation of Santa Fe Snyder Corporation

FIRST. The name of the Corporation is Devon SFS Operating, Inc.

SECOND. The address, including the street, number, city and county, of the Corporation's registered office in this state is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801 and the name of the Corporation's registered agent at such address is The Corporation Trust Company.

THIRD. The nature of the business and the purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law ("DGCL").

FOURTH. The total number of shares of capital stock which the Corporation shall have authority to issue is 1,000 shares, designated as Common Stock, par value $.10 per share.

FIFTH. The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

(4) No director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty by such director as a director; provided, however, that this Article FIFTH shall not eliminate or limit the liability of a director to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article

FIFTH shall apply to, or have any effect on, the liability or alleged liability of any director of the Corporation for or with respect to any facts or omissions of such director occurring prior to such amendment or repeal. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Restated Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SIXTH. Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

SEVENTH. The Corporation reserves the right to amend, alter, change, or repeal any provisions herein contained, in the manner now or later prescribed by statute. All rights, powers, privileges, and discretionary authority granted or conferred upon stockholders or directors are granted subject to this reservation.

EIGHTH. This Restated Certificate of Incorporation of Devon SFS Operating, Inc. has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 06/28/2002
020423010 – 2653828

CERTIFICATE OF MERGER

OF

TEXACO CALIFORNIA INC.

WITH AND INTO

CHEVRON U.S.A. INC.

It is hereby certified that:

1. The constituent business corporations participating in the merger herein certified are:

(i) Texaco California Inc., which is incorporated under the laws of the State of Delaware; and

(ii) Chevron U.S.A. Inc., which is incorporated under the laws of the State of Pennsylvania.

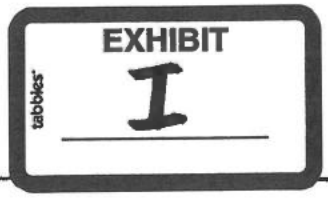
2. An Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of subsection (c) of Section 252 of the General Corporation Law of the State of Delaware, to wit, by Texaco California Inc. in the same manner as is provided in Section 251 of the General Corporation Law of the State of Delaware and by Chevron U.S.A. Inc. in accordance with the laws of the State of its incorporation.

3. The name of the surviving corporation in the merger herein certified is Chevron U.S.A. Inc., which will continue its existence as said surviving corporation under the name Chevron U.S.A. Inc. upon the effective date of said merger pursuant to the provisions of the laws of the State of its incorporation.

4. The certificate of incorporation of Chevron U.S.A. Inc., as now in force and effect, shall continue to be the certificate of incorporation of said surviving corporation until amended and changed pursuant to the provisions of the laws of the State of its incorporation.

5. The executed Agreement of Merger between the aforesaid constituent corporations is on file at an office of the aforesaid surviving corporation at: 575 Market Street, San Francisco, CA 94105.

6. A copy of the aforesaid Agreement of Merger will be furnished by the aforesaid



surviving corporation, on request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

7. The aforesaid surviving corporation does hereby agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of Texaco California Inc. , as well as for enforcement of any obligation of said surviving corporation arising from the merger herein certified, including any suit or other proceeding to enforce the right, if any, of any stockholder of Texaco California Inc. as determined in appraisal proceedings pursuant to the provisions of Section 262 of the General Corporation Law of the State of Delaware; does hereby irrevocably appoint the Secretary of State of the State of Delaware as its agent to accept service of process in any such suit or other proceedings; and does hereby specify the following as the address to which a copy of such process shall be mailed by the Secretary of State of the State of Delaware: Corporate Secretary Department, Chevron U.S.A. Inc., 575 Market, San Francisco, CA 94105.

8. The merger is to become effective on July 1, 2002, 12:30 P.M., Eastern Standard Time.

Dated: June 28, 2002

CHEVRON U.S.A. INC.

/s/ Frank G. Soler
Frank G. Soler
Assistant Secretary

CONFIDENTIAL

Exhibit 2

PHILLIPS PETROLEUM COMPANY
SANTA BARBARA, CALIFORNIA 93104
1306 SANTA BARBARA STREET

EXPLORATION AND PRODUCTION DEPARTMENT
Production Division

January 25, 196

Re: OCS-P-0166 Lease
Development Plan

United States Geological Survey
7744 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

GEOLOGICAL SURVEY
RECEIVED
FEB 8 1968
LOS ANGELES

Attention: Mr. D. W. Solanas,
Regional Supervisor

Gentlemen:

Attached is a plat showing the anticipated productive area and bottom hole locations on OCS-P-0166 Lease. This information is based on present interpretation of available data and will, no doubt, be revised as additional data is obtained during the development program.

5 U.S.C. 552(b)(9).

necessitated by future developments. The number of wells presently scheduled to be drilled and the maximum practical reach from Platform A, Hogan , make it essential that another platform be installed to fully develop OCS-P-0166 Lease. This platform will be installed at location B on the attached plot. Should Phillips Petroleum Company et al be successful in obtaining the adjoining acreage in the forthcoming lease sale, the location of platform B will be adjusted so that a portion of the adjoining tract can also be developed from this platform.

Six locations have been selected as the first wells to be drilled and are shown on the attached plat. Zone VI Coordinates of these bottom hole locations are as follows:

NOTED - SCHAMBECK

5 U.S.C. 552(b)(9).

It is our intention to make application to the U. S. Army, Corps of Engineers, for a permit to erect platform B on February 7, 1968, and your early consideration of the above development plan will be greatly appreciated.

Very truly yours,

F. R. Davis
District Production Superintendent

RDS:sj
Attach.

Exhibit 3

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
PACIFIC OCS REGION
1340 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90017

In Reply Refer To:
MMS - Mail Stop

150

July 16, 1987

Memorandum

To: Associate Director, Offshore Minerals Management, MS 640

From: Regional Director, Pacific OCS Region

Subject: Royalty-free use of Gas at Santa Ynez Unit Onshore Facility

Exxon's letter of July 10, 1987 to the Director refers to the above subject but omits several significant features that are essential to a decision on the matter. Our memorandum (Attachment 1) of July 17, 1987 to the Associate Director discusses the same subject in general terms but is not directly tied to the Santa Ynez Unit. We propose to address the Exxon letter and their proposal more directly.

Exxon's letter requests royalty-free use of gas for the operation of the Coral Canyon onshore treating facility for production from the Santa Ynez Unit. The Pacific OCS Region endorses this concept and recommends that an affirmative decision be reached on the matter. The gas will be used primarily as fuel for a 49 megawatt cogeneration plant that will supply a portion of the electrical power required by the onshore facility and offshore operations. The cogen plant will have the utility grid as back-up and may, at times, generate excess power that will be delivered to the utility grid. When this situation does occur, Exxon should be required to pay royalty on the gas used to generate the power delivered to the grid. Exhaust heat from the cogen plant will provide the heat energy for treating (dehydrating) the offshore production.

To implement the foregoing proposed program, Exxon would be required to meter three items: (1) fuel gas consumed by the plant in standard cubic feet, (2) total output of the plant in kilowatt-hours, and (3) power delivered to the utility grid in kilowatt-hours. The ratio of (1) to (2) will establish a factor expressed in standard cubic feet of gas used as fuel per kilowatt-hour of power generated. This factor times the kilowatt-hours of power delivered to the grid should establish the volume of plant fuel subject to royalty. Exxon should be required to report these data on a monthly basis to the Pacific OCS Region for examination and verification of the accuracy of the data and to Royalty Management for verification of the volume of gas used for generation of the power delivered to the utility and assessment of royalty.

The Pacific OCS Region has ample precedent and practice in the two primary areas necessary for implementation of the foregoing program. Firstly, for several years, power has been generated on Platform Henry on Lease OCS-P 0240

with excess power being returned to the utility grid. A fuel-gas to power-generated factor is used to determine the volume of gas used to generate the power delivered to the utility grid. This establishes the volume of gas upon which royalty is due. All of this operation takes place on the lease.

relevant to the case

Secondly, by policy and practice for some 20 years the Pacific OCS Region has considered an onshore treating facility as an extension of and an integral part of the lease. This has been done for at least three reasons: (1) for the convenience of the lessee which results in economic benefits thus conserving natural resources, (2) for the lessor to maintain control of a portion (royalty) of the production in which he has a vested property interest, and (3) to retain access to the facility to regulate operations and enforce compliance with regulations on the part of the lessee.

The earliest OCS production in the Pacific Region came from Lease OCS-P 0166 in June 1968 and from Lease OCS-P 0241 in February 1969. Production from both of these leases has been and still is treated (dehydrated) to pipeline quality at onshore facilities, La Conchita and Rincon respectively. The point of sale (custody transfer) for this production is at the exit of these onshore facilities. That these facilities were considered to be an integral part of the lease was articulated in a memorandum dated February 22, 1971 from the Regional Oil and Gas Supervisor of the Pacific Region to the Chief, Branch of Oil and Gas Operations at U.S.G.S. Conservation Division Headquarters, subject: "Appeal on Method of Computing Royalty - Lease OCS-P 0240."[1]

We wish to establish that the regulations clearly allowed for the location of processing facilities off the lease either offshore or onshore when the Pacific Region started the practice in 1968. The Pacific Region supplemented that practice with a policy of considering those off-lease facilities to be an integral part of the lease. The Outer Continental Shelf Lands Act (OCSLA) of 1953 is implemented by regulations contained in 30 CFR 250. The original version of these regulations was published as a final rule on May 8, 1954 at 19 FR 2656. Two sections in the regulations are significant to this discussion, 30 CFR 250.18 (Rights of use and easement) and 30 CFR 250.68 (Commingling production).[2]

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1. Note particularly the paragraph at the top of page 2 of the memorandum. The U.S.G.S. decision in this matter, identified as GS-60-O&G dated October 11, 1974, expresses this same policy on page 5. Both of these items were attached to our memorandum of July 17, 1987, but for your convenient reference copies are included with this memorandum as Attachments 2 and 3.

2. The original 1954 version of 30 CFR 250.68 remained unchanged until after 1969 and reads as follows:

> 250.68 Commingling production.
> Subject to such conditions as he may prescribe for measurement and allocation of production, the supervisor may authorize the lessee to move production from the lease to a central point for purposes of treating, measuring, and storing, and in moving such production, the lessee may commingle the production from different wells, leases, pools, and fields, and with production of other operators. The central point may be on shore or at any other convenient place selected by lessee. (emphasis added).

While the foregoing regulation is entitled Commingling, please note that it allows the supervisor to authorize the lessee to move production from the lease to a central point and the central point may be on shore. The Pacific Region has used this regulation to locate treating facilities on shore. The regulation is silent on the facet of considering the on shore facility an integral part of the lease but, by policy, practice, and precedent the Pacific Region has established that aspect of our operations.

Paragraph (a) of 30 CFR 250.18[3] allows the supervisor to grant a lessee the right to conduct operations not only on the lease upon which a platform is situated but on any other lease, State or Federal. There is no indication that unitization is a requirement to allow such a grant. However, the practice results in production being removed from a lease for operational reasons without being subjected to royalty or passing a point of sale. Paragraph (b) allows the supervisor to grant the same privileges as those in paragraph (a), but in areas near or adjacent to the leased area without any restriction that the area be leased. Thus the earliest regulations implementing the OCSLA allowed production from an OCS lease to be moved to an adjacent area, leased or unleased, or to a central point onshore before reaching the point of sale.

Leases issued as a result of the drainage sale of December 15, 1966 and the general sale of February 6, 1968 are on Form 3380-1 (February 1966). Section 2 of that lease form is entitled "Obligations of Lessee" and paragraph (h) of the section reads as follows:

> (h) Inspection. To keep open at all reasonable times for the inspection of any duly authorized representative of the Lessor, the leased area and all wells, improvements, machinery and fixtures thereon and all books, accounts, and records relative to operations and surveys or investigations on or with regard to the leased area or under the lease.

Thus the lease instrument itself provides the lessor with the right of egress and ingress to the lease. It follows that to maintain this right with respect to the onshore facility, one must consider the onshore facility to be an

---

3. The 1954 version of 30 CFR 250.18 (Rights of use and easement) remained unchanged until the general revisions of August 22, 1969 (34 FR 13544). The regulation consisted of three paragraphs [(a), (b), and (c)] in 1954 from which we wish to use selected parts.

   From paragraph (a), " . . . the supervisor may grant . . . the right of use or an easement to construct and maintain . . . and to use the same for carrying on operations, not only in connection with the lease on which the platform, structure, or island, is situated, but for the conduct of operations on any other lease, State or Federal." (emphasis added).

   From paragraph (b) "The supervisor may grant to a holder of a Federal or State lease the right of use or an easement to construct and maintain platforms, fixed structures, and artificial islands on areas of the outer Continental Shelf, near or adjacent to the leased area, and to use same for drilling . . ., for producing and reworking . . . , and for handling, treating, and storing the production therefrom . . . ." (emphasis added).

integral part of the lease, a policy established by the Pacific Region some 20 years ago and followed since that time.

Independently of the Pacific Region Policy, we believe that the February 1966 lease form may provide for royalty-free use of gas in the onshore facility. The pertinent part of the lease instrument is contained in the final sentence of Section (2)(a)(1) which says that "Gas of all kinds (except helium and gas used for purposes of production from and operations upon the leased area or unavoidably lost) is subject to royalty." (emphasis added). We consider the presence of the word "from" to be significant to the interpretation of the sentence. For example, if the word were omitted the sentence would read ". . .gas used for purposes of production and operations upon the leased area . . . " which would leave no doubt as to the intent of the statement. However, when the word "from" is inserted in the sentence, it creates a separability between the two parts of the sentence and reads ". . . for purposes of production from and operations upon the leased area . . . ." (emphasis added). Nevertheless, the major consideration here is the fact that the policy in the Pacific Region considers the onshore facility to be part of the lease thus making the operable part of the sentence to be " . . . operations upon the leased area . . . ." (emphasis added). If any consideration is given to this aspect of our discussion, we would suggest that a legal interpretation from the solicitor would be in order.

There is another item that will contribute to this decision that must be considered. We feel that it is necessary to establish to some order of magnitude the volume of gas the cogeneration plant might consume and relate that volume to production from the Santa Ynez Unit. We propose to use an extremely simplistic approach to this relationship but we believe the method will identify the ballpark in which we are playing. The method is a simple arithemetic comparison of fuel input to power output by converting each to common units of measurement. To make this conversion, we have assumed that (1) the plant will operate continuously at full capacity and (2) the operation will be at 100 percent efficiency. Actually, attainment of such conditions will never occur but the two assumptions have diametrically opposite effects and should yield results that are usable in the decision-making process.

tion for the cogeneration facility amounts to 5.8 percent of the present gas production. While this amount is a substantial volume it is a relatively small portion of the production. Of this volume, 608 MCF is the royalty (lessor's) share; the remainder already belongs to the working interest owners, including Exxon.

A question has been raised that the Pacific OCS Region has no precedent for the generation of power with lease gas at an onshore facility and returning it to the OCS for use on the lease from which the gas came. We disagree. Nearly

from the beginning of production from Lease OCS-P 0166, lease gas has been brought ashore to the La Conchita processing facility, compressed, and returned to the platforms (Hogan and Houchin) to be used to artificially lift (gas-lift) the producing wells. In the case of the compressed gas, the form of the energy is transformed at the onshore facility and returned to the lease through a pipeline (steel cylinder) for production purposes on the lease. In the case of electricity, the gas would be used as fuel for an internal-combustion prime mover as a driver for the generation of electricity which is returned to the lease via a cable conductor for production purposes on the lease. We see these cases as identical: the basic energy source is gas from the lease, it is transported to shore at the lessee's expense, transformed at the onshore facility, and returned to the lease for production purposes.

There is an obstacle in this proposed project. We believe that the solution to the problem is relatively simple but it would have to be accomplished by Exxon in negotiations with Pacific Offshore Pipeline Company (POPCO), the current purchaser of Santa Ynez Unit gas. There is a gas sales and purchase agreement between Exxon and POPCO covering gas from the Hondo Field (Contract No. 3572 dated August 9, 1978, as amended on December 7, 1981 and October I, 1986, Attachment 4). The point of sale for the gas, which transfers ownership, is at Platform Hondo; it is transported to shore by a pipeline owned, constructed, and operated by POPCO to an onshore gas-treating facility constructed, owned, and operated by POPCO, but we believe designed by Exxon, where the gas is put into marketable condition; and delivered to a gas company for distribution and sale.

There is provision in the contract which permits Exxon to take a portion of the gas for production purposes. We believe that Exxon plans to divert that portion of the gas at an onshore location into their processing facility, which is co-located with the POPCO facility, and use it at that site. Under this circumstance, since the gas will have passed a point of sale, ownership (custody) will have transferred, and the volume measurement is the basis for determining the royalty share, we believe that we cannot properly or legally allow Exxon to regain possession of a portion of the gas and declare it to be royalty-free production. We can envision several solutions to this problem but we cannot implement them, nor should we; we believe the solutions can be negotiated by Exxon and POPCO and they must be for this project to go forward as proposed.

In summary, we endorse this proposal subject to possible revisions of some contractual agreements and recommend that it be approved with appropriate conditions based on this analysis; however, we also recommend that legal counsel be sought in reaching the final decision. We would add that it is currently Department of the Interior policy to encourage consolidation and location of processing facilities at an onshore site with which the Pacific Region agrees and has implemented for 20 years.

William E. Grant

William E. Grant

Attachments (4)

cc: Associate Director, Royalty Management
Solicitor, Department of the Interior

Cypher

Exhibit 4

PHILLIPS PETROLEUM COMPANY
SANTA BARBARA, CALIFORNIA 93104
1306 SANTA BARBARA STREET
EXPLORATION AND PRODUCTION DEPARTMENT
Production Division

December 5, 1968

In re: OCS P-0166 Lease
Development Plan for
Wells Drilled from
Platform Houchin

United States Geological Survey
7744 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

Attention: Mr. D. W. Solanas
Regional Supervisor

Gentlemen:

Platform Houchin has been erected at the following location described in Zone VI coordinates.

5 U.S.C. 552(b)(9).

All major lifts have been completed and the derrick barge has left the area. Work is continuing on welding out the structure, piping, electrical, and installation of miscellaneous equipment necessary for operation of the drilling and production platform. It is anticipated that the construction phase will be completed and both rigs operable by late January, 1969.

Installation of the power cable and connecting pipeline will be started approximately December 9, 1968 and be completed within 30 days.

Attached is a plat showing the anticipated productive area and bottom hole locations on the OCS P-0166 lease. Six locations have been selected as the first wells to be drilled from Platform Houchin. Zone VI coordinates of the bottom hole locations for these wells are as follows:

5 U.S.C. 552(b)(9).

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5 U.S.C. 552(b)(9).

tion of the lease from Platform Houchin. Each well will take approximately 20 days to drill and complete. Form 9-331C "Application to Drill" will be filed with your office prior to spudding each well.

May we have your approval of the above development plan.

Very truly yours,

F. R. Davis
District Production Superintendent

FRD:ajf

Attach.

Exhibit 5

Skip to Main Content

Data Center>>

Field Definitions for Pacific Boreholes

Click on hyperlinked Column Aliases to show possible values.

The Start Position Column is used for fixed dumps only. Click on the column alias for a valid list of values or codes associated with the element selected.

Start Position	Item Length	Column Alias	Definition
1	12	API Well Number	**API Well Number** - A unique well identification number consisting of (left to right) a two digit state code (or pseudo for offshore), a three digit county code (or pseudo for offshore), a five digit unique well code, and if applicable, a two digit sidetrack code as defined in API Bulletin D12A.
13	6	Well Name	**Well Name** - The name assigned to the well. It may be a special name or the name of the property to which the well belongs.
19	8	Well Name Suffix	**Well Name Suffix** - An extension to the well name that indicates the number of times that a new wellbore has been drilled.
27	5	Operator Number	**Operator Number** - The number assigned by Minerals Management Service to a business entity, individual, or agency with whom MMS does business or exchanges information.
32	8	Bottom Field Name Code	**Bottom Field Name Code** - Name of the field in which the bottom of the well is located.
40	8	Spud Date	**Spud Date** - YYYYMMDD - The date that the drilling rig first begins boring into the earth's surface.
48	10	Bottom Lease Number	**Bottom Lease Number** - The number assigned to a lease by the regulatory agency having jurisdiction over mineral activity in the territory where the lease is located.
58	5	RKB Elevation	**RKB Elevation** - The distance, in feet, from the rig's kelly bushing to the mean sea level.
63	5	BH Total MD	**Borehole Total Measured Depth** - The actual distance measured along the axis of the borehole from the rig kelly bushing to the dept maximum penetration of the well.
68	5	True Vertical Depth	**True Vertical Depth** - The vertical distance, in feet, from the rig kelly bushing to the maximum depth of the well.
73	5	Surface N/S Distance	**Surface N/S Distance** - North/South footage or distance that represents the length of the measurement from an identifiable line. The distance from the borehole surface location to either the north or south block boundary.
78	1	Surface N/S Code	**Surface N/S Code** - North/South descriptor that indicates the direction of a measurement from an identifiable line. Indicates whether the surface borehole location is measured from the north (N) or south (S) block boundary.
79	5	Surface E/W Distance	**Surface E/W Distance** - East/West footage or distance that represents the length of a measurement from an identifiable line. The distance from the borehole surface location to either the east or west block boundary.
84	1	Surface E/W Code	**Surface E/W Code** - East/West descriptor that indicates the direction of a measurement from an identifiable line. Indicates whether the surface borehole location is measured from the east (E) or west (W) block boundary.
85	2	Surface Area	**Surface Area** - The indicator used to identify an area name.
87	6	Surface Block	**Surface Block** - Identifies a subdivision of an Official Protraction Diagram, as applied to the subdivision containing the surface location of a well.
93	5	Bottom N/S Distance	**Bottom N/S Distance** - The distance from the borehole bottom location to either the north or south block boundary.
98	1	Bottom N/ S Code	**Bottom N/ S Code** - Indicates whether the borehole bottom location is measured from the north (N) or south (S) block boundary.
99	5	Bottom E/ W Distance	**Bottom E/W Distance** - The distance from the location of borehole bottom to either the east or west block boundary.
104	1	Bottom E/ W Code	**Bottom E/W Code** - Indicates whether the borehole bottom location is measured from the east (E) or west (W) block boundary.
105	2	Bottom Area	**Bottom Area Code** - The designated abbreviation assigned to Outer Continental Shelf (OCS) geographical units for identification purposes and for use on maps and in data bases, as applied to the bottomhole location of a well.
107	6	Bottom Block	**Bottom Block Number** - Identifies a subdivision of an Official Protraction Diagram, as applied to the subdivision containing the bottomhole location of a well.
113	8	Total Depth Date	**Total Depth Date** - YYYYMMDD - The date drilling on a well reached the final total depth.
121	8	Status Date	**Status Date** - YYYYMMDD - The date the borehole status became effective.
129	1	Type Code	**Type Code** - Indicates the final classification of a borehole denoting purpose of the drilling.
130	2	District Code	**District Code** - An indicator assigned to a sub-office of an Outer Continental Shelf (OCS) regional office which has delegated authority for field operations activities including: permitting wells, inspections, drilling, and production operations.
132	3	Status Code	**Status Code** Indicates the conditions relating to a borehole.
135	5	Water Depth	**Water Depth** - The depth of water at a well/platform location from the water level to the mud line.
140	16	Surface Longitude	**Surface Longitude** - Angle measured about the spheroid axis from a local prime meridan to the meridian through the point. A longitude value of a location in the borehole.
156	16	Surface Latitude	**Surface Latitude** - Angle subtended with equatorial plane by a perpendicular from a point on the surface of a spheroid. A positive value of a location in the borehole.
172	16	Bottom Longitude	**Bottom Longitude** -Angle measured about the spheroid axis from a local prime meridan to the meridian. A positive value denotes east. The longitude value of a location in the borehole.
188	16	Bottom Latitude	**Bottom Latitude** - Angle subtended with equatorial plane by a perpendicular from a point on the surface of a spheroid. A positive value denotes north. The latitude value of a location in the borehole.
204	10	Surface Lease Number	**Surface Lease Number** - The number assigned to a lease by the regulatory agency having jurisdiction over mineral activity in the territory where the lease is located.
214	7	Complex ID Num	**Complex ID Num** - The unique identifier assigned to a single man-made structure or a group of structures connected by a walkway.
221	2	Structure Number	**Structure Number** - A unique number assigned to a specific structure within a complex.
223	8	Update Date	**Update Date** - YYYYMMDD - The latest borehole record update or weekly activity change.

