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Is Self-Initiation Still Possible?

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IS SELF-INITIATION STILL POSSIBLE?

BY H.A. TRUE JR.*

Getting up here and following Professor Clark in a discussion of the General Mining Law[1] reminds me of the experience of one Ralph Thompson. As a young man, Ralph was caught in the Jamestown flood. As he got older, he got to be quite a bore in telling people about it. When he died, St. Peter met him at the Pearly Gates and asked, "Mr. Thompson, is there something we could do to make your arrival here more enjoyable?" Ralph said, "I love to tell people about the Jamestown flood. Would you get a crowd together so I can do that?" "I'd be glad to," St. Peter answered, "but I should warn you that Noah will be in the audience."

Not wanting to debate flood survival with Noah, and since Bob Clark gave me a break by referring to the entire chapter on mineral resources[2] and not only to the Mining Act as such, I hope to draw my discussion out a bit and not come face to face with Bob because my knowledge of the Mining Law is not equal to his.

During the deliberations of the Public Land Law Review Commission (PLLRC), many of us involved in exploration for oil and gas on public lands were concerned that an extension of competitive bidding would freeze the small operators out of the leasing and exploration process. We were justified in feeling this way because the competitive bidding situation under the Outer Continental Shelf Lands Act[3] has obviously kept the independents and small operators out. In its report, the Commission encouraged competitive bidding, but not complete competitive bidding as some have advocated.[4] The Commission also, of course, recognized that the environmental impact of exploration and development must be appreciated and corrected.[5] The Report re-

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[1] 30 U.S.C. §§ 21-54 (1970).

[2] PUBLIC LAND LAW REVIEW COMMISSION, ONE THIRD OF THE NATION'S LAND 121-38 (1970) [hereinafter cited as PLLRC REPORT].

[3] 43 U.S.C. §§ 1331-1343 (1970) (originally enacted as Act of August 7, 1953, ch. 345, §§ 2-15, 67 Stat. 462).

[4] PLLRC REPORT 132-34. The Commission felt that "[c]ompetitive sale of exploration permits or leases should be held whenever competitive interest can reasonably be expected." Recommendation 49, *id.* at 132.

[5] *Id.* at 127.

commended that the country look to the private sector for exploration and production of minerals from the public lands.[6]

We heard earlier at this Conference that the Federal Land Policy and Management Act of 1976,[7] outside of recording and other evidentiary matters, did not touch on either the General Mining Law[8] or the Mineral Leasing Act of 1920.[9] But since my expertise lies in the field of oil and gas, I would like to make a few comments about that area and what has happened since the PLLRC Report was issued. My friends in the mining business assure me that more or less the same thing has happened to the hard rock mining people.

I started in this business almost twenty-nine years ago, at a time when self-initiation was the watchword for development of the public domain. Shortly after I started, I had occasion to check an area in the Buffalo BLM office and found some open acreage. I filed on a little and made a deal with the owners of the rest. Five years later, after a dry hole, we did drill a discovery, and, as I recall, that well made fourteen barrels almost every day. Not very commercial! We subsequently drilled a third well that made about 100 barrels a day which was a commercial well. We experienced "self-initiation" participation in the development of the public land and recovered resources that we felt were valuable to our country.

At that time all my operation needed was a two-office suite with a secretary, and, because even in those days we had Social Security, unemployment taxes, Fair Labor standards, and withholding taxes, a CPA to prepare my books and records and keep me within the law. When I look at our organization today, I see 120 people, and as near as I can figure, about 100 of them are keeping records for and making reports to governments of various levels. Since ONE THIRD OF THE NATION'S LANDS was issued, there has been legislation that has affected the oil and gas business along with every other business. Today we have the Environmen-

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[6] *Id.* at 122.

[7] Pub. L. No. 94-579, §§ 101-707, 90 Stat. 2743 (1976).

[8] 30 U.S.C. §§ 21-54 (1970).

[9] 30 U.S.C. §§ 181-287 (1970) (originally enacted as Act of February 25, 1920, ch. 85 §§ 2-38, 41 Stat. 437).

tal Protection Act,[10] the Clean Air[11] and Water Acts,[12] OSHA,[13] FEA,[14] and the EPCA.[15] These and many other congressional actions have burdened the oil and gas industry, *but not through the public lands*. Looking back over these seven years since the Commission's Report, I see no *statutory* change that has altered the position of the oil and gas explorer on the public domain.

The Department of the Interior, through its regulations, has had a tremendous impact on the industry. But let's see what has happened through the Department of the Interior and its rule-making regulations. A couple of years ago Interior came out with what was called "The List of 13," which was thirteen requirements for obtaining approval of a drilling location on the public lands. It was quite detailed and onerous and took a lot of time. We hadn't seen much of anything though, because in 1975 Interior came out with the NTL-6[16] which is a whole laundry list of not only what you have to do before drilling, but what you have to do during drilling and after drilling.