* This column is valid for fixed dump only.

5 U.S.C. 552(b)(9).

API#	Well Name	Well Name Suffix	Operator No.	Bottom Field Code Name	Spud Date	Bottom Lease No.	E	Surf. Long.	Surf. Lat.	Bott. Long.	Bott. Lat.	Surf. Lease	Complex ID#	Str. #	Update Date
043110009100	002	ST00BP00	01560	CRPNTR	19670312	P00166	0	-119.536556	34.338240	-119.537037	34.338411	P00166			20170620
043110009200	003	ST00BP00	01560	CRPNTR	19670303	P00166		-119.554764	34.333244	-119.555757	34.333220	P00166			20161212
043110009300	005	ST00BP00	01560	CRPNTR	19670322	P00166		-119.531861	34.336859	-119.532661	34.337159	P00166			20161212
043110009400	006	ST00BP00	01560	CRPNTR	19670403	P00166		-119.547695	34.336698	-119.548205	34.336067	P00166			20161216
043110016500	001	ST00BP00	01560	CRPNTR	19670218	P00166		-119.554974	34.338997	-119.554157	34.337705	P00166			20161216
043110016600	004	ST00BP00	01560	CRPNTR	19670510	P00166		-119.552523	34.336346	-119.551003	34.333948	P00166			20161215
043112001300	A001	ST00BP00	01560	CRPNTR	19680503	P00166		-119.542534	34.337693	-119.538720	34.338978	P00166	51000	1	20161215
043112001301	A001	ST01BP00	01560	CRPNTR	20050812	P00166	0	-119.542534	34.337693	-119.538831	34.339824	P00166	51000	1	20161215
043112001400	A002	ST00BP00	01560	CRPNTR	19680429	P00166	0	-119.542483	34.337585	-119.534071	34.338192	P00166	51000	1	20191009
043112001600	A004	ST00BP00	01560	CRPNTR	19680527	P00166	0	-119.542483	34.337588	-119.535834	34.338518	P00166	51000	1	20191009
043112001800	A003	ST00BP00	01560	CRPNTR	19680606	P00166	0	-119.542518	34.337724	-119.539243	34.339132	P00166	51000	1	20170810
043112001900	A006	ST00BP00	01560	CRPNTR	19680611	P00166	0	-119.542494	34.337626	-119.537220	34.338819	P00166	51000	1	20161223
043112001901	A006	ST01BP00	01560	CRPNTR	20050629	P00166	0	-119.542494	34.337626	-119.538895	34.338155	P00166	51000	1	20161223
043112001902	A006	ST01BP01	01560	CRPNTR	20050709	P00166	0	-119.542494	34.337626	-119.539047	34.338102	P00166	51000	1	20161223
043112002100	A011	ST00BP00	01560	CRPNTR	19680626	P00166	0	-119.542514	34.337609	-119.536942	34.337885	P00166	51000	1	20161221
043112002200	A009	ST00BP00	01560	CRPNTR	19680809	P00166	0	-119.542546	34.337745	-119.545675	34.338082	P00166	51000	1	20161220
043112002300	A018	ST00BP00	01560	CRPNTR	19680812	P00166	0	-119.542514	34.337622	-119.540451	34.337880	P00166	51000	1	20161222
043112002301	A018	ST01BP00	01560	CRPNTR	20050227	P00166	0	-119.542514	34.337622	-119.540593	34.337284	P00166	51000	1	20161222
043112002302	A018	ST02BP00	01560	CRPNTR	20050320	P00166	0	-119.542514	34.337622	-119.540404	34.337304	P00166	51000	1	20161222
043112002500	A008	ST00BP00	01560	CRPNTR	19680714	P00166	0	-119.542506	34.337581	-119.543792	34.336083	P00166	51000	1	20161222
043112002600	A012	ST00BP00	01560	CRPNTR	19680716	P00166	0	-119.542561	34.337715	-119.547987	34.337573	P00166	51000	1	20161223
043112002700	A014	ST00BP00	01560	CRPNTR	19680723	P00166	0	-119.542491	34.337612	-119.537988	34.338604	P00166	51000	1	20170103
043112002701	A014	ST01BP00	01560	CRPNTR	19980711	P00166	0	-119.542491	34.337612	-119.537688	34.338793	P00166	51000	1	20170103
043112004000	A027	ST00BP00	01560	CRPNTR	19680829	P00166	0	-119.542569	34.337742	-119.546733	34.337055	P00166	51000	1	20170105
043112004001	AG027	ST01BP00	01560	CRPNTR	19780129	P00166	0	-119.542569	34.337742	-119.546867	34.337128	P00166	51000	1	20170105
043112004200	A007	ST00BP00	01560	CRPNTR	19680917	P00166	0	-119.542499	34.337653	-119.539716	34.338764	P00166	51000	1	20191009
043112004300	A015	ST00BP00	01560	CRPNTR	19680928	P00166	0	-119.542479	34.337574	-119.535251	34.337646	P00166	51000	1	20170105
043112004301	A046	ST01BP00	01560	CRPNTR	19780423	P00166	0	-119.542479	34.337574	-119.538002	34.338378	P00166	51000	1	20170105
043112004302	A046	ST02BP00	01560	CRPNTR	20050414	P00166	0	-119.542479	34.337574	-119.538831	34.338088	P00166	51000	1	20170620
043112004400	A021	ST00BP00	01560	CRPNTR	19680921	P00166	0	-119.542572	34.337756	-119.547256	34.338137	P00166	51000	1	20180207
043112004500	A017	ST00BP00	01560	CRPNTR	19681007	P00166	0	-119.542530	34.337680	-119.541687	34.338233	P00166	51000	1	20170106
043112004501	A047	ST01BP00	01560	CRPNTR	19780226	P00166	0	-119.542530	34.337680	-119.543830	34.337366	P00166	51000	1	20180417
043112004600	A025	ST00BP00	01560	CRPNTR	19681013	P00166	0	-119.542494	34.337532	-119.539848	34.335947	P00166	51000	1	20170106
043112004800	A023	ST00BP00	01560	CRPNTR	19681026	P00166	0	-119.542537	34.337707	-119.542737	34.337219	P00166	51000	1	20170111
043112004900	A031	ST00BP00	01560	CRPNTR	19681026	P00166	0	-119.542537	34.337605	-119.547670	34.335974	P00166	51000	1	20170109
043112005300	A016	ST00BP00	01560	CRPNTR	19690204	P00166	0	-119.542553	34.337773	-119.542597	34.337814	P00166	51000	1	20170111
043112005301	A051	ST01BP00	01560	CRPNTR	19780720	P00166	0	-119.542553	34.337773	-119.547191	34.336792	P00166	51000	1	20180706
043112005400	A019	ST00BP00	01560	CRPNTR	19681107	P00166	0	-119.542476	34.337560	-119.538803	34.337062	P00166	51000	1	20170523
043112005500	A026	ST00BP00	01560	CRPNTR	19681114	P00166	0	-119.542561	34.337704	-119.550333	34.337062	P00166	51000	1	20170110
043112005501	A026	ST01BP00	01560	CRPNTR	20050527	P00166	0	-119.542561	34.337704	-119.549948	34.336848	P00166	51000	1	20170110
043112005900	A032	ST00BP00	01560	CRPNTR	19681122	P00166	0	-119.542529	34.337578	-119.546191	34.335664	P00166	51000	1	20171115
043112006700	A038	ST00BP00	01560	CRPNTR	19681215	P00166	0	-119.542549	34.337759	-119.547461	34.342256	P00166	51000	1	20170112
043112006701	A048	ST01BP00	01560	CRPNTR	19770909	P00166	0	-119.542549	34.337759	-119.541803	34.337549	P00166	51000	1	20170112
043112006702	A048	ST02BP00	01560	CRPNTR	19980613	P00166	0	-119.542549	34.337759	-119.541485	34.337351	P00166	51000	1	20190328
043112006703	A048	ST02BP01	01560	CRPNTR	19980624	P00166	0	-119.542549	34.337759	-119.541682	34.337454	P00166	51000	1	20170112
043112006800	A022	ST00BP00	01560	CRPNTR	19681201	P00166	0	-119.542542	34.337734	-119.544907	34.337867	P00166	51000	1	20170113
043112006801	A022	ST01BP00	01560	CRPNTR	19980802	P00166	0	-119.542542	34.337734	-119.539503	34.337892	P00166	51000	1	20170131
043112006900	A029	ST00BP00	01560	CRPNTR	19681205	P00166	0	-119.542495	34.337543	-119.542095	34.335317	P00166	51000	1	20170113
043112006901	A045	ST01BP00	01560	CRPNTR	19780331	P00166	0	-119.542495	34.337543	-119.542549	34.336763	P00166	51000	1	20180404
043112006902	A045	ST02BP00	01560	CRPNTR		P00166		-119.542495	34.337543	##########	##########	P00166	51000	1	20200609
043112007100	A030	ST00BP00	01560	CRPNTR	19681218	P00166	0	-119.542541	34.337633	-119.550490	34.335209	P00166	51000	1	20180207
043112007200	A024	ST00BP00	01560	CRPNTR	19690104	P00166	0	-119.542498	34.337557	-119.541614	34.336449	P00166	51000	1	20170117
043112007300	A028	ST00BP00	01560	CRPNTR	19690510	P00166	0	-119.542533	34.337592	-119.544621	34.336942	P00166	51000	1	20180328
043112007600	B002	ST00BP00	01560	CRPNTR	19690203	P00166	0	-119.553196	34.335064	-119.553196	34.335064	P00166	51001	1	20170620
043112007700	B005	ST00BP00	01560	CRPNTR	19690130	P00166	0	-119.553172	34.334941	-119.554065	34.334419	P00166	51001	1	20170118
043112007701	B034	ST01BP00	01560	CRPNTR	19790607	P00166	0	-119.553172	34.334941	-119.555757	34.334851	P00166	51001	1	20170118
043112008000	BA002	ST00BP00	01560	CRPNTR	19690206	P00166	0	-119.553193	34.335050	-119.556240	34.335439	P00166	51001	1	20170119
043112008100	AA016	ST00BP00	01560	CRPNTR	19690405	P00166	0	-119.542557	34.337786	-119.543898	34.338928	P00166	51000	1	20180327
043112008200	B004	ST00BP00	01560	CRPNTR	19690407	P00166	0	-119.553149	34.334941	-119.556289	34.334310	P00166	51001	1	20170321
043112008300	B003	ST00BP00	01560	CRPNTR	19690430	P00166	0	-119.553169	34.335040	-119.556165	34.335096	P00166	51001	1	20170120
043112008400	B006	ST00BP01	01560	CRPNTR	19690512	P00166	0	-119.553164	34.334899	-119.555979	34.332505	P00166	51001	1	20170130
043112008401	B047	ST01BP00	01560	CRPNTR	19800220	P00166	0	-119.553164	34.334899	-119.555776	34.333894	P00166	51001	1	20170130
043112008470	B006	ST00BP00	01560	CRPNTR	19690430	P00166	0	-119.553164	34.334899	-119.556206	34.332600	P00166	51001	1	20170130
043112008500	BA005	ST00BP00	01560	CRPNTR	19690517	P00166	0	-119.553167	34.334913	-119.556185	34.333570	P00166	51001	1	20170123
043112008600	B001	ST00BP00	01560	CRPNTR	19690523	P00166	0	-119.553200	34.335077	-119.556160	34.336471	P00166	51001	1	20170123
043112008700	A041	ST00BP00	01560	CRPNTR	19690524	P00166	0	-119.542525	34.337567	-119.548955	34.336404	P00166	51000	1	20180213

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043112008900	B007	ST00BP00	01560	CRPNTR	19690608	P00166	-119.553140	34.334889	-119.555449	34.334148	P00166	51001	1	20170124
043112008901	B040	ST01BP00	01560	CRPNTR	19791115	P00166	-119.553140	34.334889	-119.555743	34.334530	P00166	51001	1	20170428
043112009000	A040	ST00BP00	01560	CRPNTR	19690609	P00166	-119.542576	34.337769	-119.548756	34.337971	P00166	51000	1	20170125
043112009001	A040	ST01BP00	01560	CRPNTR	20050922	P00166	-119.542576	34.337769	-119.549386	34.340293	P00166	51000	1	20180206
043112009002	A040	ST02BP00	01560	CRPNTR	20051012	P00166	-119.542576	34.337769	-119.549545	34.337142	P00166	51000	1	20170125
043112009100	B009	ST00BP00	01560	CRPNTR	19690607	P00166	-119.553184	34.335009	-119.554912	34.335059	P00166	51001	1	20170126
043112009101	B009	ST01BP00	01560	CRPNTR	20100506	P00166	-119.553184	34.335009	-119.554591	34.335430	P00166	51001	1	20170126
043112009400	A005	ST00BP00	01560	CRPNTR	19690625	P00166	-119.542522	34.337735	-119.541695	34.340540	P00166	51000	1	20170126
043112009401	A043	ST01BP00	01560	CRPNTR	19770724	P00166	-119.542522	34.337735	-119.539446	34.338124	P00166	51000	1	20170126
043112009402	A043	ST02BP00	01560	CRPNTR	19981011	P00166	-119.542522	34.337735	-119.536603	34.339263	P00166	51000	1	20170126
043112009800	B013	ST00BP00	01560	CRPNTR	19690704	P00166	-119.553129	34.334958	-119.553295	34.334983	P00166	51001	1	20170130
043112009801	B016	ST01BP00	01560	CRPNTR		P00166	-119.553129	34.334958	########################		P00166	51001	1	20170130
043112009900	B027	ST00BP00	01560	CRPNTR	19690706	P00166	-119.553201	34.335091	-119.555803	34.337257	P00166	51001	1	20180412
043112010100	A037	ST00BP00	01560	CRPNTR	19690721	P00166	-119.542537	34.337790	-119.546164	34.338729	P00166	51000	1	20170126
043112010101	A044	ST01BP02	01560	CRPNTR	19771212	P00166	-119.542537	34.337790	-119.539868	34.337495	P00166	51000	1	20170126
043112010102	A044	ST02BP00	01560	CRPNTR	19980919	P00166	-119.542537	34.337790	-119.537340	34.339277	P00166	51000	1	20170126
043112010103	A044	ST03BP00	01560	CRPNTR	19980927	P00166	-119.542537	34.337790	-119.537327	34.339128	P00166	51000	1	20170126
043112010170	A044	ST01BP00	01560	CRPNTR	19771117	P00166	-119.542537	34.337790	-119.542058	34.337223	P00166	51000	1	20170126
043112010171	A044	ST01BP01	01560	CRPNTR	19771210	P00166	-119.542537	34.337790	-119.542512	34.337752	P00166	51000	1	20170126
043112010200	B010	ST00BP00	01560	CRPNTR	19690716	P00166	-119.553117	34.334892	-119.554140	34.333062	P00166	51001	1	20170130
043112010201	B035	ST01BP01	01560	CRPNTR	19790514	P00166	-119.553117	34.334892	-119.553191	34.334723	P00166	51001	1	20190123
043112010270	B035	ST01BP00	01560	CRPNTR	19790423	P00166	-119.553117	34.334892	-119.553132	34.334554	P00166	51001	1	20170919
043112010700	B012	ST00BP00	01560	CRPNTR	19690718	P00166	-119.553138	34.335002	-119.553361	34.336126	P00166	51001	1	20170620
043112011000	B016	ST00BP00	01560	CRPNTR	19690621	P00166	-119.553153	34.334955	-119.551991	34.335400	P00166	51001	1	20170117
043112011001	B016	ST01BP00	01560	CRPNTR	20100313	P00166	-119.553153	34.334955	-119.553710	34.336166	P00166	51001	1	20170117
043112011100	B017	ST00BP00	01560	CRPNTR	19690726	P00166	-119.553121	34.334906	-119.552439	34.333671	P00166	51001	1	20171107
043112011200	B015	ST00BP00	01560	CRPNTR	19690730	P00166	-119.553173	34.335067	-119.552508	34.336986	P00166	51001	1	20170117
043112011500	B008	ST00BP00	01560	CRPNTR	19690620	P00166	-119.553170	34.335053	-119.554757	34.335743	P00166	51001	1	20170113
043112011700	B022	ST00BP00	01560	CRPNTR	19690805	P00166	-119.553153	34.334968	-119.550158	34.336380	P00166	51001	1	20170117
043112011701	B037	ST01BP00	01560	CRPNTR	19790928	P00166	-119.553153	34.334968	-119.551148	34.335753	P00166	51001	1	20170117
043112011702	B037	ST02BP00	01560	CRPNTR	20100208	P00166	-119.553153	34.334968	-119.551443	34.337084	P00166	51001	1	20170118
043112011800	A036	ST00BP00	01560	CRPNTR	19691008	P00166	-119.542580	34.337783	-119.547791	34.338686	P00166	51000	1	20170113
043112012200	B011	ST00BP00	01560	CRPNTR	19690819	P00166	-119.553177	34.335081	-119.554106	34.337882	P00166	51001	1	20170112
043112012300	A039	ST00BP00	01560	CRPNTR	19690810	P00166	-119.542545	34.337807	-119.542545	34.337807	P00166	51000	1	20170620
043112013300	B019	ST00BP00	01560	CRPNTR	19690820	P00166	-119.553133	34.334972	-119.550545	34.335007	P00166	51001	1	20170111
043112013400AA039		ST00BP00	01560	CRPNTR	19690812	P00166	-119.542561	34.337800	-119.542884	34.339880	P00166	51000	1	20170130
043112013401	A049	ST01BP00	01560	CRPNTR	19780821	P00166	-119.542561	34.337800	-119.540730	34.338267	P00166	51000	1	20170130
043112013402	A049	ST01BP01	01560	CRPNTR	19980831	P00166	-119.542561	34.337800	-119.536812	34.339337	P00166	51000	1	20170130
043112013500	A042	ST00BP00	01560	CRPNTR	19690901	P00166	-119.542510	34.337510	-119.542809	34.324841	P00166	51000	1	20170110
043112013501	A050	ST01BP00	01560	CRPNTR	19790204	P00166	-119.542510	34.337510	-119.539902	34.337841	P00166	51000	1	20180629
043112013502	A050	ST02BP00	01560	CRPNTR		P00166	-119.542510	34.337510	########################		P00166	51000	1	20200609
043112013600	B021	ST00BP00	01560	CRPNTR	19690831	P00166	-119.553150	34.335070	-119.550717	34.337210	P00166	51001	1	20170112
043112013601	B021	ST01BP00	01560	CRPNTR		P00166	-119.553150	34.335070	########################		P00166	51001	1	20180828
043112013700	B023	ST00BP00	01560	CRPNTR	19690831	P00166	-119.553144	34.334914	-119.549541	34.334627	P00166	51001	1	20170105
043112013800	B029	ST00BP00	01560	CRPNTR	19690912	P00166	-119.553129	34.334944	-119.548005	34.336255	P00166	51001	1	20170105
043112013801	B029	ST00BP01	01560	CRPNTR	19801020	P00166	-119.553129	34.334944	-119.548068	34.336211	P00166	51001	1	20170105
043112013900	B028	ST00BP00	01560	CRPNTR	19690914	P00166	-119.553205	34.335107	-119.556072	34.338167	P00166	51001	1	20170718
043112014400	B026	ST00BP00	01560	CRPNTR	19690924	P00166	-119.553121	34.334917	-119.547440	34.335350	P00166	51001	1	20170105
043112014401	B038	ST01BP00	01560	CRPNTR	19800109	P00166	-119.553121	34.334917	-119.549449	34.336587	P00166	51001	1	20170105
043112014402	B038	ST02BP00	01560	CRPNTR		P00166	-119.553121	34.334917	########################		P00166	51000	1	20170721
043112014500	B030	ST00BP00	01560	CRPNTR	19690927	P00166	-119.553154	34.335084	-119.550275	34.337675	P00166	51001	1	20190123
043112014600	B031	ST00BP00	01560	CRPNTR	19691006	P00166	-119.553155	34.334845	-119.555985	34.330993	P00166	51001	1	20170104
043112014800	B018	ST00BP00	01560	CRPNTR	19691012	P00166	-119.553150	34.335057	-119.551374	34.336502	P00166	51001	1	20170105
043112029900	B032	ST00BP00	01560	CRPNTR	19740523	P00166	-119.553192	34.335036	-119.554026	34.337990	P00166	51001	1	20161221
043112037700	A052	ST00BP01	01560	CRPNTR	19781109	P00166	-119.542503	34.337670	-119.536562	34.338833	P00166	51000	1	20161223
043112037701	A052	ST01BP00	01560	CRPNTR	20050212	P00166	-119.542503	34.337670	-119.537276	34.339347	P00166	51000	1	20170621
043112037770	A052	ST00BP00	01560	CRPNTR	19781017	P00166	-119.542503	34.337670	-119.536483	34.339038	P00166	51000	1	20161223
043112037800	A053	ST00BP00	01560	CRPNTR	19790218	P00166	-119.542541	34.337718	-119.548123	34.337001	P00166	51000	1	20170621
043112037801	A053	ST01BP00	01560	CRPNTR	20060428	P00166	-119.542541	34.337718	-119.546173	34.337594	P00166	51000	1	20180412
043112039700	B033	ST00BP00	01560	CRPNTR	19790727	P00166	-119.553188	34.335023	-119.555859	34.336316	P00166	51001	1	20161223
043112040300	B036	ST00BP00	01560	CRPNTR	19791211	P00166	-119.553176	34.334968	-119.555810	34.335753	P00166	51001	1	20161220
043112041000	B039	ST00BP00	01560	CRPNTR	19800325	P00166	-119.553178	34.335094	-119.554560	34.336766	P00166	51001	1	20161223
043112041900	B046	ST00BP00	01560	CRPNTR	19800511	P00166	-119.553182	34.335108	-119.555755	34.336960	P00166	51001	1	20180309
043112042300	B043	ST00BP00	01560	CRPNTR	19800625	P00166	-119.553142	34.335016	-119.550097	34.335809	P00166	51001	1	20161216
043112042301	B043	ST01BP00	01560	CRPNTR		P00166	-119.553142	34.335016	########################		P00166	51000	1	20170719
043112042800	B045	ST00BP00	01560	CRPNTR	19800828	P00166	-119.553148	34.334930	-119.551969	34.335152	P00166	51001	1	20170706

Exhibit 6

The State Lands Commission terminated three offshore oil and gas leases and a pipeline right of way lease

Jun 28, 2019 | Oil and Gas, Press Release

Sacramento, CA –The State Lands Commission terminated three offshore oil and gas leases and a pipeline right of way lease today.

Over the past few years, the Commission has sought to compel Carone Petroleum Corporation and Signal Hill Services Inc., state lessees, to pay rent and maintain a sufficient bond for their respective leases. The failure to bring their rent current or to provide sufficient bonding resulted in today's termination action.

"The State Lands Commission's primary responsibility is to protect the public's interest in over 5 million acres of state lands. Today's action affirms that the Commission will always hold lessees accountable to the required standards of lease agreements, particularly when it comes to offshore oil drilling," said Lieutenant Governor and Commission Chair Eleni Kounalakis.

The oil and gas leases, located offshore Carpinteria in Santa Barbara County, have not been in production since 1992 and with their termination almost 4000 acres of tide and submerged lands are returned to California's Coastal Sanctuary. The oil and gas leases have no infrastructure on state land to remove. The pipelines within the right of way lease were operational and transported hydrocarbons and produced water from Platform Hogan in federal waters to shore.

The Commission consulted with the Bureau of Safety and Environmental Enforcement before terminating the leases. Carone has two federal leases and had once planned to use Platform Hogan, located in federal waters offshore Santa Barbara, to drill oil from its state leases.

"These lease terminations demonstrate the Commission's steadfast commitment to protecting natural resources and public lands. We will continue to ensure lessees uphold their obligations to the people of California," said State Controller and Commissioner Betty T. Yee.

The Commission appreciates the impacted employees integrity, commitment to safety and environmental protection, and professionalism. Today's actions are solely a result of Carone Petroleum Corporation and Signal Hill Services, Inc. failure to comply with their lease obligations. Staff reports related to the Commission's actions, agenda items 98 and 99, are here.

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PART II

FEDERAL REGISTER

VOLUME 19 NUMBER 248

Washington, Thursday, December 23, 1954

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

EDITORIAL REVISION OF REGULATIONS

The following constitutes an editorial revision of the regulations in Subtitle A, and the regulations of the Bureau of Land Management, comprising Chapter I of Title 43 of the Code of Federal Regulations. The objectives of the revision have been so far as feasible to eliminate obsolete material and material relating solely to internal departmental procedure and to change the nomenclature of the various officers and offices referred to in the regulations so as either to conform to the present organization of the Department of the Interior or to recognize the flexibility of that organization. It is the Department's intent in this revision to make no substantive changes in the regulations, and it is made at this time in order to ensure that the bound 1954 edition of 43 CFR is as up to date as possible. The revision is hereby approved.

CLARENCE A. DAVIS,
Acting Secretary of the Interior

PART 1—PRACTITIONERS

A numerical list of the parts of Subtitle A and Chapter I of Title 43, showing the pages on which they begin, appears at the end of this Part II.

AUTHORITY: §§ 1.1 to 1.14 issued under sec. 5, 23 Stat. 101; 5 U. S. C. 493.

§ 1.1 *Purpose.* This part is prescribed to govern practitioners representing parties in proceedings before the Department of the Interior.

§ 1.2 *Definitions.* As used in this part, unless the context or subject matter otherwise requires:

(a) "Committee" means the Committee on Practitioners.

(b) "Department" includes not only the Office of the Secretary of the Interior, but also any office of the Department of the Interior, in Washington, D. C., and elsewhere.

(c) "Party" includes applicant, claimant, or anyone whose interests are presented to this Department for adjudication.

(d) "Practitioner" means any individual who under this part may act in a representative capacity in practice before the Department; but no individual while acting exclusively on his own behalf shall be considered a practitioner.

(e) "Practice" relates only to action by practitioners with respect to the process of adjudication.

§ 1.3 *Committee on Practitioners.* A Committee on Practitioners composed of three members is hereby created. The Solicitor of the Department, ex officio, shall be a member of and chairman of the Committee. The other two members, ex officio, shall be the Associate Solicitor, Division of Appeals, and the Assistant Solicitor, Branch of Land Management. The Committee shall, by a majority of those present, act at such times as it may designate or at the call of the chairman, a quorum to consist of two members. Hearings may be held before such persons and at such places and times as the Committee may designate. In administering its functions, the Committee may call upon any agency of the Department for assistance. The Committee may delegate to one of its members or to any employee of the Department authority to pass upon applications for admission and routine matters generally. Except as otherwise specifically provided, the Committee shall administer all functions under this part.

§ 1.4 *Who may practice.* (a) Any individual who has been admitted to practice before the Department or any of its bureaus under any prior regulations and who is in good standing at the effective date of this part will be permitted to practice before the Department under this part.

(b) Any individual who is a member in good standing of the bar of the highest court of a State, Territory or the District of Columbia will be permitted to practice without filing an application for such privilege. However, in the discretion of the Committee, or any hearing officer of the Department as to a particular matter pending before him, an individual claiming such privilege may be required to file a written statement concerning his status as an attorney, his character and repute, and setting forth such other information as may be required of him. The Committee or the hearing officer may permit such individual to practice in a particular matter subject to his filing the required statement and to any subsequent action by the Committee or the Secretary.

(c) Any individual, not admitted to the bar, will be permitted to act as a practitioner in a particular matter if the party he represents is within one of the following groups: (1) a member of his family; (2) a partnership of which he is a member; (3) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (4) the lessee of a mineral lease which is subject to an operating agreement or sublease approved by the Department, which grants to such individual a power of attorney; (5) a Federal, State, district, territorial, or local government or an agency thereof, or a government corporation, or a district or advisory board established pursuant to statute. Where a corporation, business trust, or an association is a party, or a fiduciary within the meaning of subpara-

Forest by the act of March 19, 1948 (62 Stat. 83)

(Sec. 3, 63 Stat, 683; 30 U. S. C. 192c)

CROSS REFERENCE: For regulations under the Mineral Leasing Act for Acquired Lands, see §§ 200.1 through 200.10.

§ 200.32 *Scope.* (a) Except as to the minerals listed in § 200.31, §§ 200.31 through 200.36 apply to the leasing or other disposal of minerals.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U. S. C. 520) Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U. S. C. 401, 403 (a) and 408) the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118) section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781) the act of July 22, 1937 (50 Stat. 522, 525, 530) as amended July 28, 1942 (56 Stat. 725; 7 U. S. C. 1011 (c) and 1018)

(2) In acquired lands, except Indian lands, under the jurisdiction of the bureaus and other agencies of the Department of the Interior, and

(3) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83) which were acquired with funds of the United States, or lands received in exchange therefor.

(b) Leases or permits may be issued, or the minerals otherwise disposed of, only if the Bureau of Land Management is advised by the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, that development of such minerals will not interfere with the primary purpose for which the land was acquired, and any lease, permit or other instrument, granting the right to mine and remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. If, however, there is any disagreement between any of the bureaus or agencies of the Department of the Interior as to leasing any land, or as to the terms or conditions of any proposed lease, the matter shall be submitted to the Secretary by the bureaus or agencies concerned.

(Sec. 3, 63 Stat. 683; 30 U. S. C. 192c)

§ 200.33 *Outstanding mineral permits and leases.* Permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 200.34 *Filing of applications for mineral permits or leases.* Applications for permits or leases may be filed with the Bureau of Land Management, Department of the Interior, Washington 25, D. C., by any citizen of the United States, or corporation organized and existing under the laws of the United States or any State thereof.

§ 200.35 *Terms and conditions of mineral permits and leases.* Prospecting and mining permits shall not exceed 20 years' duration and shall provide for an annual rental payable in advance of not less than 25 cents per acre and a royalty of not less than 2 percent of the value of the minerals after having been brought to the surface of the ground. After production begins, the yearly advance rental shall be credited on the royalty payments for that year. The permit may also require the posting of a bond in an amount to be determined by the Bureau of Land Management. Prospecting may, in the discretion of the appropriate official of the Department, bureau, or agency, having jurisdiction over the lands, be carried on without permit where no structures are to be erected and no substantial excavation or disturbances of the surface will be made. Mineral leases shall be subject to such terms and conditions as may be prescribed in each case by the Bureau of Land Management.

§ 200.36 *Payments and reports.* All payments of rentals and royalties on permits and leases shall be made to the Bureau of Land Management and all reports concerning operations shall be filed with the Director of the Geological Survey.

OIL AND GAS LEASING IN LANDS UNDER RIGHTS-OF-WAY

AUTHORITY: §§ 200.80 to 200.87 issued under sec. 6, 46 Stat. 374; 30 U. S. C. 306.

§ 200.80 *Lands in and under railroad and other rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U. S. C. 301–306) authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

§ 200.81 *Application for lease.* (a) No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas, shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma, in the land office at Santa Fe, New Mexico. Such applications must be filed by the owner of the right-of-way or by his assignee and be accompanied by a filing fee of $10, and, if filed by an assignee, by a duly executed assignment of the right to lease.

(b) The application should detail the facts as to the ownership of the right-of-way, and of the assignment if the application is filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production, and the probability of drainage of the deposits in the right-of-way. Since rights-of-way are of record in the Bureau of Land Management, a description by metes and bounds is not necessary or required, but each legal subdivision through which the portion of the right-of-way desired to be leased extends should be described.

§ 200.82 *Owner of adjoining land allowed to submit bid.* (a) After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on his own motion, the manager of the land office will serve notice on the owner or lessee of the adjoining lands, as provided in section 3 of the act of May 21, 1930 (46 Stat. 374; 30 U. S. C. 303) allowing him 30 days or such other time as may be provided in the notice within which to submit an offer or bid of the amount or percentage of compensatory royalty such owner or lessee will agree to pay for the extraction through wells on his adjoining land of the oil and gas under and from such right-of-way. Notice to the owner of the right-of-way will be given at the same time allowing him opportunity within the same period to submit a bid or offer as to the amount or percentage of royalty he will pay if a lease is awarded to him.

(b) Award of lease to the owner of the right-of-way, or of a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands, will be made to the bidder whose offer is determined to be to the best advantage to the United States, considering the amount of royalty to be received and the better development of the oil and gas deposits in the right-of-way under the respective means of production and operation.

§ 200.83 *Term of lease and of compensatory royalty agreement.* The term of the lease will be for a period of not more than twenty years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 200.84 *Royalties.* The royalty to be charged will be fixed by the Bureau of Land Management, after consideration of all the facts and circumstances in each case, but will not be less than 12½ percent.

§ 200.85 *Form of lease.* The lease issued to the owner of the right-of-way or assignee of such owner will be substantially Form 4–213 modified to conform to the requirements of the law and these regulations.

§ 200.86 *Form of agreement to pay compensatory royalty.* The agreement with the owner or lessee of the adjoining land to pay compensatory royalty for the extraction through wells on his adjoining land of the oil and gas in or under the right-of-way will be substantially Form 4–1036.

§ 200.87 *Form of bond.* The bond required under section 2 (a) of the lease and by the contractor under agreement to pay compensatory royalty, should be substantially Form 4–203g.

CROSS REFERENCE: For operating regulations see 30 CFR Part 221.

PART 201—MINERAL DEPOSITS IN THE OUTER CONTINENTAL SHELF

GENERAL PROVISIONS

Sec.

AUTHORITY: §§ 201.1 to 201.150 issued under sec. 5, 67 Stat. 464; 43 U. S. C. 1334. Interpret or apply secs. 6, 8, 67 Stat. 465, 468; 43 U. S. C. 1335, 1337.

NOTE: Forms referred to in this part may be obtained from the Bureau of Land Management.

GENERAL PROVISIONS

§ 201.1 *Purpose and authority.* The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462) referred to in this part as "the act" among other things, authorizes the Secretary of the Interior to issue on a competitive basis leases for oil and gas, sulphur, and other minerals in submerged lands of the outer Continental Shelf, as defined in section 2 of the act. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands are applicable to the submerged lands of the outer Continental Shelf.

§ 201.2 *Persons qualified to hold leases.* Mineral leases issued pursuant to section 8 of the act may be held only by citizens of the United States over 21 years of age, associations of such citizens, States, political subdivisions of a State, or private, public, or municipal corporations organized under the laws of the United States or of any State or Territory thereof.

§ 201.3 *Leasing maps.* (a) Any area of the outer Continental Shelf which has been appropriately platted as provided in paragraph (b) of this section is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act, unless before any lease is offered or issued the unit is (1) withdrawn from disposition pursuant to section 12 (a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12 (d) of the act.

(b) As the need arises, the Bureau of Land Management will prepare official leasing maps of areas of the outer Continental Shelf, which will be made to conform so far as practicable to the method of tract designation established by the adjoining State. The area included in each mineral lease shall be described in accordance with the official leasing map.

(c) Each oil and gas lease issued pursuant to section 8 of the act shall cover a compact area, which shall not exceed 5,760 acres.

§ 201.4 *Helium.* Each lease issued or continued under the act shall be subject to a reservation by the United States of the ownership of and the right to extract helium from all gas produced from the leased area, subject to such rules and regulations as shall be prescribed by the Secretary of the Interior. In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area in the manner required by the United States, for the extraction of helium in such plant or reduction works for that purpose as the United States may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The United States shall have the right to erect, maintain, and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium.

§ 201.5 *Payments due under lease.* All payments to the United States required by the act or the regulations in this part shall be made to the oil and gas supervisor of the Geological Survey for the region in which the leased area is situated unless otherwise provided by the regulations in this part or directed by the Secretary. All such payments should be made by check, bank draft, or money order payable to the Treasurer of the United States.

COOPERATIVE CONSERVATION PROVISIONS

§ 201.10 *Unit plans, pooling, and drilling agreements.* Section 5 (a) (1) of the act authorizes the Secretary in the interest of conservation to provide for unitization, pooling and drilling agreements. Such agreements may be initiated by lessees or where in the interest of conservation they are deemed necessary they may be required by the Secretary.

§ 201.11 *Application for approval of unit plan.* The procedure for obtaining the approval of a unit plan of development is contained in 30 CFR Part 226, "Unit or Cooperative Agreements" [1] All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey for the region in which the unit area is situated.

§ 201.12 *Pooling or drilling agreements.* (a) With the approval of the Secretary, pooling or drilling agreements may be made between lessees for the purposes of (1) utilizing a common drilling platform to develop adjacent or adjoining leases; (2) permitting operators or pipeline companies to enter into contracts involving a number of leases sufficient to justify operations on a large scale for the discovery, development, production or transportation of oil and gas, sulphur, or other minerals and to finance the same; or (3) for other purposes in the interest of conservation.

(b) A contract submitted for approval under these provisions should be filed with the oil and gas supervisor, together with enough copies to permit retention of 5 copies by the Department after approval. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination and prescribe the conditions on which the contract is approved.

§ 201.13 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, and when it can be shown that no undue interference with operations under existing leases will result, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil or gas in the lands of the outer Continental Shelf, whether or not produced from the outer Continental Shelf. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each

[1] See 30 CFR, Part 226.

case, or, in lieu thereof, for a royalty other than that prescribed in any lease of the area involved when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease of an area used for the storage of oil or gas shall not be deemed to expire during the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands or interests in the lands involved, the parties in interest, including lessees of other mineral interests, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such storage. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

§ 201.14 *Directional drilling.* A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directionally drilling under the leased area through any directional well surfaced on adjacent or adjoining land, and production, drilling, or reworking of any such directional well shall be considered production or drilling or reworking operations (as the case may be) on the leased area for all purposes of the lease.

ISSUANCE OF LEASES

§ 201.20 *Kind and term.* In accordance with the provisions of section 8 of the act, all leases will be issued competitively upon the Department's motion or upon a request describing the area and expressing an interest in leasing a unit or units addressed to the Director, Bureau of Land Management, Washington 25, D. C., hereinafter referred to as the Director, with a copy to the oil and gas supervisor. From time to time the Director may issue calls for the submission of requests for oil and gas or other mineral lease offerings in specified areas. Leases will be awarded to the highest qualified bidder on the basis specified in the notice of lease offer. All oil and gas leases shall be for a term of 5 years and so long thereafter as oil or gas may be produced from the leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted thereon. All sulphur leases shall be for a term of 10 years and so long thereafter as sulphur may be produced from the leased area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon. Other mineral leases shall be for such terms as may be prescribed by the Secretary at the time of offering the leases.

§ 201.21 *Notice of lease offer.* Notice of the offer of lands for lease will be given by publication at the expense of the United States in the FEDERAL REGISTER, as the official publication, and in such other publications as may be authorized and the first publication shall be at least 30 days prior to the date of sale. The notice will set the place, date, and hour at which the bids will be opened. All sealed bids in response to any such notice must be filed at the place, and prior to the time set for opening bids. The notice may contain special conditions which will become part of the lease to be issued.

§ 201.22 *What must accompany bids.* (a) A separate bid must be submitted for each lease unit described in the notice of lease offer. A bid may not be submitted for less than an entire unit. Each bidder must submit with his bid a certified or cashier's check or bank draft on a solvent bank, or a money order or cash, for one-fifth of the amount of the cash bonus. If the bidder is an individual, he must submit with his bid a statement of his citizenship. If the bidder is an association (including a partnership) the bid shall be accompanied also by a certified copy of the articles of association or appropriate reference to the record of the Bureau of Land Management in which such a copy has already been filed, with a statement as to any subsequent amendments. If the bidder is a corporation, the following additional information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the by-laws indicating that the person signing the bid has authority to do so, or, in lieu of such a copy, a certificate by the secretary or the assistant secretary of the corporation to that effect, over the corporate seal or appropriate reference to the record of the Bureau of Land Management in connection with which such articles and authority have been previously furnished.

(b) All bidders are warned against violation of the provisions of Title 18 U. S. C. section 1860, prohibiting unlawful combination or intimidation of bidders.

§ 201.23 *Award of lease.* Following the public opening of the sealed bids as provided for in the notice of lease offer, the authorized officer, subject to his right to reject any and all bids will award the lease to the successful bidder. In the event the highest bids are tie bids, tie bidders may file with the Director within 15 days after notification an agreement to accept the lease jointly, otherwise all bids will be rejected. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for such lease will be considered rejected. Notice of his action will be transmitted promptly to the several bidders. If the lease is awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from his receipt thereof to execute them, pay the first year's rental, the balance of the bonus bid, and file a bond as required in § 201.50. Deposits on rejected bids will be returned. If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the act. If before the lease is executed on behalf of the United States the land is withdrawn or restricted from leasing, all payments made by the bidder will be refunded. If the awarded lease is executed by an agent acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the agent to execute the lease. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed on behalf of the United States, and one fully executed copy will be mailed to the successful bidder.

§ 201.24 *Form.* Oil and gas leases will be issued on Form 4–1255, and sulphur leases on Form 4–1256. Other mineral leases will be issued on such forms as may be prescribed by the Secretary.

§ 201.25 *Dating of leases.* All leases issued under the regulations in this part will be dated and become effective as of the first day of the month following the date the leases are signed on behalf of the lessor, except that, when prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

RENTALS AND ROYALTIES

§ 201.40 *Rentals.* An annual rental shall be due and payable in advance on the first day of each lease year prior to discovery at the rate specified in the lease. The owner of any lease created by the assignment of a portion of a producing lease and on which assigned portion there is no discovery shall be required to pay an annual rental for such assigned portion at the rate per acre specified in the lease payable each lease year following the year in which the assignment became effective and prior to a discovery on such segregated portion.

§ 201.41 *Royalties.* Royalties shall be at the rate specified in the lease but in no event shall the royalty on oil and gas be less than 12½ percent of the amount or value of the production saved, removed or sold from the lease, nor on sulphur less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 201.42 *Minimum royalty.* Each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 201.43 *Compensatory payments, extension of lease.* In the event that an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and in the event that the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking

operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

BONDS

§ 201.50 *Amount of bond required of lessee.* The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $15,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $100,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the outer Continental Shelf in the (a) Gulf of Mexico, (b) along the Pacific Coast or (c) along the Atlantic Coast as may be appropriate. An operator's bond in the same amount may be substituted at any time for the lessee's bond. The United States reserves the right to require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary. The amount of bond coverage on leases for other minerals will be determined at the time of the offer to lease and will be stated in the notice of lease offer.

§ 201.51 *Form of bond.* Bonds furnished by lessee or operator for a single lease will be on Forms 4–1257 and 4–1260. The $100,000 bond will be on Form 4–1258. In place of a surety bond a lessee or operator may furnish his personal bond and deposit therewith United States bonds in a sum equal at their par value to the amount of the surety bond, such personal bonds as to a single lease to be on Forms 4–1261 and 4–1262, and as to areas, Form 4–1259.

ASSIGNMENTS OR TRANSFERS

§ 201.60 *Assignment of leases or interests therein.* Leases, or any undivided interest therein, may be assigned in whole or as to any officially designated subdivision subject to the approval of the authorized officer, to any one qualified under § 201.2 to take and hold a lease. Any assignment made under this section shall, upon approval, be deemed to be effective on and after the first day of the lease month following its filing in the Bureau of Land Management, Washington 25, D. C., unless at the request of the parties an earlier date is specified in the Director's approval. The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

§ 201.61 *Requirements for filing of transfers.* (a) (1) All instruments of transfer of a lease or of an interest therein, including operating agreements, subleases, and assignments of record interests, must be filed in triplicate for approval within 90 days from the date of final execution with a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and must contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests, or payments out of production, may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or sublease signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney in fact to execute the assignment or application and the statement required by § 201.22.

(c) Where an assignment creates a segregated lease a bond must be furnished in the amount prescribed in § 201.50. Where an assignment does not create separate leases the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) In order for the heirs or devisees of a deceased holder of a lease, or any interest therein, to be recognized by the Department as the lawful successor to such lease or interest, evidence of their status as such heirs or devisees must be furnished in the form of a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will, and, in all cases, the statements of the heirs or devisees that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 201.22. In the event such heirs or devisees are unable to qualify to hold the lease or interest they will nevertheless be recognized as the lawful successors of the deceased for a period of not to exceed 2 years from the date of death of their predecessor in interest.