I'd like to relate a couple of horrible examples of what has happened to us under these regulations. We staked a well location in North Dakota where the Federal Government controlled the surface and the mineral rights. We invited personnel from the Forest Service, the U.S. Geological Survey, and the Bureau of Land Management into the field and got the location approved. We thought everything was fine. The first load of the drilling rig arrived and as it turned off the county road, 660 feet from the location, a "Keystone Cop" in the form of a district engineer for the USGS came up and shut us down because nobody had approved the road to the drillsite. So we had to send for the engi-

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[10] National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4331-4335, 4341-4347 (1970).

[11] Clean Air Acts and Amendments, 42 U.S.C. §§ 1857-1857x (1970).

[12] Clean Water Restoration Act of 1966, Pub. L. No. 89-753, §§ 101-211, 80 Stat. 1246 (1966) (codified in scattered sections of 33 U.S.C.).

[13] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, §§ 2-34, 84 Stat. 1590 (1970) (codified in scattered sections of 5, 15, 18, 24, 42, 49 U.S.C.).

[14] Federal Energy Administration Act of 1974, 15 U.S.C. §§ 761-786 (Supp. V 1975)).

[15] Energy Policy and Conservation Act, Pub. L. No. 94-163, §§ 101-552, 89 Stat. 871 (1975) (codified in scattered sections of 12, 15, and 50 U.S.C., generally in 42 U.S.C. §§ 6201-6422 (Supp. V 1975)).

[16] Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-6).

neers to make a cut-and-fill profile and do all the other engineering. After all that we just drove over the prairie, but we did finally get approval. We estimated that that little misunderstanding cost us a cool $25,000.

Last year, in early November, we made an agreement with a lessee to drill on his federal lease, which was due to expire on January 31, 1977, some eleven or twelve weeks later. As you may know, the USGS is very stuffy about extending leases for two years. To get an extension you must have a rig on the site and be drilling on the expiration date. For this reason we made an all-out effort to get approval of the location. Our first visit to the location, accompanied by USGS personnel, dirt contractors, engineers, and geologists, was on November 12, 1976. The USGS approved the location but the BLM did not.

We then staked an alternate location 600 feet northwest. Let me explain that up in this area you are sharpshooting at little pimples. They are one-well oil fields and, if you get off the closure and away from the porosity, you get a dry hole. It is a very scientific pinpoint process. We finally agreed to move 600 feet northwest in order to place the drillsite in a different environment on the National Grasslands. We resurveyed it and on December 12, 1976, got everybody back together to reexamine the location. Again the USGS approved but the BLM did not. One week later we received a list of the reasons for refusal: (1) the access road required too much cut; (2) the location required too much cut; and (3) the area was identified as a critical area for raptor nesting sites. Furthermore, the previous lessee had built a road to within a quarter of a mile of our location which we had planned to use but we had not requested permission to do so. As a result, the whole deal was again turned down. The final objection was that the access road—and this was in rough, rugged country—would require more than a two-foot cut. You can hardly build an access road on a prairie with less than a two-foot cut!

Finally, on January 4, 1977, a third wellsite inspection was made at a new location, forty or fifty feet away. On January 18, we received the necessary approvals. Because of a shortage of rigs and because we had to have a rig on that location and drilling by January 31 in order to extend the lease, we had been paying standby time for a rig since December 1, 1976. We force-drafted equipment into North Dakota and got the road and location prepared. The rig began drilling about six hours before the deadline, and we got the extension of the lease. Unfortunately, this all turned out to be a mistake because it was a dry hole. If we had just known that, we would have happily lost the lease and saved the money. We have documented the cost of that delay on the location at $200,000. Now that's pretty expensive hawk-nesting protection.

Additional regulations are now pending that will not change the Mineral Leasing Act or General Mining Law per se but will certainly affect us all. The USGS is currently conducting hearings on redefining the "MER," a term referred to in the EPCA and to which Interior refers in leases and regulations. Ever since I went to school, the MER has been the Maximum Efficient Rate of production. However, since the Secretary's authority is tied to the term, the USGS will probably find a new definition that is more to its liking, so that it can legally regulate the rate of production on eighteen federal leases.[17]

My question is this: In the absence of any specific legislation affecting the small oil and gas operator on the public lands, is self-initiation still possible?

I would have to answer in this way: Yes, it is possible but only for the big companies that have sufficient staff and resources to fight all the red tape and put up with the delays and expense. Yes, it is possible for the individual, the small guy, if he's only going to act as a broker. But, if he wants to be a producer, if he wants to be an explorationist, I must admit that I see no way that an individual can start out from scratch now and "self-initiate" into petroleum production from the federal lands.

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[17] The USGS already regulates the price of federal royalty oil, the price of federal royalty gas, and the determination whether oil can be produced without marketing gas.