§ 201.62 *Separate assignments required for transfer of record title to leases.* A separate instrument of assignment must be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 201.63 *Effect of assignment of particular tract.* (a) When an assignment is made of all of the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease from the United States in his own name, and the assignment after its approval will be the basis of a new record. Royalty, minimum royalty, and rental provisions of the original lease shall apply separately to each segregated portion.

(b) In the case of an assignment of a portion of an oil and gas lease the segregated leases shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas may be produced from the original leased area in paying quantities or drilling or well reworking operations as approved by the Secretary are conducted thereon.

TERMINATION OF LEASES

§ 201.80 *Relinquishment of leases or parts of leases.* A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the Director's office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to abandon all wells on the land to be relinquished to the satisfaction of the oil and gas supervisor.

§ 201.81 *Cancellation of leases.* Any nonproducing lease issued under the act may be canceled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations in force and effect on the date of the issuance of the lease, if such failure to comply continues for 30 days after mailing of notice by registered letter to the lease owner at his record post office address. Any such cancellation is subject to judicial review as provided in section 8 (j) of the act upon the complaint of any person. Producing leases issued under the act may be canceled for such failure only by judicial proceedings in the manner prescribed in section 5 (b) (2) of the act. Any lease issued under the act, whether producing or not, will be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

SUSPENSION OF OPERATIONS AND PRODUCTION; ROYALTY AND RENTAL RELIEF

§ 201.90 *Suspension of operations and production, royalty and rental relief.* (a) In addition to the provisions of section 12 (c) and (d) of the act, in the event that the Director of the Geological Survey in the interest of conservation directs the suspension of both operations and production with respect to any lease no payment of rental or royalty will be required during the period of suspension; and the term of the lease will be extended by a period equivalent to the period of suspension. In the event that the Director of the Geological Survey assents, at the request of a lessee, to a suspension of both operations and production under a lease or directs or assents to a suspension of operations only or production only, the term of the lease will not be deemed to expire so long as the suspension remains in effect but the lessee will not be relieved of his obligation to pay rental, minimum royalty, or royalty, as the case may be, during the term of suspension. In the event a leased

area contains only a well or wells capable of producing gas in paying quantities but which gas cannot be produced because of the lack of transportation facilities, the Director of the Geological Survey shall, upon application, grant producing relief subject to the conditions of this paragraph for a maximum period not to exceed five years commencing with the lease year beginning on or after the date of discovery, or the effective date of the regulations in this part, whichever is later. Any further suspension will be granted only pursuant to the other provisions of this paragraph. As to leases maintained under section 6 of the act which cover minerals in addition to oil and gas, suspensions may be made separately as to oil and gas or as to any other mineral designated in the suspension, order, or grant.

(b) In order to increase the ultimate recovery of minerals and in the interest of conservation, the Director of the Geological Survey, whenever he determines it necessary to promote development or finds that a lease cannot be successfully operated under the terms provided therein, may reduce the rental, minimum royalty, or royalty on the entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes. An application for any of the above relief shall be filed in triplicate with the Director of the Geological Survey. It must contain the serial number of the lease; the name of the record title holder; a description of the area included in the lease; the number, location, and status of each well that has been drilled; a tabulated statement for each month, covering a period of not less than six months prior to the date of filing the application, of the aggregate amount of minerals subject to royalty computed in accordance with the lease and applicable regulations. Every application must also contain a detailed statement of expenses and costs of operating the entire lease and of the income from the sale of any leased products, and all facts tending to show whether the wells or workings can be successfully operated upon the rental or royalty fixed in the lease. Where the application is for a reduction of royalty, full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid, and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

MINERAL LEASES AFFECTED BY SECTION 6 OF OUTER CONTINENTAL SHELF LANDS ACT

§ 201.110 *Effect of regulations on provisions of lease.* (a) As contemplated by section 6 (b) of the act, the preceding regulations in this part so far as they are applicable and the following regulations will supersede the provisions of any lease which is determined to meet the requirements of section 6 (a) of the act, to the extent that they cover the same subject matter, with the following exceptions: The provisions of a lease with respect to the area covered by the lease, the minerals covered by the lease, the rentals payable under the lease, the royalties payable under the lease (subject to the provisions of sections 6 (a) (8) and 6 (a) (9) of the act) and the term of the lease (subject to the provisions of section 6 (a) (10) of the act and, as to sulphur, subject to the provisions of section 6 (b) (2) of the act) shall continue in effect and, in the event of any conflict or inconsistency, shall take precedence over those regulations.[2]

(b) A lease that meets the requirements of section 6 (a) of the act shall also be subject to all operating and conservation regulations applicable to the outer Continental Shelf, as well as the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way in the outer Continental Shelf, to the extent that those regulations are not contrary to or inconsistent with the provisions of the lease relating to the area covered, the minerals covered, the rentals payable, the royalties payable, and the term of the lease.

§ 201.111 *Leases of other minerals.* The existence of a lease that meets the requirements of section 6 (a) of the act will not preclude the issuance of other leases of the same area for deposits of other minerals: *Provided,* That no lease of minerals other than those covered by the lease shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease: *And provided further,* That no sulphur leases will be granted by the United States on any area while such area is included in a lease covering sulphur under section 6 (b) of the act.

§ 201.112 *Bonds.* Within 30 days from the effective date of the regulations in this part or within such further period or periods as may be fixed from time to time by the authorized officer, the lessee under a lease meeting the requirements of section 6 (a) of the act must furnish a bond as provided in § 201.50.

§ 201.113 *Wells.* (a) After due notice in writing, the lessee shall drill and produce such wells as the Secretary may reasonably require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with good operating practice.

(b) At the election of the lessee, the lessee may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the area, field, or pool in which the leased area or any part thereof is situated, which is authorized or sanctioned by applicable law or by the Secretary.

(c) The lessee shall drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the oil and gas supervisor, to pay a sum determined by the supervisor as adequate to compensate the lessor for failure to drill and produce any such well. In the event that this lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of this lease.

§ 201.114 *Inspection.* The lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of the Department of the Interior, the leased area and all wells, improvements, machinery and fixtures thereon and all books, accounts, maps and records relative to operations and surveys or investigations on or with regard to the leased area or under the lease.

§ 201.115 *Diligence; compliance with regulations and orders.* The lessee shall exercise reasonable diligence in drilling and producing the wells herein provided for; shall carry on all operations in accordance with approved methods and practices including those provided in the operating and conservation regulations for the outer Continental Shelf; shall remove all structures when no longer required for operations under the lease to sufficient depth beneath the surface of the waters to prevent them from being a hazard to navigation and the fishing industry; and shall carry out at expense of the lessee all lawful and reasonable orders of the lessor relative to the matters in this section. On failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided,* That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 201.116 *Freedom of purchase.* The lessee shall accord all workmen and employees directly engaged in any of the operations under the lease complete freedom of purchase.

§ 201.117 *Purchase of production.* In time of war, or when the President of the United States shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12 (b) of the act.

§ 201.118 *Suspension of operations during war or national emergency.* Upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, the Secretary is authorized to suspend any or all operations under a lease, as provided in section 12 (c) of the act: *Provided,* That just compensation shall be paid by the United States to the lessee whose operations are thus suspended.

§ 201.119 *Restriction of exploration and operations.* The United States shall have the right, as provided in section 12 (d) of the act, to restrict from exploration and operations the leased area or any part thereof which may be designated by and through the Secretary of

[2] Nothing herein should be construed to waive compliance with any provision of any State lease the subject matter of which is not covered in the regulations in this part.

Defense, with the approval of the President of the United States, as, or as part of, an area of the outer Continental Shelf needed for national defense. So long as such designation remains in effect no exploration or operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under any lease within any such restricted area shall be suspended, any payments of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

§ 201.120 *Geological and geophysical exploration, rights-of-way.* The United States reserves the right to authorize the conduct of geological and geophysical exploration in the leased area which does not interfere with or endanger actual operations under the lease and the right to grant such easements or rights-of-way, upon, through, or in the leased area as may be necessary or appropriate to the working of other lands containing the deposits described in the act, and to the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes, subject to the provisions of section 5 (c) of the act where they are applicable and to all lawful and reasonable regulations and conditions prescribed by the Secretary thereunder.

§ 201.121 *Leases of sulphur and other mineral.* The United States reserves the right to grant sulphur leases and leases of any mineral other than oil, gas, and sulphur within the leased area or any part thereof, subject to the provisions of sections 8 (c) 8 (d) and 8 (e) of the act and all lawful and reasonable regulations prescribed by the Secretary thereunder: *Provided,* That no such sulphur lease or lease of other mineral shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the lease which is continued under section 6 of the act.

§ 201.122 *Removal of property on termination of lease.* Upon the expiration of any lease, or the earlier termination thereof as provided in the regulations in this part, the lessee shall within a period of one year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing other leases, and other property permitted by the lessor to be maintained.

§ 201.123 *Remedies in case of default.* (a) Whenever the lessee fails to comply with any of the provisions of the act or of the lease or of the lawful and reasonable regulations issued within 90 days after the authorized officer has determined that the lease meets the requirements of section 6 (a) of the act, the lease shall be subject to cancellation as follows:

(1) If, at the time of such default, no well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands the lease may be cancelled by the Secretary (subject to the right of judicial review as provided in section 8 (j) of the act) if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(2) If, at the time of such default, any well is producing, or is capable of producing, oil or gas in paying quantities from the leased area, whether such well be drilled from a surface location within the leased area or be directionally drilled from a surface location on adjacent or adjoining lands, the lease may be cancelled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4 (b) of the act if such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address.

(b) If any such default continues for the period of 30 days after mailing of notice by registered letter to the lessee at the lessee's record post office address, the lessor may then exercise any legal or equitable remedy which the lessor may have; however, the remedy of cancellation of the lease may be exercised only under the conditions and subject to the limitations set out in paragraph (a) of this section, or pursuant to section 8 (i) of the act.

(c) A waiver of any particular default shall not prevent the cancellation of the lease or the exercise of any other remedy the lessor may have by reason of any other cause or for the same cause occurring at any other time.

§ 201.124 *Heirs and successors in interest.* Each obligation under any lease and under the regulations in this part shall extend to and be binding upon, and every benefit thereunder shall inure to, the heirs, executors, administrators, successors, or assigns of the lessee.

APPEALS

§ 201.150 *Appeals.* Any person aggrieved by any action taken under this part has the right of appeal to the Secretary of the Interior in accordance with the conditions and limitations provided in §§ 221.73 to 221.76 of this chapter. Nothing contained in this part shall be construed to prevent any interested party from seeking judicial review as authorized by law.

SUBCHAPTER M—NATIONAL FORESTS, NATIONAL PARKS, AND NATIONAL MONUMENTS

PART 205—NATIONAL FORESTS

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL FORESTS

CANCELLED ENTRIES WITHIN NATIONAL FORESTS

EXCEPTION IN FINAL CERTIFICATE AND PATENT OF TELEPHONE LINES, ROADS, TRAILS, BRIDGES, ETC. MAINTAINED AND OPERATED BY THE UNITED STATES UPON THE PUBLIC LANDS, INCLUDING NATIONAL FOREST LANDS

AUTHORITY: §§ 205.1 to 205.13 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For Indian allotments in national forests, see § 176.15 of this chapter. For mining claims in national forests, see § 185.33 of this chapter. For national forest homesteads, see Part 170 of this chapter. For Forest Service, Department of Agriculture, see Parks and Forests, 36 CFR Chapter II. For forest regulations of the Bureau of Indian Affairs, see Indians, 25 CFR Parts 61 to 64. For National Park Service, Department of the Interior, see Parks and Forests, 36 CFR Chapter I.

PROCEDURE ON APPLICATION OR PROOF FOR LANDS WITHIN NATIONAL FORESTS

§ 205.1 *Showing required with application alleging settlement prior to establishment of forest.*[1] When a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the manager will require such person to file with his application a statement in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the statement, in duplicate, of at least one disinterested person, corroborating the statement. The manager will immediately forward the duplicate of such statements to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

pursuant to paragraph (b)(1) of this section, the Federal Government or such State, as the case may be, may not raise as a defense any claim of sovereign immunity, or any claim that the employee who revealed the privileged or proprietary data or information which is the basis of such suit was acting outside the scope of the person's employment in revealing such data or information.

(c) If the Director finds that any State cannot or does not comply with the conditions described in the agreement entered into pursuant to paragraph (a)(4) of this section, the Director shall thereafter withhold transmittal and deny access for inspection of privileged or proprietary data or information to such State until the Director finds that such State can and will comply with those conditions.

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

Subpart A—Outer Continental Shelf Minerals and Rights-of-Way Management, General

Subpart B—Oil and Gas Leasing Program

Subpart C—Reports From Federal Agencies

Subpart D—Call for Information and Nominations

Subpart E—Area Identification and Tract Size

Subpart F—Lease Sales

Subpart G—Issuance of Leases

Subpart H—Rentals and Royalties—[Reserved]

Subpart I—Bonding

Subpart J—Assignments, Transfers, and Extensions

Subpart K—Termination of Leases

Subpart L—Section 6 Leases

Subpart M—Studies

AUTHORITY: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the

default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

(g) With the approval of the Secretary, the Director may provide at the time of the notice of lease sale that (1) the successful bidder for a lease where payment of any part of the cash bonus has been deferred pursuant to 43 U.S.C. 1337(a)(2), as implemented by 30 CFR 256.32(d), shall furnish the authorized officer a corporate surety bond in the amount of the cash bonus deferred conditioned on payment of the cash bonus deferred according to the notice of lease sale; and (2) the high bidder for a lease where the decision to accept the high bid has been deferred, pursuant to 43 U.S.C. 1337(a)(1), as implemented by 30 CFR 256.47(e)(2), shall furnish the authorized officer a corporate surety bond in the amount of the bid not already remitted, conditioned on payment of the yet to be remitted amount after the bidder has been notified that his high bid has been accepted, within the time specified in the notice of lease sale.

[44 FR 38276, June 29, 1979. Redesignated at 47 FR 47006, Oct. 22, 1982, and amended at 50 FR 47378, Nov. 18, 1985]

§ 256.59 Form of bond.

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form approved by the Director.

[50 FR 47379, Nov. 18, 1985]

§ 256.61 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

Subpart J—Assignments, Transfers, and Extensions

§ 256.62 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 256.35(b) of this part to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 256.44(c) of this part that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the MMS, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

§ 256.64 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
WASHINGTON, DC 20240

Exhibit 9

JUN 6 1988

Mr. Jackson M. Cooley,
Attorney at Law
Amoco Production Company
P.O. Box 50879
New Orleans, Louisiana 70150

Dear Mr. Cooley:

We are responding to your letter dated April 26, 1988, in which you requested a written position from the Minerals Management Service (MMS) regarding responsibilities of a lessee-assignor and the lessee-assignee after a complete assignment is effective.

The departmental regulations are clear regarding the assignment of oil and gas leases issued pursuant to section 8 of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1337). These regulations provide that "[s]ubject to the approval by the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under §256.35(a) of this part to hold a lease." 30 CFR §256.62. The departmental regulations applicable to the assignment of OCSLA oil and gas leases also correctly describe the liabilities for lease obligations which are chargeable to the assignor (Id. §256.62(d)) and the assignee (Id. §256.62 (e)). The regulations are very explicit, stating that the assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment and that the assignee shall be liable for all obligations under the lease subsequent to the effective date of the assignment.

It is our position that if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions.

GULF OF MEXICO OCS REGION
MMS
JUN 09 1988
OFFICE OF THE REGIONAL DIRECTOR

In summary, upon approval of an assignment, the assignee assumes the rights and obligations of the assignor prospectively from the data of approval.

If you have any further questions, please feel free to contact Carolita Kallaur at (202) 343-3504.

Sincerely,

(SGD) WM. D. BETTENBERG

Director

cc: MMS General File
Director Chron
AS/LM(2)
AD/OMM
Offshore Chron (1)(2)
Official OIMD RF
SOL-Leggette\Hoese (2)
BSA RF & Hold
LMS:RSchwager:cc:5/9/88:343-5121
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UNITED STATES DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

NTL No. 93-2N October 6, 1993

NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES IN THE OUTER CONTINENTAL SHELF

Liability of Assignors, Assignees, and Colessees for Plugging of Wells and Removal of Property on Termination of an Outer Continental Shelf Oil and Gas Lease

This Notice to Lessees and Operators (NTL) is provided pursuant to the authority prescribed in 30 CFR §§ 250.4, Jurisdiction, and 256.1, Purpose. This NTL is also based upon the provisions of 30 CFR § 250.8, Designation of operator; 30 CFR Part 250, Subpart G, Abandonment of Wells, particularly provisions of §§ 250.110, General requirements, 250.112, Permanent abandonment, 250.114, Site clearance verification, and 250.143, Platform removal and location clearance; 30 CFR § 256.62, Assignment of leases or interests therein; and section 22 of the lease agreement which pertains to removal of property on termination of the lease.

Recent efforts by OCS lessees and operators seeking protection under Federal bankruptcy laws have resulted in colessees and previous lessees (assignors) being called upon to perform obligations that the designated operator or assignee was obliged to undertake under 30 CFR § 256.62(e), such as plugging lease wells.

The governing rules, including 30 CFR § 256.62, which were promulgated originally by *Federal Register* Notice dated June 29, 1979 (44 FR 38276), provide in subsection 256.62(d) and (e) that—

> "(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment."
>
> "(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act."

The obligations to plug and abandon wells, remove platforms and other facilities, and to clear the seafloor of obstructions accrue when a well is drilled or used, a platform or other facility is installed or used, or an obstruction is created. These obligations continue until the procedures specified in 30 CFR Part 250, Subpart G, Abandonment of Wells, are followed.

Following MMS approval of the assignment of an OCS oil and gas lease, the assignor continues

to be liable to DOI/MMS for the performance of these obligations with respect to wells, structures, or obstructions in existence and not plugged or removed at the time of the assignment.

The assignor and assignee may enter into agreements assigning responsibility for performance of lease abandonment and clearance, but Federal regulations rather than such agreements govern responsibility to DOI/MMS.

The MMS looks first to the designated operator to perform these obligations. Should the operator be unable to perform the lessee's obligations to plug and abandon wells, remove platforms and other facilities, and clear the seafloor of obstructions, MMS will normally require any or all of the lessee(s) to perform the activities necessary to bring about compliance. If there is no lessee able to perform, MMS will require prior lessees who held the lease during or after the time when the facilities were installed or the obstructions created to perform those functions. The MMS is not authorized or funded to assume responsibility for these obligations.

10/6/93
Date

(Sgd.) Tom Fry
Director, Minerals Management Service

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
WASHINGTON, DC 20240

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OFFICE OF THE REGIONAL DIRECTOR
GULF OF MEXICO OCS REGION

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Exhibit 11

Memorandum

To: Regional Director, Gulf of Mexico OCS Region

From: Associate Director for Offshore Minerals Management

Subject: Responsibility of Assignors and Assignees

In a memorandum dated September 19, 1989, your office questioned the correctness of the Director's interpretation of 30 CFR 256.62(d) and (e) which was transmitted to Amoco Production Company (Amoco) in a letter dated June 6, 1988. That letter stated:

> It is our position that if the assignee is unable to fulfill its obligations to plug and abandon wells and remove facilities, that Interior will not proceed against the original lessee-assignor to perform those functions.

Your memorandum expressed the belief that the correct interpretation of 30 CFR 256.62(d) and (e) would hold that:

> . . . the assignor is responsible for the plugging and abandonment of wells and removal of facilities installed prior to assignment in the event of default by an assignee.

Reconsideration of the Director's interpretation of 30 CFR 256.62(d) and (e) was requested in your September 19, 1989, memorandum. You also expressed the following questions as concerns.

> 1. To whom will Minerals Management Service (MMS) turn for fulfillment of lease clearance obligations in the event of the default of an assignee?
>
> 2. What can MMS do to prevent the wholesale transfer of numerous properties, each burdened with extensive abandonment responsibilities, on to what in effect may turn out to be "dummy" companies relative to their ability to deal with responsibilities MMS has allowed them to absorb?

While we understand your interest in seeing a different interpretation placed on the provisions of 30 CFR 256.62(d) and (e), we must reaffirm the position expressed in the Director's letter dated June 6, 1988, to Amoco.

Once the Secretary's designee unconditionally approves the assignment of a lease, the assignee must be looked to for the fulfillment of "all" obligations under the lease. Thus, MMS faces the same situation when a subsequent lessee

(assignee) defaults in an obligation as it would face if the original lessee defaults in an obligation.

In order to prevent the wholesale transfer of numerous properties, each burdened with extensive abandonment responsibilities, onto lessees who are financially incapable of dealing with those responsibilities, MMS officials must recognize their responsibility to disapprove lease assignments to persons incapable of demonstrating financial competence. It may be necessary, in some instances, for the current lessee to remove certain facilities prior to the approval of the assignment. For leases containing wells and other facilities that may involve substantial abandonment expense, the assignor may choose to agree in writing to remain liable for the abandonment of all wells and facilities and the clearance of well and platform sites. In such cases, since the ultimate responsibility has been retained by the assignor, it would be appropriate to require the assignor to continue to maintain such bonds as may be required by MMS for the lease in question. To guard against issues of liability that might arise during abandonment, it must be clear that the assignor has retained responsibility for abandonment or clearance actions voluntarily as a term of the lease assignment transaction in consideration of other benefits gained from the assignment.

A Notice of Proposed Rulemaking (NPR) that would specifically require additional bond coverage under 30 CFR 256.61 when a lessee submits an Exploration Plan and again when a lessee submits a Development and Production Plan or a Development Operations Coordination Document has been prepared for recommendation to the Director. If the Director and the Assistant Secretary for Land and Minerals Management approve that proposal, the NPR could be published in the Federal Register before the end of the year.

Exhibit 12

8–27–93
Vol. 58 No. 165
Pages 45231–45408

federal register

Friday
August 27, 1993

Briefings on How To Use the Federal Register
For information on briefings in Atlanta, GA, and Washington, DC, see announcement on the inside cover of this issue.

§ 216.54 Oil and Gas Operations Report.

Every operator of an OCS lease or federally-approved offshore agreement and any operator of an onshore Federal or Indian lease or federally-approved agreement that has elected to report production on an Oil and Gas Operations Report (Form MMS–4054) instead of the Form MMS–3160 (see § 216.50(c)(2)) must file a Form MMS–4054 each month as long as there exists at least one well that is not permanently plugged and abandoned. A completed Form MMS–4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported, until the lease or agreement is terminated, or the last well is permanently plugged or abandoned and all inventory is disposed of, or until omission of the report is authorized by MMS.

9. Section § 216.55, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.55 Gas Analysis Report.

Any operator of an OCS lease or federally-approved agreement and, upon request by MMS, any operator of an onshore Federal or Indian lease or federally-approved agreement, from which gas is sold or is transferred for processing prior to the point of royalty computation, must file a Gas Analysis Report (Form MMS–4055) for each sales or transfer meter. The form is due at least twice a year; once in the first 6 months of the calendar year, and once in the last 6 months of the calendar year, but may be submitted monthly, or as specified by the gas sales contract terms, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies. All reports must be submitted by August 15th for any sales/transfers occurring in the first 6 months of the calendar year and February 15th of the following year for any sales/transfers occurring in the second 6 months of the calendar year.

10. Section 216.56, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.56 Gas Plant Operations Report.

The operator of each gas plant that processes gas that originates from an OCS lease or federally-approved agreement and, upon request by MMS, the operator of a gas plant that processes gas from an onshore Federal or Indian lease or federally-approved agreement, prior to the point of royalty computation, must file a Gas Plant Operations Report (Form MMS–4056) for each calendar month, beginning with the month in which processing of gas is initiated, on or before the 15th day of the second month following the month being reported. The report must show 100 percent of the gas. If a plant no longer processes gas that originated from a Federal or Indian lease, or federally-approved agreement, prior to the point of royalty computation and has not processed such gas for 6 months or more, the operator of the gas plant is not required to file a Gas Plant Operations Report until the plant again produces such gas. The operator of the gas plant must notify MMS, in writing, when such gas has not been processed for 6 months or longer.

11. Section 216.58 under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.58 Production Allocation Schedule Report.

(a) Any operator of an offshore Facility Measurement Point (FMP) handling production from a Federal lease or federally-approved agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination must file a Production Allocation Schedule Report (Form MMS–4058). This report is not required whenever all of the following conditions are met:

(1) All leases involved are Federal leases;

(2) All leases have the same fixed royalty rate;

(3) All leases are operated by the same operator;

(4) The facility measurement device is operated by the same person as the leases/agreements;

(5) Production has not been previously measured for royalty determination; and

(6) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.

(b) A completed Form MMS–4058 must be filed for each calendar month, beginning with the month in which handling of production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

[FR Doc. 93–20759 Filed 8–26–93; 8:45 am]
BILLING CODE 4310–MR–M

30 CFR Part 256

RIN 1010–AB38

Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the surety bond provisions. Although this final rule applies to all OCS leases, the new levels of required minimum bond coverage are designed primarily to address lease abandonment and cleanup on producing leases in shallow water from 0 to 200 feet. The level of bond coverage required on the remaining leases will be addressed on a case-by-case basis pursuant to § 256.61, Additional bonds. This rule is being promulgated to assure that lessees have the financial capacity to carry out their obligations, e.g., to properly plug and abandon wells, remove platforms, and clear the well or platform site of obstructions.

EFFECTIVE DATE: November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: This final rule establishes a three-tier approach to bond coverage requirements for OCS oil and gas leases and postlease operations similar to the one proposed in the notice of proposed rulemaking (NPR) that was published on January 24, 1990 (55 FR 2388). This approach provides a transition period for implementation of the new bond requirements by retaining the current level of bond coverage for leases until such time as there is a change in lease activity or ownership. The increased bond coverage will be required when an Exploration Plan (EP) or a significant revision to an approved EP, a Development and Production Plan (DPP) or a significant revision to an approved DPP, a Development Operations Coordination Document (DOCD), or a significant revision to an approved DOCD, or a request for assignment of a lease is submitted to the Minerals Management Service (MMS) for approval. The final rule also allows a lessee or operator to submit a bond in an amount less than the amount prescribed by the rule for individual leases when the authorized officer agrees with the lessee's (operator's) showing that well abandonment, platform removal, and site clearance costs for the lease will be less than the amount of the lease bond coverage

($200,000 to $500,000) specified in this final rule.

The title of part 256 has been changed to Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf to reflect the subject matter contained therein. Part 256 no longer addresses rights-of-way, and the leasing of OCS minerals other than oil, gas, and the sulphur is governed by the provision of 30 CFR part 281. Changes have also been made in the text of the rule, as issued, to clarify the intent of the new rule and to retain certain aspects of the current rule that were omitted from the proposed rule (e.g., the final rule retains the provision that permits a lessee to maintain a $300,000 areawide bond if it only holds leases that have had no exploration or development and production activity proposed).

Provisons of the Final Rule

The objective of this rulemaking is to identify the appropriate level(s) of bond coverage required of OCS lessees. The level of coverage should reflect an appropriate balance between encouraging the maximum economic recovery of natural gas and oil from Federal offshore leases while providing the Federal Government with an adequate level of protection in the event lessees default in their obligations to properly abandon lease wells, remove platforms and other structures, and clear the seafloor around the well and platform site of debris and other obstructions to alternate uses.

The 1985 Marine Board of the National Research Council study entitled "Disposal of Offshore Platforms," estimated the removal costs for structures in 20 feet or less of water (includes some older structures in up to 50 feet of water) to range from $50,000 to $400,000 while the costs of removing structures in water depths between 20 feet (in some instances 50 feet) and 100 feet were estimated to range between $600,000 and $1.3 million. The removal costs of structures in water depths of 100 to 200 feet were estimated to range between $1 million and $2.5 million.

The total costs for platform removal, well abandonment, and site clearance can vary significantly among individual leases because of differences in the number of structures, number and depth of wells, water depth, and other factors. The MMS estimates the average cost for removing all structures and clearing entire lease sites in shallow water (0 to 200 feet) in the Gulf of Mexico (GOM) to be: (0 to 50 feet)—$3.2 million, (51 to 100 feet)—$2.6 million, (101 to 200 feet)—$3.9 million. The MMS estimates the same work in deep water (more than 201 feet) to be (201 to 400 feet)—$8.8 million, (more than 401 feet)—$21 to over $90 million.

The surety bond requirements of this rule balance the Government's need for a greater degree of protection against the costs and disincentives to additional production that higher surety bonds would impose. The requirements do not seek to require surety bond levels that would cover each individual lease's full liabilities in all cases, since it is expected that in many cases the wells and associated structures on a lease would not all stop being economically producible at the same time. Thus, it is expected that the lessee typically will have some funds available to cover part or all of its potential liability. The MMS regulations at 30 CFR part 250, subparts G and I, and other MMS requirements make it clear that lessees are responsible for all removal, plugging and abandonment, and site clearance costs—the level of bond coverage does not provide a ceiling for lessee obligations and responsibilities.

The findings of the National Research Council study combined with more recent lessee provided information concerning actual well-abandonment costs and site cleanup costs provided general guidelines for revising the levels of bond coverage required without causing an unnecessary burden on offshore lessees and operators.

The new, basic surety bond amounts established by this final rule will provide an effective mechanism to give greater assurance of the financial capability of OCS lessees and operators, without hindering the capability of those lessees and operators to undertake OCS exploration and development operations.

Under the approach retained by this final rule, prior to the issuance of a lease, a successful bidder must submit and maintain a $50,000 surety bond conditioned upon compliance with all the terms and conditions of the lease. The successful bidder is not required to submit an individual $50,000 surety bond if the bidder already maintains or furnishes an areawide surety bond in any of the amounts specified in the rule ($300,000, $1 million, or $3 million) that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases held by the bidder in the OCS area in which the lease that is to be issued is located.

When a lessee proposes to initiate exploratory activities on a lease, or proposes to assign the record title in a lease that has an approved EP, a surety bond in the amount of $200,000 must be submitted with the EP unless the authorized officer, for good cause, permits the lessee to submit the $200,000 bond after the submission of the EP but prior to the approval of drilling activities under the EP. A lessee need not submit a $200,000 lease exploration bond with its EP if the lessee already maintains or furnishes a $500,000 lease development bond or an areawide surety bond in the sum of $1 million or $3 million that is conditioned upon compliance with all the terms and conditions of the OCS oil and gas and sulphur leases held by the lessee in the OCS area in which the lease is located.

At the development and production stage, or where a lessee proposes to assign the record title in a developed lease, this final rule requires the submission of a $500,000 lease bond unless the lessee already maintains or furnishes an areawide bond in the amount of $3 million that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases in the OCS area in which the lease is located.

As noted in the preamble to the proposed rule and proposed § 250.62, these higher bond amounts are also required when there is an assignment by lessees of record title interests in a lease with an approved EP, DPP, or DOCD consistent with the requirements of 30 CFR 256.64(c).

This final rule retains the provision under which an operator's bond in an equal amount may be substituted for a lessee's bond. It should be noted that the substitution of an operator's bond for a lessee's bond does not relieve the lessee(s) of the obligation to comply with all the terms and conditions of the lease.

This final rule also retains the provision under which the authorized officer may require additional security in the form of a supplemental bond or bonds or require an increase in the coverage of an existing bond when additional security is deemed necessary (30 CFR 256.61, Additional bonds). Thus, the authorized officer may, on a case-by-case basis, require a lessee to increase its level of bond coverage to the level necessary to ensure present and future compliance with all lease obligations. Section 256.61(d) expands upon current § 256.61 to include examples of factors similar to those currently being examined by authorized officers to help determine the need for additional or supplemental security. Those factors include, but are not limited to, financial ability, record of meeting obligations, and projected financial strength. Inclusion of such examples informs the public of the kinds of considerations that have been and will be evaluated in determining

the need for an increase in the bond coverage required on a lease.

This is not a substantive change from the kinds of factors MMS currently examines.

This rule also requires that bonds be issued by a surety certified by the U.S. Department of the Treasury (U.S. Treasury). U.S. Treasury securities (U.S. Bonds or Notes) may be submitted in lieu of a bond should the lessee or operator so choose. In addition, the rule allows the substitution of alternate forms of financial assurance in lieu of surety bonds if certain criteria are met and the authorized officer approves the substitution. For example, letters of credit might be provided in lieu of the required surety bond if the authorized officer determines that the interests of the Government are sufficiently protected, and the letter of credit is not revocable.

The MMS is not adopting that provision of proposed § 256.62(e) which would have excused an assignee from furnishing bond if the assignor furnished bond and agreed to liability for the assignee's performance, because it is unnecessary. An existing regulation at § 256.64(c) permits an assignor and assignee agreement as joint principals on a bond. Further, current rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." These obligations, accrued but not yet due for performance, include those of sealing wells, removing platforms, and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed. The assignor continues to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment.[1]

Typically an assignment agreement between an assignor and assignee will require the assignee to meet these obligations, and to provide a performance bond or indemnity agreement to protect the assignor from potential liability to the lessor or the regulatory body for their performance. However, as one means of minimizing the assignor's perceived need for demanding bond for the same liability as bonded for MMS, MMS will accept, under § 256.64(c), a joint bond from an assignor and assignee in the amount specified in this rule. The Regional Director may also employ the authority under new § 256.58(g) to accept alternative security instruments, or the implicit authority to phase in the increase in supplemental bond required under new § 256.61(d). This should facilities assignee bonding at a sufficient level to eliminate the assignor's perceived need for a second bond not payable to the United States.

Additional revisions for technical accuracy not affecting the substance of the rule were also made.

Comments and Recommendations of Respondents

In order to alert the potentially impacted parties, MMS mailed copies of the **Federal Register** NPR directly to some 272 lessees and operators who are currently active in the OCS. This final rule incorporates, to the degree practicable, the comments and recommendations received in response to the NPR, while providing a more acceptable level of increased protection for the environment.

A total of 60 timely comments were received. Fifty-three of these were from companies and individuals in the offshore oil and gas industry. Of the 53, 30 were from lessees and operators and 15 from companies and individuals in the oil and gas support services industry. The opposition to the proposed increases in bond coverage expressed in these comments was based upon the view that the United States should accept responsibility for lease abandonment and clearance liabilities resulting from a default by a lessee or operator either directly or through a fund established for that purpose. Federal and State agencies either supported the proposed rule or objected to the proposal on the basis that it did not provide the level of bond coverage necessary to ensure lessee/operator compliance with lease abandonment and cleanup requirements.

Comments from five companies in the insurance and surety business were mixed with one generally supporting the proposed rule, two favoring alternate approaches, and two providing only general comments.

Comment: A frequently stated comment was that the proposed $3 million areawide bond is much greater than the costs of site clearance in shallow water depths and exceeds the costs actually experienced by the smaller companies which do not operate in deeper water. Several respondents suggested that the proposed higher bond requirements apply only to facilities in water depths greater than 300 feet. These respondents supported their argument that the proposed bond coverage was too high by citing the Category I cost estimate of $400,000 for platform removal presented in the 1985 Marine Board study.

Response: The estimated costs of $400,000 for removing Category I lease structures was for small structures in water depths of less than 20 feet (and some older structures in less than 50 feet of water) and did not include costs associated with well abandonment and seafloor clearance. It should be noted that leases in shallow water support more structures on average than do leases in deeper water.

Comment: Many of the respondents opposed the proposed rule on the grounds that the record does not show a significant level of default by OCS lessees.

Response: The record shows that defaults by OCS lessees in meeting their well (lease) abandonment and cleanup obligations are a relatively new but growing phenomenon. The development of this new phenomenon has focused attention on the hazards to safety of operations and potential environmental damage faced in this situation. The MMS does not have the appropriation authority required to assume the financial liabilities of even one lessee or operator who defaults on its obligations to abandon lease wells, remove structures and clear the worksite. Thus, MMS would be remiss in its responsibility for protection of the environment and safety of operations in the OCS if it waits the development of a record of a more significant level of defaults by offshore lessees before taking action.

Prior to 1985, the number of platforms being decommissioned was relatively small. In 1989, 100 platforms were removed from the Gulf of Mexico OCS. This is up from the 32 that were removed in 1985. The number of

[1] A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation. The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere. See, generally, Clark, Continued Liability of a Seller After a Sale of Producing Properties, 41 Inst. on Oil and Gas L. and Tax'n 5-6 (1990). Similarly, under the Louisiana Mineral Code, an assignee becomes responsible directly to the lessor for the performance of the lease obligations, but the assignor is not relieved of its obligations unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

Received

8/16/2021

Interior Boardof Land Appeals

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA-2021-132	**)**	**OCS-P-0166**
	)	
Devon Energy Corporation	**)**	**Oil & Gas**

ANSWER

The Bureau of Safety and Environmental Enforcement (BSEE) submits this response to the Statement of Reasons (SOR) filed by Devon Energy Corporation (Devon) challenging BSEE's November 6, 2020, order to perform all decommissioning for which Devon accrued an obligation on Lease OCS-P 0166 (Order).

Contrary to Devon's arguments, Devon holds accrued decommissioning liability by virtue of its position as successor to Santa Fe Energy Company (Santa Fe), which accrued that liability as a lessee. Under the regulations in effect when Santa Fe held its record title interests, and at the time of Santa Fe's assignment of those interests in 1991, Santa Fe accrued decommissioning obligations for the wells and infrastructure in place during its tenure and retained those obligations following lease assignment, principles that the Interior Board of Land Appeals (IBLA or Board) has already affirmed on multiple occasions. Devon, in turn, is liable for these obligations as a matter of law as the successor to Santa Fe.

In sum, Devon is liable to perform decommissioning, and BSEE respectfully requests the Board affirm the Order.

I. BACKGROUND

Lease OCS-P 0166 (Lease), located on the Outer Continental Shelf (OCS) in the Santa Barbara Channel, offshore of California, was originally granted by the Bureau of Land

Management effective on January 1, 1967, to three companies: Continental Oil Company (37.5%), Cities Service Oil Company (37.5%), and Phillips Petroleum Company (25%). AR A-1 at 1; AR A-61 (Serial Register Page). Following a number of assignments, Devon's predecessor Santa Fe became a lessee of the Lease, acquiring a 37.5% record title interest in 1987. AR A-2.

In 1991, Santa Fe assigned the entirety of its interests in the Lease to Signal Hill Services, Inc. (Signal Hill), the last lessee of the Lease. AR C-11. Signal Hill relinquished its interests in the Lease on October 14, 2020, and defaulted on its decommissioning obligations. AR A-65. Accordingly, pursuant to well-established regulatory principles, BSEE pursued prior lessees of the Lease for decommissioning. Devon had acquired Santa Fe's decommissioning liability with regard to the Lease as the result of a number of transactions that Devon explains in its SOR at 1 n.1. As a result of Signal Hill's default on its decommissioning obligations, Devon became and remains jointly and severally liable for decommissioning the wells and infrastructure present on the Lease when Santa Fe held its record title interests. AR B-39; C-50. Devon appealed BSEE's November 6, 2020, Order to perform those obligations.

II. STANDARD OF REVIEW

BSEE's enforcement of decommissioning obligations that have accrued to current and former lessees is a matter within its discretion. Generally, BSEE's exercise of its discretionary authority will be upheld when there is a "'reasonable explanation' for the agency's decision and 'a rational connection exists between its findings and the choice it makes.'" *Black Elk Energy Offshore Operations, LLC*, 182 IBLA 332, 341 (2012) (quoting *Petro Ventures, Inc.*, 167 IBLA 315, 325 (2005)). Ultimately, the "burden is upon the appellant challenging such a decision to demonstrate, by a preponderance of the evidence, that [BSEE] committed a material error in its factual analysis, or that its decision is not supported by a record showing that [BSEE] gave due

consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made." *Id.* at 341.

III. ARGUMENT

Devon fails to distinguish conclusive and binding Board and federal court precedent, attempts to elevate statements by a subordinate agency official as binding over those of an Assistant Secretary (and this Board), and relies upon a number of arguments that have already been repeatedly rejected by the Board or are entirely irrelevant, in an unconvincing attempt to escape the regulatory decommissioning obligations that its predecessor accrued decades ago. Ultimately, Devon does not meet its burden to show that BSEE's findings and decision are irrational or inaccurate, and the Board should affirm BSEE's Order.

A. Devon's predecessor accrued the obligation to decommission prior to assignment of its lease interests.

Devon argues that its predecessor Santa Fe had not yet accrued decommissioning obligations when it assigned its Lease interests to Signal Hill. However, decommissioning obligations accrue when a well is drilled or a platform or pipeline is installed, or a lessee takes record title to a lease on which such infrastructure is present. This is and has always been the Department's position. Santa Fe accrued its decommissioning liability prior to its assignment of its lease interests, and that liability remains with Devon.

i. Governing regulations, Board precedent, and the Lease establish that Devon's predecessor accrued decommissioning liability prior to assignment.

The Board has addressed the question of whether decommissioning liability accrues prior to assignment of interests in active leases on multiple occasions and has consistently held that it does. In *Anadarko Petroleum Corp*., 187 IBLA 77 (2016), *recons. denied*, 188 IBLA 127 (2016), the Board analyzed the language of the decommissioning regulations as they existed at the time

of Santa Fe's assignment to Signal Hill. Those regulations, at 30 C.F.R. § 256.62(d) & (e) (1991), read:

> (d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.
>
> (e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

See Anadarko, 187 IBLA at 79. The Board held that this regulatory language required an assignor to "carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease" and did not "carve out an exception or, in any other way, exempt an assignor, from responsibility for decommissioning obligations, which accrued under its lease." *Id*. at 85. Contrary to Devon's assertions, inherent within this is the conclusion that decommissioning obligations accrued on active leases under the regulations as they existed at the time, and that accrual under the regulations was not deferred until the obligations came due for performance following lease termination. The Board emphasized that 30 C.F.R. § 256.62(d) & (e) "explicitly stated" only that it "(1) made the assignor liable for all obligations accruing under the lease prior to the approval of the assignment, and (2) made the assignee liable for obligations after the assignment." *Id.* at 86. It further added that "[n]owhere in that regulation did the agency provide that the assignor's liability for the accrued obligations is extinguished upon execution of the assignment. In fact, that regulation makes no mention of any termination of an assignor's accrued obligations as the result of an assignment." *Id.*

In addition, the Board found that, under Section 22 of the *Anadarko* lease (referred to by the Board as "Paragraph 22" and excerpted below), Anadarko had contracted to carry out the decommissioning obligations "even after termination of the Lease." *Id.* As a result, the Board held "[w]hen under the terms of its [Outer Continental Shelf Lands Act (OCSLA)] lease, a lessee

agreed to retain decommissioning responsibilities, even after the lease is terminated, the lessee remains liable for such responsibilities." *Id.* at 87. Again, inherent within these observations is the conclusion that decommissioning obligations accrue prior to the point at which they actually come due for performance and not, as Devon asserts, only following lease termination.

For purposes of the present case, Section 6 of the Lease is nearly identical to Section 22 of Anadarko's lease and similarly requires the lessee to decommission the lease within one year following termination:

Section 22: Anadarko	Section 6: Devon
Within a period of one year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with the applicable regulations and orders of the Director.	Upon the expiration of this lease, or the earlier termination thereof as herein provided, the Lessee shall within a period of 1 year thereafter remove from the premises all structures, machinery, equipment, tools, and materials other than improvements needed for producing wells or for drilling or producing on other leases and other property permitted by the Lessor to be maintained on the area.

Id. at 90; AR A-1. The relevant parts of the regulations at 30 C.F.R. § 256.62(d) & (e) interpreted in *Anadarko* were identical to those applicable to Santa Fe, as well. *See supra* at 4 and SOR Exhibit 8. As this case implicates the identical assignment regulations and very similar lease provisions to those at issue in *Anadarko*, the Board's determination that a former lessee remains liable after assignment and lease termination for the decommissioning obligations it had accrued prior to assignment of the active lease is binding here on Devon. 187 IBLA at 86.

Devon attempts to distinguish its case from *Anadarko* by asserting that the absence of express language regarding future regulations materially distinguishes the Lease from that interpreted in *Anadarko*. SOR at 19-20. Devon further contends that the *Anadarko* holding

regarding decommissioning liability based on the 1980s/1991 regulations and lease language is dictum. SOR 8 n.10. The opposite is true. *Anadarko*'s primary holding was that the lease language and the regulations as they existed at the relevant time required Anadarko to decommission the lease at issue, irrespective of any future regulations. 187 IBLA at 85-87. The Board addressed the separate question of whether the *Anadarko* lease might also be subject to subsequently-promulgated regulations, but that analysis was supplemental to the Board's discussion of Anadarko's liability under the 1980s/1991 regulations and did not render it dictum. *Id.* at 87-90. As the Board states in its conclusion in *Anadarko*:

> As discussed herein, *without regard to the current regulations*, the Board reads the language of Paragraph 22 of the Lease, providing that, after termination of the Lease, appellant, as assignor, remained responsible for decommissioning obligations, along with the 1981-1984 assignment regulation (43 C.F.R. § 3319.1(d)-(e) (1980-1982); (recodified as 30 C.F.R. § 256.62(d)-(e) (1983-84))), and concludes that appellant remains liable for decommissioning obligations it accrued prior to assignment. Although the 1981-1984 assignment regulation provided that, upon assignment, an assignee becomes responsible for obligations it accrued prior to assignment, it did not also absolve the assignor of its obligations accrued under the Lease.
>
> We further discussed that, under Paragraph 1 of the Lease, appellant is subject to "all regulations issued pursuant to [OCSLA] in the future which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein "

Id. at 93-94 (emphasis added). If anything, it is the latter conclusion regarding future regulations that is dictum, as it was not the Board's main rationale for upholding BSEE's decision.

ii. The Assistant Secretary provided the Department's interpretation of the meaning of "accrue" under the 1991 regulations.

Devon contends that the Board has not settled a "question" regarding exactly when decommissioning liability "accrues" pursuant to 30 C.F.R. § 256.62(d) (1991), the relevant regulation at the time Santa Fe assigned its interests in the Lease. SOR at 20, citing 187 IBLA at 85. The Board in *Anadarko* held that "even if the Board were to disregard the current regulations

[as revised in 1997], we would conclude appellant must carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease." *Id.* at 87. Devon posits that this leaves a gap in the Board's analysis of when exactly decommissioning liability accrues.

As noted above, multiple elements of the Board's decision in *Anadarko* inherently contradict Devon's theory that decommissioning liabilities cannot "accrue" until the time for their performance has arrived, following lease termination. *See, e.g., id.* at 85, 87 (discussing the fact that the assignor had accrued decommissioning obligations on its active lease prior to its assignment, at which point those obligations were not yet due for performance). This is fully in keeping with the Department's consistent view of this regulatory concept both before and after 1991. The Assistant Secretary for Land and Minerals Management (Assistant Secretary) explained this position almost thirty years ago. In 1993, the Assistant Secretary, who possessed the authority to make binding regulatory interpretations for the Department, expressly affirmed the fact that "accrual," and thus the residual liability of assignors, under the existing regulations at the time (30 C.F.R. § 256.62 remained the same as in 1991) was tied to the *creation* of the liability through the installation of the infrastructure, not the point at which *performance* of that obligation later comes due following lease termination. In the preamble to a final rulemaking, addressing why certain proposed provisions were not being adopted, the Assistant Secretary explained that, under existing 30 C.F.R. § 256.62(d), assignors accrued liability, and remained jointly liable with the assignee, for decommissioning facilities that were in existence at the time of assignment:

> [C]urrent rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." These obligations, **accrued but not yet due for performance**, include those of sealing wells, removing platforms, and clearing the ocean of obstructions. **These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in**

> **subpart G of part 250 are followed. The assignor continues to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment**.

58 Fed. Reg. 45,255, 45,257 (Aug. 27, 1993) (emphasis added). The Assistant Secretary also expressly stated in a footnote to the paragraph above that any prior statements to the contrary reflected a misinterpretation of the regulations, directly repudiating a letter from former Minerals Management Service (MMS) Director Bettenberg stating an incorrect position regarding post-assignment decommissioning liability:

> A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the **erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation**.

Id.

Several years later, in connection with a clarifying rulemaking expressly incorporating language reflecting these longstanding principles into the regulations, the Assistant Secretary again reiterated that it had *always* been the Department's "position that an assignor of an OCS lease remains responsible for all wells and facilities that were in existence at the time the assignor assigns its interest until the wells are plugged and abandoned, the facilities are decommissioned, and the site is reclaimed." 62 Fed. Reg. 27,948 (May 22, 1997) (Final Rule).

In the same rulemaking, the Assistant Secretary explained that the genesis of the rule providing that assignors retain decommissioning liability dated back to OCSLA's first implementing regulations in 1954, and that the provision had always stood for the principle that an assignor is not relieved of its decommissioning obligations upon assignment:

> Response: **The commenter is objecting to a rule that dates back to 1954**. See § 201.60 of the May 1954 regulations and current § 256.62(d), both of which state

> that assignors continue to be responsible for obligations that accrued before the approval of an assignment. **MMS is not persuaded that that rule should be changed**. This rulemaking simply amends § 250.110 to specify when the obligation to plug and abandon accrues, so as to avoid confusion as to the application of existing § 256.62(d) to these important obligations. While an assignee becomes responsible directly to the lessor for the performance of the lease obligations, under contract law the assignor is not relieved of its obligations unless the lessor expressly discharges the assignor in writing. **We do not discharge the assignor of its accrued obligations when we approve the assignment of record title in a lease**. We have renamed § 256.62, "Assignment of leases or interests in leases," and rewritten the text to present the requirements of the provision in plain English.

Id. Thus, the Board in *Anadarko* – like the Department in 1993 and 1997 – was not writing on a clean slate and properly embraced a decades-long regulatory interpretation by an official authorized to establish binding positions for the Department.

The Board may not simply ignore such formally published statements of an Assistant Secretary, as Devon suggests. Actions by Assistant Secretaries are binding on the Board, and the rulemaking documents were promulgated by the Assistant Secretary. In the 1993 final rule, the Assistant Secretary clearly stated the Department's position regarding the meaning of the term "accrue" as used in 30 C.F.R. § 256.62(d), as it existed at the time of Santa Fe's assignment of the Lease in 1991. Devon attempts to downplay the significance of this statement of position by saying the Board may ignore it based on a single case that can be distinguished easily. In *Black Butte Coal Co.*, the Board declined to uphold a Bureau of Land Management (BLM) decision that relied on agency guidelines that were clearly "contrary to the express terms of the regulations," and were "characterized by BLM as a 'notice' rather than regulations." *Black Butte Coal Co.*, 109 IBLA 254, 261 (1989). The Board discussed how the publication of agency guidelines in the Federal Register "does not raise them to the status of an amendment of the regulation." *Id.* In contrast, the Assistant Secretary's statements were part of a final rule amending the relevant regulations, and explaining why other proposed amendments were not

necessary under a proper understanding of existing regulation, through which he exercised his authority to state the Department's official position on the proper interpretation of 30 C.F.R. § 256.62. While preambles are not binding, they inform proper understandings of regulatory language, and at the very least reflect the Department's position regarding the meaning of such language. The interpretation reflected in the 1993 rulemaking documents is properly viewed as the official position of the Department and the Secretary of the Interior, which must be respected.

iii. The Assistant Secretary's interpretation is legal.

It is well established that an agency is "entitled to interpret its own regulations in the first instance." *Am. Petroleum Inst. v. EPA*, 906 F.2d 729, 742 (D.C. Cir. 1990). A regulation's preamble can demonstrate an Assistant Secretary's intent behind and interpretation of a regulation. *Halo v. Yale Health Plan, Dir. of Benefits & Recs. Yale Univ.*, 819 F.3d 42, 53 (2d Cir. 2016). This is precisely what the Assistant Secretary did in 1993 in interpreting Section 256.62(d). While Devon may protest that the Assistant Secretary's interpretation post-dated Santa Fe's assignment and was inconsistent with Santa Fe's expectations, this is irrelevant to whether the interpretation applies in this matter. Much like a Board decision interpreting the application of a longstanding regulation to a particular circumstance, the Assistant Secretary's explanation addressed the meaning of the regulatory language as it had existed well before Santa Fe assigned its interests.

Devon attempts to frame this as a "re-interpretation" that was "unlawful." SOR at 20. Devon cites a number of cases that rejected agencies' interpretations because they were in direct contravention to the regulations they were interpreting, *id.* at 23, along with cases that assert that a preamble of a rule is not binding on its own. *Id.* at 24. Devon then appears to argue that the Assistant Secretary's interpretation cannot operate as the sole support for the Board's conclusion

in *Anadarko* regarding the accrual of decommissioning obligations prior to assignment. *Id.* This is incorrect, as can be determined by looking to the very cases from which Devon quotes only selectively. For example, the D.C. Circuit's actual holding in *Wyoming Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 53 (D.C. Cir. 1999), was that "[a]lthough the preamble does not 'control' the meaning of the regulation, it may serve as a source of evidence concerning contemporaneous agency intent." Similarly, the Ninth Circuit concluded in *Peabody Coal Co. v. Dir., Office of Workers' Comp. Programs*, 746 F.3d 1119, 1125 (9th Cir. 2014), that an administrative law judge may consider a regulatory preamble when making a determination on worker's compensation benefits. As long as the preamble is not in conflict with the regulation, agencies may consider it in making their determinations, and courts are bound to accept agencies' reasonable interpretations of their regulations. *See Singh v. Holder*, 771 F.3d 647, 652 (9th Cir. 2014) ("[W]e are bound to follow an agency's reasonable interpretations of its own regulations, but we do not defer to an agency's interpretation when it is contrary to the plain language of the regulation."). None of the authorities or arguments that Devon relies upon in challenging the Assistant Secretary's statements demonstrate that his interpretation is not reasonable, or is inconsistent with the language of the regulation. *See United States v. Nasir*, 982 F.3d 144, 158 (3d Cir. 2020). At most, Devon asserts that the regulatory language left room for interpretation and the Assistant Secretary's statements did not match Devon's prior understanding; however, that is insufficient to undermine or preclude reliance upon such statements in identifying the position of the Department on the meaning of its regulations. In fact, the cases Devon cites actually support BSEE's position, that regulatory preambles inform an agency's intent and can be relied upon when making decisions.

B. Devon fails to provide relevant support for its theory regarding when decommissioning obligations accrue.

Devon raises a number of theories in an attempt to support its conflicting view that decommissioning obligations do not actually accrue until they become due for performance, after termination of the Lease. Some have already been rejected directly by the Board or the Assistant Secretary himself, and others are entirely irrelevant and merit little substantive discussion.

i. Devon's reliance upon statements by a subordinate agency official, already rejected by the Board as non-binding and formally repudiated by the Assistant Secretary, is misplaced.

Devon supports its regulatory interpretation almost entirely through reliance on a 1988 letter from former MMS Director Bettenberg to a single operator, Amoco, opining that the decommissioning regulations at the time released assignors from all decommissioning liability upon assignment. SOR at 13. Both the Assistant Secretary and the Board have already addressed Director Bettenberg's correspondence and rejected its views without reservation.

In connection with the 1993 rulemaking, the Assistant Secretary explicitly repudiated the Bettenberg letter as inconsistent with the Department's longstanding position on the meaning of its regulations:

> A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation. The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere. See, generally, Clark, Continued Liability of a Seller After a Sale of Producing Properties, 41 Inst. on Oil and Gas L. and Tax'n 5-6 (1990). Similarly, under the Louisiana Mineral Code, an assignee becomes responsible directly to the lessor for the performance of the lease obligations, but the assignor is not relieved of its

> obligation unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

58 Fed. Reg. 45,255, 45,257. The Assistant Secretary rejected Director Bettenberg's opinions set forth in his letter as "erroneous" and "mistaken," and made clear the Department's position dating to the inception of OCSLA that its regulations hold the assignor jointly liable with the assignee for performing obligations that accrue prior to assignment, including decommissioning obligations which accrue when a well is drilled or infrastructure is installed. *Id.*

The Board also addressed attempts to rely on the views expressed in this letter, along with a similar 1989 correspondence from Director Bettenberg, in *Anadarko Petroleum Corp*., and in *Energen Res. Corp*., 188 IBLA 374 (2016). The Board in *Anadarko* concluded that its reading of the controlling regulations was decisive enough that it did not need to address head-on the issue of whether Bettenberg's understanding of 30 C.F.R. § 256.62(d) & (e) expressed in 1988 and 1989 altered the outcome. 187 IBLA at 86 n.14. Nevertheless, the Board was forced to confront the Bettenberg argument again soon thereafter in *Energen Res. Corp*. and quickly dispatched it. *Energen*, 188 IBLA at 381. The Board first acknowledged that "only the Secretary of the Interior, the proper Assistant Secretary with delegated rulemaking authority, the Office of Hearings and Appeals ('OHA'), and the Board have authority to bind the Department to a regulatory interpretation." It then went on to hold that there was "no evidence in the record indicating" that former Director Bettenberg "was accorded such authority, and, therefore, his regulatory interpretation and past practices with other lessees implementing that interpretation do not serve to bind the Department with respect to [appellant's] liability."[1]

[1] *Id*.; *see also Statoil Gulf of Mexico, LLC*, 42 OHA 261, 304, 306 (2011) ("[D]ecisions of subordinate officials of the Department have no precedential value"; "a definitive and binding statement on behalf of the agency must come from a source with the authority to bind the agency"; "an interpretation or advice by an official without authority to bind the agency alone would not amount to an authoritative interpretation"; noting decisions from an MMS Regional Supervisor and Regional Director were not binding on the Department); *id.* at 306 ("Nor does an agency's past

If anything, a complete review of the relevant record demonstrates that Bettenberg's view was not even embraced within the agency, much less as an official position of "the Department," as Devon suggests. *See* SOR Exhibit 11 (Memorandum addressing MMS Regional Director's disagreement with Bettenberg position regarding assignor liability). And contrary to Devon's argument, there are numerous elements of the record that support the Board's decision to give little weight to Bettenberg's correspondence, including, but not limited to, the Assistant Secretary's 1993 preamble statements; Notice to Lessees and Operators (NTL) No. 93-2N; and the 1997 rulemaking codifying language clarifying the Department's longstanding position regarding the proper interpretation of the regulations. Contrary to Devon's argument, years before the 1997 rulemaking the agency had already clarified its interpretation of existing regulations on these topics through an NTL signed by the MMS Director. *See* NTL No. 93-2N (clarifying that, under "[t]he governing rules, including 30 CFR § 256.62, . . . [t]he obligations to plug and abandon wells, remove platforms and other facilities, and to clear the seafloor of obstructions accrue when a well is drilled or used, a platform or other facility is installed or used, or an obstruction is created [and] continue until the procedures specified in 30 CFR Part 250, Subpart G, Abandonment of Wells, are followed. Following MMS approval of the assignment of an OCS oil and gas lease, the assignor continues to be liable to DOI/MMS for the performance of these obligations with respect to wells, structures, or obstructions in existence and not plugged or removed at the time of the assignment.").

Devon effectively asks the Board to ignore its own prior rejection of this precise argument, as well as definitive repudiating statements by the relevant Assistant Secretary, and

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failure to enforce a regulation…prevent it from enforcing the regulation in the present, if the agency had not previously established an authoritative interpretation upon which a regulated entity could reasonably rely."); *Devon Energy Corp. v. Kempthorne*, 551 F.3d 1030, 1040 (D.C. Cir. 2008) (holding that memoranda from the MMS Deputy Director were not final, binding agency determinations regarding the rule at issue).

instead embrace the conclusion that a thirty-year-old contradictory opinion reflected in a letter from a subordinate agency official should continue to bind the Department's administration of its regulations. This position is both legally unjustifiable and administratively untenable. Devon argues that the 1988 letter was meant to "announc[e] industry-wide interpretations," but nothing in the letter, which was addressed to a single operator, reflects any such intent. Even if he had such an intention, Director Bettenberg did not have the authority to render binding interpretations of Department regulations. While a regrettable error by an agency official, the Bettenberg correspondence is immaterial to these proceedings, has no capacity to bind the Department, and should for the third time be rejected by the Board as irrelevant to its review.

BSEE concedes that certain documents published by subordinate agency officials near the time of Santa Fe's assignment may have led assignors to think that they would not retain decommissioning obligations after lease assignment. However, those documents were created during a brief period over thirty years ago, were shortly thereafter repudiated at both the agency and Assistant Secretary levels, and have been determined to be irrelevant to the proper application of the regulations by the Board multiple times.[2] Despite Devon's protestations, the regulations have always said and meant that Santa Fe accrued the relevant decommissioning obligations prior to its assignment and retained those obligations following assignment. That certain agency personnel misunderstood that legal concept and led assignors to think otherwise is unfortunate, but irrelevant to the enforceability of the regulations. Erroneous interpretations of

[2] *Anadarko*, 187 IBLA at 86, n.14 (2016) ("Given our analysis and disposition, we see no reason to reiterate or address the parties' debate regarding statements made by Department employees concerning enforcement of the 1984 assignment regulation, years after promulgation of the regulation and appellant's assignment of its Lease interests."); *Statoil*, 42 OHA at 304, 306 (OHA Director holding that decisions from an MMS Regional Supervisor and Regional Director were not binding on the Department to preclude subsequent application of the regulations in a different manner); *Devon Energy*, 551 F.3d at 1040 (holding that memoranda from the MMS Deputy Director were not final, binding agency determinations regarding the rule at issue).

regulations by subordinate officials who lack the authority to bind the Department cannot alter the terms or meaning of the regulations or preclude the Department from enforcing them.

ii. Devon's citations to irrelevant statutes, contractual questions, and common law do not support its arguments and are not determinative.

Devon attempts to support its position regarding the accrual of obligations through citation to inapplicable statutes like the Mineral Leasing Act and representations regarding when *other* obligations accrue pursuant to *other* authorities. These arguments are simply irrelevant and do not support its theory. Their relevance is at the very least belied by a series of actions by BSEE, the Board, and the Assistant Secretary demonstrating that the applicable laws governing the obligations in dispute here afford different treatment. BSEE addresses these arguments quickly in turn below.

Devon asserts that under the Lease, there is no accrual of decommissioning obligations until the Lease is terminated, under the theory that the obligation to decommission only arises once performance of the obligation comes due and is subject to enforcement. SOR at 8. This theory relies on the false premise that no obligation can be deemed to have "accrued" until the time for its performance has arrived. It is based in a fundamental misunderstanding that falsely conflates two distinct events: (1) the accrual of the liability for decommissioning, and (2) the ripening of the obligation to satisfy that liability by performing the decommissioning. Devon's theory suggests that an entity cannot be prospectively obligated to take an action unless and until the point at which it can be held liable for breaching that obligation. This conception of the legal landscape is inconsistent with a host of contractual and regulatory principles that recognize the manifestation (accrual) of obligations to perform at points in time before such performance is due.

BSEE is not arguing that the obligation to decommission was due for performance as of the date of Santa Fe's assignment. However, while BSEE's right to enforce decommissioning obligations (generally)[3] does not ripen until lease termination, the lessee's obligation to perform at the appropriate time accrues at the point the future need for decommissioning manifests, which occurs when a well is drilled or infrastructure is installed.[4] As such, while Santa Fe had not yet *breached* its decommissioning obligation at the time of its assignment of its Lease interests, that does not mean it had not yet *accrued* the obligation by that time. The Assistant Secretary again clarified this very distinction under the relevant regulations decades ago. *See* 58 Fed. Reg. at 45,257 (discussing obligations "accrued but not yet due for performance"). Further, the fact that the Department's cause of action to pursue a lessee for subsequently failing to perform does not accrue until there is a breach is a separate issue, and not relevant to the question presented. Devon's theory that a party cannot accrue an obligation to perform in the future unless and until that performance is due and owing is plainly incorrect.

While Devon suggests that it is aware of no other instances where an obligation is deemed to have accrued before it is due for performance, SOR at 9, it need not have looked very far to find an apt example. A lessee's obligation to pay royalties on production from a lease accrues as soon as the production is saved, removed, or sold from the lease, but the actual requirement to pay those royalties does not come due until the end of the month following that production. 30 C.F.R. § 1218.50. The regulatory language establishing when royalty obligations accrue and when payments are due has remained the same since at least 1984. 30 C.F.R. §

[3] *But see* 30 C.F.R. § 250.1703 (addressing decommissioning of idle infrastructure on active leases).
[4] *Cf.* Convention on the Continental Shelf art. 5, April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578 (in force June 10, 1964) (international convention under which exploration of the continental shelf and exploitation of its resources is permitted, requiring nations authorizing such activity to provide for the removal of any installations used).

218.50 (1984) (49 Fed. Reg. 37,336, 37,346). Thus, the notion of obligations accruing prior to performance being due is not so unique or inconceivable as Devon suggests.

Further, if a lessee were to assign its lease between production and the end of the following month, it would retain the obligation to satisfy those royalty obligations that accrued prior to assignment, despite the fact that it assigned its interests before the requirement to perform (pay) ripened. By contrast, under Devon's theory, a lessee could quickly assign or relinquish its lease after a particularly prolific month of production and walk away without paying royalties, since the royalty payment would not be due for another month (and thus, in Devon's view, would not yet have "accrued" as an obligation). While on a more compressed timeline, this example - and it is certainly not the only one - demonstrates the plain error of Devon's theory that, as a universal principle, an obligation cannot accrue until performance of that obligation is due.[5] Without the protection of this flawed premise, Devon's theories simply dissolve.

With regard to Devon's common law argument, SOR at 11, there is no reason for the Board to look to the common law for an understanding of a regulatory concept with a well-settled meaning reflected in binding Departmental precedent. Even if such an approach were to be taken, as discussed *supra* the concept of when a *cause of action* to enforce an obligation accrues is different than the concept of when the *obligation itself* accrues. The Assistant Secretary in fact addressed the common law question in the previously-discussed rulemakings while reaching his determination that the proper reading of the relevant regulations provided for

[5] Devon's theory of the meaning of "accrue" conveniently relieves assignors of *any* potential liability for decommissioning, since performance is (generally) not due until one year after a lease expires. It is inconceivable that in 1954 the Secretary would have adopted assignment regulations that took care to provide that the assignor retains responsibility for accrued obligations, while intentionally excluding the most significant residual obligations derived from domestic and international law. Devon would have us believe, too, that the Secretary intended accrual to apply only to obligations that were ripe for enforcement prior to assignment, further reading the concept of ongoing assignor liability into irrelevance.

accrual of decommissioning obligations upon well drilling and infrastructure installation, and the survival of those obligations with the assignor post-assignment. *See* 58 Fed. Reg. at 45,257 ("In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere."); 62 Fed. Reg. at 27,948 ("We do not discharge the assignor of its accrued obligations when we approve the assignment of record title in a lease."); *see also Anadarko*, 187 IBLA at 86-87 (holding that where the Department as lessor does not expressly release an obligation as part of assignment, the assignor retains the liability for performing that obligation). So even taking the common law into account, the Department's position regarding the relevant regulations holds.

Devon also attempts to tie the contractual issue to OCSLA, SOR at 12, arguing that any obligation between Santa Fe and the Department was extinguished when the assignment occurred. Devon again relies on the Bettenberg correspondence for this proposition, which we have already demonstrated to be an unsound foundation. Devon additionally attempts to connect the accrual question to the Mineral Leasing Act (MLA), which is inapplicable to the Lease and activities or obligations on the Outer Continental Shelf. To the extent arguably relevant by way of analogy, Devon's invocation of the references to and decisions under the MLA is inconsistent with controlling interpretations of the specific regulations at issue by this Board and the relevant Assistant Secretary, and as such hold little to no analytical value by analogy. In fact, the Board has noted in response to prior appeals that there are strong reasons for not relying on the MLA in interpreting OCSLA and its implementing regulations. *See Anadarko Petroleum Corp*., 283 IBLA 1, 17 & n.17 (2012).

Even if principles applicable under the MLA were relevant, Devon invokes authorities related to accrual of rental obligations, and the fact that rental obligations have been found not to accrue until payment is due does not answer the very different question of when decommissioning obligations accrue. Under the applicable regulations at the time of assignment, the decommissioning obligations accrued when the wells were drilled and facilities installed, creating the future need for them to be addressed. That is an entirely different framework from when monetary obligations to pay rents "accrue," which is irrelevant to the question of whether decommissioning obligations accrue before they come due for performance. At the very least, it cannot be disputed that the current regulations provide for accrual of such obligations before performance is due,[6] illustrating that these concepts are not inherently tethered. The Board has held multiple times that the accrual of decommissioning liability happens at the earlier point, and that "accrual of an obligation" and "performance coming due" are thus two separate and distinct concepts, which in this context are separated in time.

iii. Devon's anti-tautology argument lacks merit.

While Devon challenges the regulatory interpretation establishing that decommissioning obligations accrue prior to the point at which performance is due - endorsed now by not only BSEE, but the Board and the Assistant Secretary, and unmistakably codified in current regulation - as an "anti-tautology," it is in truth Devon's rebuttal which is a tautology. SOR at 23. Across page after page, Devon hammers on a principle that effectively boils down to "an obligation does not accrue until it accrues." Like any tautology, BSEE cannot refute that proposition. Devon's anti-tautology argument itself is circular, as it depends upon the unwarranted assumption of its own conclusion that accrual of liability for an obligation cannot

[6] *See* 30 C.F.R. § 250.1702.

occur before the obligation becomes due for performance. Absent that self-reinforcing assumption, there is no anti-tautology argument.

C. Devon possesses an independent regulatory obligation to decommission that is not subject to common law contract defenses.

A lynchpin of Devon's arguments regarding an assignor's discharge of decommissioning obligations is that such obligations derive exclusively from the Lease, specifically Section 6 of the Lease, and thus are subject to discharge through common law contractual defenses. SOR at 11-12 ("These common law notions of accrual are readily applicable here."); ("[T]he issue is whether the rule can be applied to Devon, as successor to another former lessee who . . . left the relationship of privity with the government as a result of assignment and novation....."). This argument, however, is inconsistent with the D.C. Circuit's ruling in *Noble Energy, Inc. v. Jewell*, 650 F. App'x 9 (D.C. Cir. 2016), *cert. denied*, 137 S. Ct. 1327 (Mem) (U.S. March 20, 2017) (No. 16–368).

In *Noble Energy*, the D.C. Circuit affirmed the district court's holding that BSEE's decommissioning regulations impose an independent obligation on a lessee to conduct plugging and abandonment operations that is not subject to discharge based on common law contractual theories as applied to a lease. *Noble Energy*, 650 F. App'x at 11 ("Noble has a regulatory obligation independent of its contractual obligation to permanently plug Well 320-2."); *see also Taylor Energy Co. LLC v. United States*, 975 F.3d 1303, 1316 (Fed. Cir. 2020) ("*Noble Energy* does not suggest that a lessee may be relieved of its regulatory obligations in the event of a breach, just because those obligations were incorporated into the [contract]. Rather, *Noble Energy* holds that a party must comply with its contractual duties if they are mandated by federal law, even if the contract is ultimately dissolved.").

Devon makes a half-hearted assertion that *Noble* can be distinguished because there, the original lessee remained the lessee until expiration, and the decommissioning regulations applied in that case were not the same as the 1991 regulations in place at the time of Santa Fe's assignment. SOR at 8. However, as explained above, and elucidated previously by the Assistant Secretary and the Board, the 1991 regulations did not differ in substance in any material manner that would distinguish the applicability of the relevant principles from *Noble* in this case. *See, e.g.*, 58 Fed. Reg. at 45,257; *Anadarko*, 187 IBLA at 86 ("Nowhere in that [1980s version of the] regulation did the agency provide that the assignor's liability for accrued obligations is extinguished upon execution of the assignment."). In particular, under neither set of regulations is the fact that Noble Energy was the final lessee material to the relevant question (*i.e.*, the inapplicability of contractual defenses to regulatory decommissioning obligations).

The law here is clear: BSEE's decommissioning regulations are not subject to common law contractual principles or defenses but instead operate independently from the Lease. This fact vitiates Devon's main arguments. Devon cannot rely on common law contractual principles of privity and novation to argue that Santa Fe's assignment of its lease interest in 1991 absolved it of its accrued *regulatory* decommissioning obligations. Such an outcome would be inconsistent with the requirements of the applicable regulations, which separately and independently impose decommissioning obligations for the promotion of safety and protection of the environment. Since the decommissioning obligations stated in Section 6 of the Lease and in the regulations are independent of one another, Devon's obligations under the Department's decommissioning regulations remain in effect today irrespective of any purported contractual defenses to the Lease obligations.

D. Devon's arguments regarding the inapplicability of the post-1997 regulations are a strawman, and to the extent relevant are incorrect.

In light of the analysis above, demonstrating that the pertinent decommissioning regulations have at all relevant times established the necessary elements for Devon's decommissioning liability, Devon's arguments regarding the inapplicability of the post-1997 regulations are irrelevant. Accordingly, the Board does not need to further consider that question. To the extent the Board is inclined to do so, rather than burden the Board with duplicative briefing, BSEE hereby incorporates by reference the relevant argumentation in Section III.B of its Answer being filed contemporaneously herewith in *ConocoPhillips Co.* (IBLA No. 2021-137) and *OXY U.S.A. Inc.* (IBLA No. 2021-138).

IV. CONCLUSION

Pursuant to Departmental regulation, as properly understood in accordance with multiple determinations by this Board and the relevant Assistant Secretary, Devon's predecessor Santa Fe accrued decommissioning liability for wells and facilities on the Lease prior to assigning its interests in the Lease, and retained those accrued liabilities following assignment. BSEE reasonably exercised its discretion to pursue Santa Fe's successor Devon for performance of its decommissioning obligations. BSEE provided a reasonable explanation for its decision to issue the Order and was rational in pursuing Devon. Devon has not met its burden to demonstrate that BSEE committed a material error in its factual analysis, and BSEE's record shows that it considered all relevant factors, including the Department's position regarding accrual of decommissioning obligations that has remained the same since the 1950s. In light of the above, BSEE respectfully requests that the Board affirm the November 6, 2020, Order.

Dated: August 16, 2021

Respectfully submitted,

HEEWON KIM Digitally signed by HEEWON KIM Date: 2021.08.16 15:35:16 -04'00'

Heewon Kim
Counsel for BSEE

CERTIFICATE OF SERVICE

I certify that the foregoing Answer was served upon the Appellant in accordance with applicable rules by sending a true copy thereof via email, as agreed to between the parties pursuant to 43 C.F.R. § 4.401(c)(4)(ii)(D), to Poe Leggette on August 16, 2021, at pleggette@bakerlaw.com.

I further certify that on August 16, 2021, a true copy of the Answer was emailed to ibla@oha.doi.gov for filing, pursuant to the Board's March 24, 2020, Order regarding filing of any and all pleadings by email in response to the COVID-19 pandemic.

HEEWON KIM

Digitally signed by HEEWON KIM
Date: 2021.08.16 15:36:51 -04'00'

Heewon Kim
Counsel for BSEE

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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

DEVON ENERGY CORPORATION	*	**IBLA-2021-132**
	*	
	*	**Appeal of November 6, 2020 Letter Decommissioning of Oil and Gas Lease OCS-P-0166**

DEVON ENERGY CORPORATION'S REPLY

A candid review of the record and pleadings in this case leads to one conclusion only. Before 1993, the Department had issued several binding interpretations of what the word s "assignment" and "accrued" meant in the context of oil and gas leasing. One of them, approved in 1942 by Assistant Secretary Oscar Chapman on behalf of the Secretary, specifically addressed the circumstance of relinquishment of an oil and gas lease. Later, with specific regard to the accrual of the obligation to decommission OCS leases, the Minerals Management Service described its understanding that the obligation did not accrue when platforms were emplaced or wells drilled. That understanding was explicitly embodied in the agency's approval of the assignment of Lease OCS-G 0166 ("the Lease") to Signal Hill Service, Inc. ("Signal Hill"), effective February 5, 1991. All of MMS's statements and actions followed from what the Secretary of the Interior called "the established concept of an assignment as a transfer which substitutes one lessee for another and creates a new contractual relationship between the assignee and the United States." *Continental Oil Co*., 74 Int. Dec. 229, 230 (Secretary took jurisdiction) and 238 ("established concept") (1967).

A candid review further shows that, after all these long years, the Minerals Management Service ("MMS") grew uneasy about the implications of the assignment rule and its focus on accrual. So, in 1993 it issued statements pretending, first, that the Department's history interpreting and applying the assignment regulations before 1988 never happened, and, second, that the long-serving MMS career employees and their advisors in the Solicitor's Office were simply appallingly misinformed between 1988 and 1993. Lacking confidence this strategy for reversal would be upheld, the Department eventually reversed course through prospective rulemaking, effective August 20, 1997. The case is this simple: the agency had a

position, it decided it did not like it, and it reversed it prospectively. But now, says the Bureau of Safety and Environmental Enforcement ("BSEE"), Devon Energy Corporation ("Devon") is compelled to hold the agency's bag retrospectively.

The Board has a short path out of this appeal. Devon calls this Board's attention to the arguments to which the Bureau of Safety and Environmental Enforcement ("BSEE") has failed to respond, either in its Answer in this docket or in its Combined Answer in *ConocoPhillips Company*, IBLA 2021-137, and *OXY U.S.A., Inc*., IBLA 2021-138. The Board can grant the appeals in these three cases simply on what BSEE does not contest.

First, BSEE does not contest that its predecessor approved the assignment at issue in this case, relieving Devon's predecessor, Santa Fe Energy Resources, Inc. ("Santa Fe"), of liability for decommissioning the wells and platforms on lease OCS-P 0166 ("the Lease"). That approval is a contract between the Department and the assignors under *Continental Oil Co*., 74 Int. Dec. at 238 (assignee of OCS lease "simply takes over the entire obligation of the lessee") & 244 (assignment procedure creates three contracts). *Continental Oil Co*. is a binding Departmental precedent. *Id*. at 230 ("the Secretary of the Interior has assumed jurisdiction in the matter"). It so devastates BSEE's argument here that neither the Answer nor the Combined Answer even mentions it. BSEE does not argue the approval of the assignment was void, and even concedes the assignors relied on the approval. Answer at 15. Devon has no obligation under the Lease or assignment contract to decommission.

Second, in defending BSEE's order as enforcement of a separate "regulatory" obligation, Answer at 21-22 (citing *Noble Energy, Inc. v. Jewell*, 650 F. Appx. 9 (D.C. Cir. 2016)), BSEE fails to contest that the regulation on which that obligation depends cannot be applied retroactively. Devon has no accrued obligation to decommission under the prospective regulation. This is not because, as BSEE misperceives, Devon argues that a government breach of the assignment's approval absolves it from independent regulatory obligations. *See* Answer at 22 (Devon cannot rely on novation to absolve it of "accrued regulatory decommissioning obligations"). It is because the regulation cannot operate retroactively, a point to which BSEE has no answer.

Without further argument, Devon is entitled to have the order reversed based on what BSEE failed to address. But what BSEE did address merits the following reply.[1]

I. MMS APPROVED THE ASSIGNMENT TO SIGNAL HILL AND EXPRESSLY RELIEVED DEVON'S PREDECESSOR OF LIABILITY FOR DECOMMISSIONING

BSEE "concedes that certain documents published by subordinate agency officials near the time of Santa Fe's assignment may have led assignors to think that they would not retain decommissioning obligations after lease assignment. . . . That certain agency personnel misunderstood that legal concept and led assignors to think otherwise is unfortunate, but irrelevant to the enforceability of the regulations." Answer at 15. The only misfortune here is BSEE's unwillingness to face with candor the undisputed facts of record. MMS approved this assignment. Statement of Reasons ("SoR") at 4-5. The official approving the assignment had all the authority he needed to approve the assignment, novating the assignors' obligation (among other obligations in the Lease) to decommission. *See* AR A-02 at 2 (Regional Supervisor approved 1987 assignment of the Lease). Appellants here (including Oxy and ConocoPhillips) relied on that approval. "To say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government." *Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970).

But BSEE does not challenge the approval of the assignment or the facts set forth in Devon's opening brief. SoR at 2-5. BSEE is correct not to do so, for that challenge would run afoul of this Board's precedents. This is not the first time that bureaus within the Department have claimed epiphanies into the meaning of longstanding rules that their less insightful predecessors failed to see. In *The Superior Oil Co.*, 12 IBLA 212 (1973), this Board held USGS could not change retroactively a value methodology previously

[1] By regulation, the Department imposes joint and several liability on Devon. 30 C.F.R. § 250.1701(a). The rationale behind any assertion of joint and several liability is that the harm is indivisible. Yet BSEE's conduct here belies indivisibility. Its Combined Answer concedes Devon is not liable to decommission wells drilled by Signal Hill. Combined Answer at 13. Nor does the record support that Devon's alleged contribution to the existence of the platforms to be decommissioned cannot reasonably divided based on its limited tenure as a co-owner. The regulation is unconstitutionally applied to Devon, yet the Board is bound by the Department's regulations and can provide no remedy to Devon here. *See, e.g.*, *Fred E. Payne*, 159 IBLA 69, 80 (2003) (Board without jurisdiction to find a regulation unconstitutional). Nevertheless, Devon does not waive its right to challenge the unconstitutionality of the regulation as applied if the Board were to affirm the Order.

agreed to by a Regional Supervisor that had been within his authority to accept. *Id*. at 225. Assessing the agency's argument that a lessee may not estop the government from correcting a federal employee's error, the Board explained; "[t]he case at bar is distinguishable since the royalty base accepted by the Supervisor for some four years was within the ambit of his authority. It is also clear that the Geological Survey could not change the royalty base on a retroactive basis, *Continental Oil Co. v. United States*, 184 F.2d 802 821 (9th Cir. 1950)." *Id*. at 226.

The Board also followed the rule against a bureau retroactively upending prior approvals in *Viersen & Cochran*, 134 IBLA 155 (1995).[2] Reversing MMS in part, the Board noted "there is a substantial difference between the assertion of a right to reconsider decisions allowing deductions as of the present time and the assertion of a right to retroactively reverse such a decision." *Id*. at 165. MMS acknowledged that USGS had been fully apprised of the circumstances when it granted approval for certain transportation allowances for oil and gas production, but it "simply professes that USGS was in error when it did so[:]"

> The simple fact of the matter, however, is that we are not faced with a "silent acceptance" of the deduction for the transportation costs . . . ; rather, we have the affirmative recognition of the contract's acceptability as a basis for establishing a transportation allowance by the official authorized at the time to make that determination.

Id. at 166. "Under these circumstances, the Government can, in fact, be bound by its former actions." *Id*.

More recently, this Board followed the rule against retroactivity in a case involving a different topic: approved production measurement points. In *Robert L. Bayless*, 143 IBLA 267 (1998), the Board reversed BLM's failure to honor a prior approval of off-lease measurement.

> By ordering Bayless to radically change the manner in which it measured volume production during the PAR [production accountability review] period despite the continuing legal efficacy of the approved off-lease plan during that time, BLM has done implicitly what it has chosen not to do explicitly. Ordering a recalculation using a different, previously unapproved wellhead measurement system . . . amounts to a retroactive taking by BLM. Under these circumstances, it would be unfair to penalize Bayless by requiring him to retroactively adjust his production volumes.

Id. at 272.

[2] *Sun Exploration & Production Co.*, 112 IBLA 373 (1990), is to the same effect. It is discussed in detail by both ConocoPhillips and by Oxy, and Devon adopts their discussions here.

All these precedents share a key fact with Devon's appeal: in all, the agency actor was not an Assistant Secretary, the Deputy Secretary, or the Secretary. But none of the decisions of these subordinates could be undone retroactively. Where the Board has previously relied on the need for the actor at least to be at the level of an Assistant Secretary, the Board was addressing whether a prior interpretation by a subordinate official could have binding effect on the Department in another matter. So the legal proposition that only an Assistant Secretary or this Board has the authority to pronounce rules or generally applicable interpretations, *see Energen Res. Corp*., 188 IBLA 374, 381 (2016) (discussing those officials who "have authority to bind the Department to a regulatory interpretation"), does not come into play here. The precedents such as *Robert L. Bayless* all are applications of the rules in particular decisions which the employees within the several bureaus of the Department had been delegated authority to make. The Order at issue here manifestly operates retroactively. The official who authorized the approval of the assignment to Signal Hill routinely acted on the approval or disapproval of assignments of OCS leases within his region. AR A-02. It was an authority delegated to his office. BSEE cannot undo his approval thirty years later.

II. UNTIL CHANGED BY NOTICE AND COMMENT RULEMAKING IN 1997, THE OBLIGATION TO DECOMMISSION LEASES DID NOT "ACCRUE" UNTIL THE LEASE TERMINATED

The chief theme of the Answer is that the obligation to decommission accrues when wells are drilled and platforms are emplaced, even though the obligation does not become enforceable until the lease terminates, and that this "is and has always been the Department's position." Answer at 3. BSEE repeats the theme at least three times more. Answer at 7 (position before and after 1991), 8 ("had always been" the Department's position), & 15 ("the regulations have always said and meant" decommissioning accrues when the platform is emplaced).

The current Attorney General of the United States, the Honorable Merrick Garland, has already provided the pin to puncture this rhetorical balloon. Formerly Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, Attorney General Garland likened this line of argument to that of the Bellman in Lewis Carroll's The Hunting of the Snark. "I have said it thrice: What I tell you three times is true." *Parhat v. Gates*, 532 F.3d 834, 848-49 (D.C. Cir. 2008). BSEE has only two sources

of support for its assertion. Both arose after the 1991 assignment to Signal Hill. One is an Assistant Secretary's 1993 preambular and non-binding remark about the meaning of the 1954 regulation on assignments--a regulation that was not proposed for amendment in 1993. Answer at 8, & 10 (admitting "preambles are not binding"). The other is this Board's decision in *Anadarko Petroleum Corp*., 187 IBLA 77 (2016), *recon. denied*, 188 IBLA 127 (2016). Neither source actually analyzed how the Department had previously used the word "accrued" or what the word's conventional meaning was; indeed, the Board in *Anadarko* declined on reconsideration to do so. It falls now to a panel of this Board to perform that analysis. The courts will expect the Board to follow the customary guides to interpreting legal texts and give reasoned explanations if the Board is to depart from them. In all events, the courts will not allow the Department to rely on the mere repetition, however adamant, of Lewis Carroll's Bellman. SoR at 25-26 (collecting cases). Mere invocation of *Anadarko Petroleum Corp*. to affirm the Order will not suffice to avoid arbitrary decision-making.

Without considering that its own new definition does not appear in any interpretation of "accrued" before 1993, BSEE nevertheless dismisses Devon's arguments. It says "we have already demonstrated to be an unsound foundation[,]" Answer at 19, the premise on which Devon's arguments are based. But before BSEE can declare the foundation unsound, it is first obliged to inspect the foundation. This it has failed to do in point after point.

First is its failure to consider the meaning of the word "accrued" when the Department used it in the 1954 regulations, in the 1993 preamble, the 1997 regulation, or in this Board's decision in *Anadarko Petroleum Corp*. The lead meaning of "accrued" in Black's Law Dictionary has for many years been "[t]o come into existence as an enforceable claim or right; to arise[.]" Black's Law Dictionary 21 (7th ed. 1999). The lead definition in the Webster's Dictionary is the same: "to come into existence as an enforceable claim; vest as a right (a cause of action has accrued when the right to sue has become vested)[.]" Webster's Third New International Dictionary of the English Language Unabridged 13 (1986). There is no dispute here between Devon and BSEE on when BSEE may enforce its claim. The government had no legally "enforceable claim" against Santa Fe to decommission when Santa Fe assigned its interest to Signal Hill in

1991. That enforceable claim did not "arise" until the lease terminated. In no guide to English usage is "accrued" described, as BSEE would now describe it, as meaning "accrued but not yet due for performance."[3] Answer at 7 (quoting 58 Fed. Reg. at 45,257 (Aug. 27, 1993)). If "accrued" had always meant what BSEE now says, there would have been no need to amend the regulations in 1997.

Though BSEE dismisses common law cases applying the term "accrued" as "simply irrelevant," Answer at 16, Devon offered them not to show that this appeal is controlled by the common law of any particular state, but to show there is widespread consensus over what the word "accrued" means. And it doesn't mean what BSEE now claims. BSEE has found no judicial ruling supporting its interpretation. BSEE may feel its power of interpretation is secure on a platform that protects it from the tides of English meaning and the currents of American jurisprudence, but the Lease here is a contract interpreted under the common law of contracts. *Mobil Oil Expl. & Prod. SE, Inc. v. United States*, 530 U.S. 604, 607-08 (2000) ("When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals[,]" a quotation specifically referring to OCS leases). If there ever was a platform from which BSEE could uniquely interpret terms in common legal usage, *Mobil Oil* decommissioned that platform twenty years ago.

Even more surprising is BSEE's disregard of the Department's own precedents. BSEE simply fails to respond to the following points from Devon's Statement of Reasons.

- If "accrued" has always meant what BSEE now claims, then section 5 of the Lease would not have drawn a distinction between "accrued rentals and royalties" and the removal of

[3] In 1991, when MMS approved the assignment to Signal Hill, there was no meaning of "accrued" that is even close to that adopted in the 1997 regulations. "In the past tense, in sense of due and payable; vested." Black's Law Dictionary 20 (6th ed. 1990).] "Accrued right" meant a "matured cause of action, as legal authority to demand redress." *Id.* at 21. "A cause of action 'accrues' when a suit may be maintained thereon[.]" *Id.* The same was true when the Department first used the word "accrued" in the 1954 OCS leasing regulations. "A cause of action 'accrues' when a suit may be maintained thereon." Black's Law Dictionary 37 (4th ed. 1951). Thus, when BSEE argues that "while Santa Fe had not yet *breached* its decommissioning obligation at the time of its assignment…, that does not mean it had not yet *accrued* the obligation by that time," Answer at 17 (emphasis in original), lawyers trained in the Anglo-American legal tradition look at BSEE in befuddlement. To English speakers, it is the breach that marks the accrual.

all structures. If BSEE were right, section 5 would simply say that relinquishment of the lease was subject to the lessee's fulfillment of "all accrued obligations." SoR at 9.

- The 1954 regulations treated the assignee of a segregated OCS lease "as though he had obtained the lease from the United States in his own name[.]" SoR at 10 (quoting 43 C.F.R. § 201.63(a)). That view was reinforced by the interpretation of the assignment regulations as providing that in "a complete transfer from the lessee to an assignee, … [t]he assignee simply takes over the entire obligation of the lessee." *Id*. at 9-10 (quoting *Continental Oil Co*., 74 Int. Dec. 229, 236 (1967)). It is impossible to believe the Department would have adopted such sweeping statements without clarifying that, "of course, decommissioning obligations for existing platforms remain with the assignor." A reasoned decision upholding BSEE's assertion that its view "has always been" the correct interpretation would have to explain why these statements should be abandoned retroactively. BSEE's Answer cannot explain why.
- The Department has declared that its interpretations of the assignment regulations issued under the Mineral Leasing Act are "pertinent to" its interpretations of assignments under the OCS Lands Act. SoR at 16 (quoting *Continental Oil Co*., 74 Int. Dec. at 234). Under the MLA, this Board has held that an assignment effects a novation completely extinguishing the assignor's relationship to the federal lessee. *Id*. at 12-13 (quoting *Petroleum, Inc*., 161 IBLA 194, 210 (2004)). Nothing about this appears in BSEE's answer.
- The Department's binding interpretation of how the OCS assignment procedure creates three contracts is set forth in *Continental Oil Co*. SoR at 14-15. This interpretation perfectly explains both MMS's interpretations in 1988 and 1989 and its behavior surrounding the approval of the assignment to Signal Hill, Not one word from BSEE.

- Finally, in binding decisions the Department has distinguished between "obligations accrued" and "obligations thereafter accruing" in the context of lease relinquishment. That distinction explains why decommissioning obligations are separately preserved, apart from accrued obligations, in section 5 of the Lease. If it were not for this express retention of decommissioning duties, decommissioning would be another "obligation thereafter accruing" from which the lessee would be released. SoR at 16-18 (analyzing cases). BSEE refused to respond.

Without attempting reasoned decisionmaking, but relying only on the mere repetition of Lewis Carroll's Bellman, BSEE has conceded its case by silence.

III. BSEE AGAIN ABANDONS PRECEDENT IN ITS ONE INVOCATION OF COMMON LAW

Ordinarily, it would fall to BSEE as defender of the Order under review to develop any argument it wishes to have the Board consider. Here BSEE mentions an argument, leaving it to Devon and the Board to develop. Referring to the 1993 preamble on which its argument heavily relies, BSEE asserts the "Assistant Secretary in fact addressed the common law question in the previously-discussed rulemakings [regarding] … the survival of those obligations with the assignor post-assignment." Answer at 18-19 (quoting 58 Fed. Reg. at 45,257, "In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere").

If that assertion strikes the reader as odd, it should. After pages of agency argument that federal lessees, onshore and offshore, are at least NOT liable for obligations that do not accrue until after the approval of the assignment, BSEE now argues the joke remains on the lessees because "original lessees" remain liable for all future obligations even after an assignment is approved. Under this argument, in other words, the word "accrued" can be disregarded as irrelevant because "original lessees" are liable anyway.

It is important the Board understand the context of this argument, because adopting it would be an unexplained and inexplicable departure from everything the Department has said about "accrued."

Attempting to support this new distinction , BSEE has quoted part of the text appearing footnote 1 to the 1993 preamble, which we quote in full here.

> The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee absent an express release by the lessor in the lease or elsewhere. Similarly, under the Louisiana Mineral Code, . . . the assignor is not relieved of its obligations unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

Answer at 18-19 (quoting 58 Fed. Reg. at 45257) (emphasis omitted).

It is entirely appropriate for the agency to look to the common law, as Solicitor Margold did, and to Louisiana' s Mineral Code. What is inappropriate is the agency' s misunderstanding of how those sources of law operate. The rule invoked in the quotation holds that (absent special language in the contract) the "original lessee" remains liable to the obligee (*i.e*., the counterparty under the lease) if the assignee fails to perform. Under this rule, for example, an assignor who assigns the lease one week after buying it is still liable for all obligations over the life of the lease, even though no obligation has yet "accrued" during the assignor's brief tenure. The exception to the rule is whenever the obligee expressly or implicitly absolves the assignor of responsibility through release or novation.

On this point, the most commonly cited case in current oil and gas disputes is *Seagull Energy E & P, Inc. v. Eland Energy, Inc*., 207 S.W.3d 342 (Tex. 2006).[4] There, Seagull was the operator under a joint operating agreement ("JOA"). As a non-operator, Eland held an undivided partial interest in two OCS blocks subject to the JOA during the years 1994 to 1996 . In July 1996, Eland assigned its interests to a third-party. *Id*. at 344. The third party later failed to pay Seagull its share of post-assignment operating costs under the JOA. Upholding Seagull's right to payment from Eland, the Texas Supreme Court held that

[4]Article 129 of the Louisiana Mineral Code operates in the same way as the rule followed in *Seagull Energy*. "An assignor ... is not relieved of his obligations or liabilities under a mineral lease unless the lessor has discharged him expressly and in writing." La. Rev. Stat. 31:129. The Reporter's Comment on this Article notes, in relevant part, "It is also true of present law that an assignor cannot free himself of the obligations of his contract by assignment without consent of his creditor. The substitution of a new debtor is a form of novation, but it is effective only with the consent of the creditor. The substitution of a new lessee has been held to be a form of novation in the case of an ordinary lease. There is no basis for distinguishing mineral leases from other types of leases in this respect." (Citations omitted.)

"the seller remains liable under the operating agreement, unless released by the operator or [by] the terms of the agreement." *Id*. Explaining its reasoning, the Court noted that the JOA did "not explain the consequences of an assignment of a working interest to a third party. Thus, we disagree with Eland that the parties expressly agreed that an assignment ... was to operate as a novation[.]" *Id*. at 346.

As explained previously, the Department has taken a path different from the common law rule invoked by BSEE. The federal approval of the lease assignment expressly relieves the assignor of obligations accrued after assignment. Unlike *Eland*, the federal lease assignor has been substituted out of the lease going forward. Specifically with respect to OCS leases (though the rule onshore is the same), the Department follows "the established concept of an assignment as a transfer which substitutes one lessee for another and creates a new contractual relationship between the assignee and the United States[.]" *Continental Oil Co.*, 74 Int. Dec. at 238. But because the assignor remains liable for obligations accrued before the effective date of the approval, the Department has conceived of its approval as "result[ing] in the creation of a contractual relationship involving at least three parties, of which the United States is one, and, in order for that assignment to constitute an enforceable agreement, it is necessary not only that it result in a valid contract between assignor and assignees, but that it *should also result in valid contracts between the United States and each of those parties*." *Id*. at 244 (emphasis added). In other words, there is one private contract between assignor and assignee, one (the lease contract) between the assignee and the Department, and one between the assignor and the Department. And, as this Board has recognized, part of that new contract between the assignor and the United States is a novation extinguishing the assignor's lease relationship. *Petroleum, Inc.*, 161 IBLA at 210. *See also* SoR at 18-19. Because the common law and Mineral Code rules relied on by BSEE are not based on "accrual," and because the *Eland* rule is trumped by a novation when the Department approves the assignment, BSEE draws no support from *Eland*.[5]

[5] It is possible the Assistant Secretary's error came from confusing an assignment of record title (as with Santa Fe here) and an assignment of operating rights carved out of record title. A holder of record title is still liable to the federal lessor if the operating rights owner breaches. *Petroleum, Inc.*, 161 IBLA at 211. The Department's treatment of operating rights owners is an analog to that of assignees under *Eland*.

IV. BSEE'S ARGUMENT ON DEVON'S SEPARATE REGULATORY DUTY TO DECOMMISSION AVOIDS, AND THUS CONCEDES, THE ARGUMENT THAT BSEE CANNOT IMPOSE THAT DUTY RETROACTIVELY

BSEE's Answer does not respond to Devon's argument, SoR at 19-20, that the preamble to the Lease, making the lease subject to all lawful regulations of the Secretary, did not incorporate into the Lease the future 1997 regulations. Having persuaded itself that "accrued" has always meant "accrued, but not due for performance," BSEE rests by incorporating the argument BSEE made in Section III.B of the Combined Answer filed against ConocoPhillips and Oxy. For clarity, we must unpack BSEE's argument. If Devon is correct about what "accrued" meant prior to the 1997 regulations, can BSEE apply the new 1997 view of "accrued" to the transaction it approved in 1991? BSEE argues it can: that is, BSEE urges it can be wrong about what "accrued" meant in 1991 but still apply its new meaning because assignees of Santa Fe kept the lease in effect after August 20, 1997, the effective date of the 1997 regulations.

There are only two ways this outcome is possible. One is if Santa Fe agreed during the discussions with MMS in 1991 that it would still be subject to future changes in regulations affecting the Lease, even though its interest in the lease was eliminated by BSEE's approval of the assignment. Stated in the language of *Continental Oil Co.,* because the assignor was no longer a party to the lease, Santa Fe's agreement to decommission could only be part of the separate contract between the assignor and the lessor. The other is if, through regulation alone, BSEE has the power to undo the commitment MMS made with the assignors and with Signal Hill in approving the assignment of the Lease in 1991.

Before working through BSEE's arguments, it is important to recall that MMS approved an assignment in which the assignee Signal Hill, not the assignors, agreed to be bound to all regulations "now or to be issued" under the OCS Lands Act. SoR at 4 (quoting AR A-3 at 2). The assignors did not agree to decommission. BSEE does not deny this. It is also important to recall the parties agree the Department lacks the authority to issue OCS rules with retroactive effect. SoR at 26; Combined Answer at 12. BSEE's argument, therefore, is that the Lease itself already contained language making future regulations part of the lease; but if that is wrong, then the application of future regulations to conduct predating those regulations is not "retroactive."

A. The Preamble to the Lease Did Not Incorporate Future Regulations

Regarding the preamble to the Lease, Devon demonstrated "the Preamble does not make part of Lease 0166 a future regulation, let alone a future regulation with retroactive effect." SoR at 20. Devon added:

> To avoid confusion, Devon clarifies what it is not saying here. It is not saying that BSEE cannot adopt conservation regulations that apply to existing leases. It is saying that regulations issued after the effective date of Lease 0166 are not "made part hereof" for the purpose of knowing the scope of what has been incorporated into the lease contract.

Id. at n. 11. The distinction between what is incorporated into the lease contract and what is not is an important one. A breach of the lease leads to contract remedies, *see Mobil Oil*; a breach of regulations alone leads to statutory remedies. In *Mobil Oil*, for example, the question was not whether Congress was barred from adopting the Outer Banks Protection Act because the Act was outside the terms of the OCS lease; the question was whether the adoption of the Act caused the government to repudiate the lease. The Court rejected the argument, which BSEE offers here, that every regulation or statute adopted after leases were issued nevertheless became part of the lease itself.

Ignoring both Devon's distinction and *Mobil Oil*, BSEE argues not only that the Secretary has been empowered since 1953 to adopt rules that can apply to operations on already existing leases (the point Devon's footnote 11 acknowledges), but also that this power automatically incorporates those new laws into existing leases. Combined Answer at 10. Not only is that errant conclusion unsupported by case authority or statutory text, it still does not come to heart of the issue here. **New rules can govern future operations on existing leases; they cannot govern past operations or former lessees unless the lease language clearly requires it.** The preamble to the Lease did not expressly incorporate future regulations. The fact that leases issued after the 1978 Amendments to the OCS Lands Act did expressly incorporate future regulations, *see* Combined Answer at 11 (noting Anadarko's different preamble), proves Devon's point: the old and new preambles have different effect. Different words reflect different intent. Words matter.

B. BSEE Cannot By Regulation Alone Undo the Approval of the Assignment in 1991

If, in 1991, the word "accrued" meant what Devon argues, and if, in 1991, nothing in the Lease or in the approval of the assignment bound the assignors to be subject to future regulations, the only remaining avenue to sustain the Decision is if, through the 1997 rulemaking, BSEE could modify the Lease and the approval to impose liability for decommissioning on the 1991 assignors.

Here the Combined Answer makes two points. The first concerns the effect of the 1978 amendments to the Secretary's rulemaking authority under section 5(a) of the OCS Lands Act. The language is quoted at length on page 10 of the Combined Answer and need not be reprinted. Relevant to the point here is the very language BSEE chose to underline and place in boldface: the Secretary can adopt and amend regulations for the conservation of natural resources and "such rules and regulations shall, **as of their effective date**, apply to all operations conducted under a lease[.]" Combined Answer at 10 (emphasis in the original). The statute, on which all of BSEE's Argument III. B. depends, does not use the words BSEE needs to prevail. It does not say the regulations shall apply "back to the effective date of the lease." It does not say the regulations "shall apply to assignors whose assignments were approved before the effective date of the regulations." It says only the regulations shall apply to operations as of the regulations' effective date. The statute gives explicitly prospective rulemaking authority. Under federal law, that is how rulemaking works. *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 208 (1988). Even though BSEE adds emphasis to the text of the statute, BSEE does not argue otherwise.

This concession about prospective rulemaking forces BSEE to withdraw to its final redoubt. If BSEE is wrong about "accrued," and also wrong about the preamble to the Lease and the approval of the assignment, and if its rulemaking is of prospective force only, then it must find a way to say the 1997 rules are not retroactive after all. BSEE tries to rise to that challenge, and it does so boldly: if a lease continued in force after August 20, 1997, there is no such thing as retroactivity under the OCS Lands Act. BSEE argues that because the statute allows for future rules applicable to operations after the effective date of the rules, that ends the matter. Combined Answer at 12 ("there is nothing 'retroactive' about applying the 1997 regulatory amendments to the Lease that continued for decades thereafter").

But that misses the point. Devon and its fellow assignors did not conduct operations on the Lease after August 20, 1997. BSEE here is applying a new and prospective requirement to alter the legal consequences of the assignors having conducted operations on the Lease before February 5, 1991. BSEE tries to use the 1997 Regulation to reach back in time. The legal term for that "reach back" is retroactivity.

There is a reason BSEE does not respond to Devon's explanation of what retroactivity means. *See* SoR at 27-29. BSEE cannot. Devon addressed retroactivity at length in its opening brief. SoR at 26-29. Because both the Answer and Combined Answer fail to mention the authorities Devon cited, Devon need not restate the argument in full again. In brief, a regulation is being applied retroactively when it "impairs rights a party possessed when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions already completed." *Nati'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (citation omitted). If BSEE is wrong about what "accrued" meant in 1991, then the assignors had no duty to decommission Signal Hill's lease, whether under the assignment regulations at the time, under the preamble to the Lease, or under the approval of the assignment. BSEE is using the 1997 regulation to "increase the assignors' liability for past conduct," and to "impose[] new duties [of decommissioning] with respect to transactions [*i.e.*, the approved assignments] already completed." BSEE gave no rebuttal to this conclusion. It has no rebuttal to this conclusion. And no rebuttal to this conclusion can be contrived.

V. THE ASSISTANT SECRETARY'S 1993 BELIEF ABOUT "ACCRUED" IS NOT BINDING

The Assistant Secretary's 1993 statement interpreting what "accrued" meant in 1954 is not binding on this Board or on Devon. BSEE concedes "preambles are not binding[.]" Answer at 10. Agency interpretations are likewise not binding. SoR at 26 n. 14 (citing *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015)). BSEE attempts to respond to IBLA precedent that the Assistant Secretary's opinion in a preamble of a section of the rules <u>not</u> amended is not binding on the Board. Its attempt, however, will not survive examination by a panel of this Board. *Compare* SoR at 21-23 *with* Answer at 9. Furthermore, the Assistant Secretary's statement is arbitrary, ignoring prior binding precedent on how accrual operates and

invoking the *Eland* rule when Department precedent treats approval of an assignment as a novation of the lease between the government and the assignor. To be clear, Devon does not argue that interpretations by the MMS in 1988 and 1989 are binding. It argues instead that those interpretations honor the analysis in *Continental Oil Co*. and earlier precedents, while that of the Assistant Secretary does not.

VI. BSEE'S ARGUMENT ABOUT THE ACCRUAL OF ROYALTY DOES NOT SUPPORT ITS POSITION

BSEE argues that the scheme governing oil and gas royalties proves there is a difference between "accrued" and "due for performance." It urges that a "lessee's obligation to pay royalties on production from a lease accrues as soon as the production is saved, removed, or sold from the lease, but the actual requirement to pay those royalties does not come due until the end of the month following that production." Answer at 17 (citing 30 C.F.R. § 1218.50). There is plenty of authority—lease, regulation, and statute—concerning when royalties are due. Lease Sec. 2(a)(3); 30 C.F.R. § 1218.50(a) (2019); 30 U.S.C. § 1724(c)(2) ("The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this chapter on the last day of the calendar month following the month in which oil or gas is produced."). BSEE cites no authority on <u>when</u> the obligation to pay federal royalties "accrues." Devon's counsel remains aware of none. However, if one were required to apply the label "accrued" to federal oil and gas royalties, then using conventional understandings of "accrued" the obligation would accrue when "the right to enforce" it "for any given production month … is fixed" at the end of the month after production. 30 U.S.C. § 1724(c)(2). Royalties would "accrue" when payment became due. There is nothing about royalties, therefore, that helps BSEE here. If BSEE's argument about the accrual of royalties were sound, one can be forgiven for wondering why it did not appear in the 1993 and 1997 preambles which BSEE so frequently cites.

VII. ONRR MISSTATES THE STANDARD OF REVIEW

Finally, it is telling BSEE urges the Board uphold its "exercise of its discretionary authority" under judicial standards of review for arbitrariness. Answer at 2. As BSEE explains it, "BSEE's enforcement of decommissioning obligations that have accrued to current and former lessees is a matter within its

discretion." *Id*. This assertion hurts BSEE's cause, however. If BSEE has the discretion now to tag Devon with liability, then it also has the discretion not to. If there is such discretion, then in 1991 the Regional Director, Pacific OCS Region, Dr. Lisle Reed exercised this discretion by not compelling Signal Hill's assignors to accept liability for decommissioning the Lease. BSEE's invocation of its discretion here proves the introduction to this Reply: MMS approved the assignment specifically aware the assignors would not be liable for decommissioning if later assignees failed to do it. Dr. Reed had the delegated discretion to approve the assignment with that understanding. That approval cannot be overturned now. *Viersen & Cochran*, 134 IBLA at 166.

But the Board is not bound to follow deferential review here. Even if the Board were a court, it would not employ deference in reviewing this Order. Deference is not given to agency interpretation that causes "unfair surprise" to regulated entities. *See Kisor v. Wilkie*, 139 S.Ct. 2400, 2416-2418, 2421 (2019). Moreover, the IBLA (a body independent of BSEE) has already heard this argument from BSEE's predecessor, the Minerals Management Service, and held deference is inapposite. "There is no principle or precedent that implies or indicates that the Board owes any deference to the Regional Director's legal views." *Statoil Gulf of Mexico LLC, ExxonMobil Corp.*, 178 IBLA 244, 256 (2009) (emphasis added). It is the IBLA that "decides finally for the Department appeals . . . from decisions rendered by Department officials," 43 C.F.R. § 4.1(b)(2) (emphasis added), "as fully and finally as might the Secretary," *see id*. § 4.1 (emphasis added). Moreover, "it is for this Board to interpret contract language, terms, and conditions, as we owe no deference to a bureau's 'technical determinations' or 'legal interpretations' because it is our interpretation of the law, facts, and contract that is entitled to deference by the Federal Courts." *Taylor Energy Company LLC*, 193 IBLA 167, 179 (2018) (emphasis added).

CONCLUSION

For the reasons presented in Devon Statement of Reasons and this Reply, the Board should vacate the Order of Mr. Bruce H. Hesson dated November 6, 2020.

Respectfully submitted this 30th day of September 2021.

/s/ Poe Leggette
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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021, service of the foregoing **DEVON ENERGY CORPORATION'S REPLY** was made in accordance with the applicable rules as noted, to the following:

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Poe Leggette

Received

10/22/2021

Interior Board of Land Appeals

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA 2021-132	)	
Devon Energy Corporation	)	
	)	
IBLA 2021-137	)	**Lease OCS-P 0166**
ConocoPhillips Company	)	**Offshore Decommissioning**
	)	
IBLA 2021-138	)	
OXY U.S.A. Inc.	)	

NOTICE OF RELATED CASES

The Bureau of Safety and Environmental Enforcement (BSEE) submits this notice to inform the Interior Board of Land Appeals (Board) of the related nature of the above-captioned appeals.

The material facts in all three appeals are substantially the same. The appellants in the three matters were all co-lessees of the same outer Continental Shelf (OCS) lease (Lease OCS-P 0166 (Lease)) during the time period leading up to February 1991, when they all assigned their respective interests to Signal Hill Services, Inc. (Signal Hill). When Signal Hill defaulted on its obligations to decommission the wells and facilities on the Lease following its relinquishment, each Appellant received essentially identical orders to perform the decommissioning of the same wells and facilities based on their status as predecessor lessees during the same relevant period. Those identical orders, and the common circumstances underlying them, are the subject of these three separately-filed appeals. This is reflected in the fact that BSEE created a single administrative record for all three appeals.

Moreover, as evidenced by the statements of reasons and answers filed with the Board, the legal issues presented for the Board's resolution are largely identical, common to or adopted

across the parties' briefs, and otherwise fundamentally overlapping and intertwined. The overarching legal question is whether appellants possess liability for the ordered decommissioning pursuant to the controlling law, regulations, and lease terms as applied to the common factual circumstances. That legal question, and any relevant subsidiary questions, apply in the same manner across all three appeals, and appellants have identified no pertinent legal distinctions between their circumstances material to the resolution of their respective appeals. BSEE's legal position and basis for asserting such liability is identical as to all three appellants. While each appellant supplements the commonly-shared foundational legal arguments with points of individual variation or emphasis, their legal arguments are built predominantly on shared core theories disputing their accrual of the relevant obligations as prior lessees of the Lease, or the ability of BSEE to enforce those obligations.

Accordingly, BSEE provides this notice to the Board to bring to its attention the common, intertwined, and complementary nature of the factual and legal issues presented for resolution across these three appeals. BSEE respectfully recommends that the Board consider certain docket management actions to ensure the most efficient use of administrative resources and consistency in its adjudication of these common issues, including but not limited to assignment of the three matters to a common Panel of Administrative Judges and coordinated consideration of (and potential decision-making on) the three matters. While we are not moving for the Board to consolidate these appeals, BSEE would have no objection to the Board deciding to consolidate these appeals for administrative purposes *sua sponte* based on a recognition that "the facts or legal issues in [the three] appeals pending before the Board are the same or similar" pursuant to 43 C.F.R. § 4.404. Counsel for appellants, however, have informed us that they object to consolidation.

Date: October 22, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 22, 2021, the foregoing Notice of Related Cases was served upon Appellants, as agreed to between the parties pursuant to 43 C.F.R. § 4.401(c)(4)(ii)(D), by emailing copies to:

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I further certify that on October 22, 2021, a true copy of the Notice of Related Cases was emailed to ibla@oha.doi.gov for filing, pursuant to the Board's March 24, 2020, Order regarding filing of any and all pleadings by email in response to the COVID-19 pandemic.

Eric Andreas

Eric Andreas