

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARIO OIL AND GAS COMPANY,	)	
	)	
Plaintiff,	)	
	)	Case No. <u>24-1801 C</u>
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

COMPLAINT

1. This case seeks compensation owed to Lario Oil & Gas Company (“Lario”) due to the November 3, 2020 decision (“Decision”) of the State Director of the Montana/Dakotas State Office (“State Office”) of the Bureau of Land Management (“BLM”) to cancel a portion of Federal Oil and Gas Lease NDM 102154 (the “Lease”) (attached as Ex. 1).

2. The Lease had been issued by the United States to Lario in 2011 pursuant to Lario’s successful bid at a BLM lease sale. In November 2020, however, the United States decided to cancel a portion of the Lease, citing the United States’ belief that part of the leased lands were in fact trust lands of the Mandan, Hidatsa, Arikara Nation (“MHA Nation”). The United States provided almost no explanation for this conclusion, and worse, offered only one solution: to avoid shutting in wells that penetrated the leased lands, Lario would need to negotiate and enter into a new lease with the MHA Nation, and fast—within 37 days.

3. This action not only deprived Lario of its bargained-for lease terms with the United States, but it also placed Lario in a significantly disadvantaged bargaining position with respect to the MHA Nation. As BLM itself noted at the time “[t]he [Lease is] in a prolific part of

the Bakken oil field . . . and Tribal lease amounts would be more due to a higher minimum royalty rate per statute.” Ex. 2, February 13, 2020 Briefing Memorandum for the Deputy Director – Bureau of Land Management at 2. Given Lario’s extensive investments in developing the Leased minerals and nine years of participating and investing in operations there, Lario had no choice but to obtain the best possible terms from the MHA Nation, even if those terms—including those addressing lease bonuses, rentals, and royalties to be paid to the MHA Nation—would be significantly worse than Lario’s lease terms with the United States.

4. This lawsuit does not challenge the legality of the United States’ decision to recognize some of the leased lands as belonging to the MHA Nation. Instead, this lawsuit seeks to compel the United States to face the straightforward legal consequences of having entered into a valid contract with Lario and then unequivocally breaching the contract by cancelling a portion of the Lease.

5. Oil and gas leases are contracts, and by cancelling the Lease, the United States breached that contract. Lario, as the non-breaching party, is entitled to receive compensation from the United States for the damages resulting from that breach. These damages include millions of dollars in losses from (i) the higher lease bonus and royalties that have been paid to the MHA Nation and will continue to be paid into the future, (ii) a settlement payment required by the MHA Nation for production from prior periods that had been covered by the Lease, and (iii) lost proceeds on production during the period between the United States’ cancellation of the Lease and the effective date of the new lease with the MHA Nation.

6. The United States’ breach has forced Lario into a far more disadvantageous contract with the MHA Nation and has caused additional financial losses. The United States must address these consequences by providing all compensation required by law to Lario.

PARTIES

7. The Plaintiff Lario is an oil and gas company that is the record title holder of the Lease and an intended beneficiary of the Lease through the production of oil and gas and other expected and relied upon revenue.

8. Defendant United States, through the Department of the Interior (“the Department”) and the BLM, is the lessor of the Lease. The United States is also responsible for managing the exploration and development of federal oil and gas resources, including resources in North Dakota’s Lake Sakakawea area. In that role, the United States rendered the decision to cancel a portion of the Lease.

JURISDICTION

9. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1491(a) (“Tucker Act”), because this action presents a claim against the United States which is founded upon statutes and the Constitution of the United States and includes a claim of over \$10,000.00 in damages.

10. This Court has jurisdiction under the Tucker Act where it shows that “its claims arose out of a valid contract with the United States.” *Crewzers Fire Crew Transp., Inc. v. United States*, 741 F.3d 1380, 1382 (Fed. Cir. 2014).

11. "The effect of finding privity of contract between a party and the United States is to find a waiver of sovereign immunity." *Pac. Gas & Elec. Co. ex rel. Brown v. United States*, 838 F.3d 1341, 1350 (Fed. Cir. 2016).

12. A plaintiff can also bring a claim in this Court for breaches of the implied covenant of good faith and fair dealing, which arises out of a contract with the United States. *First Nationwide Bank v. United States*, 431 F.3d 1342, 1349 (Fed. Cir. 2005).

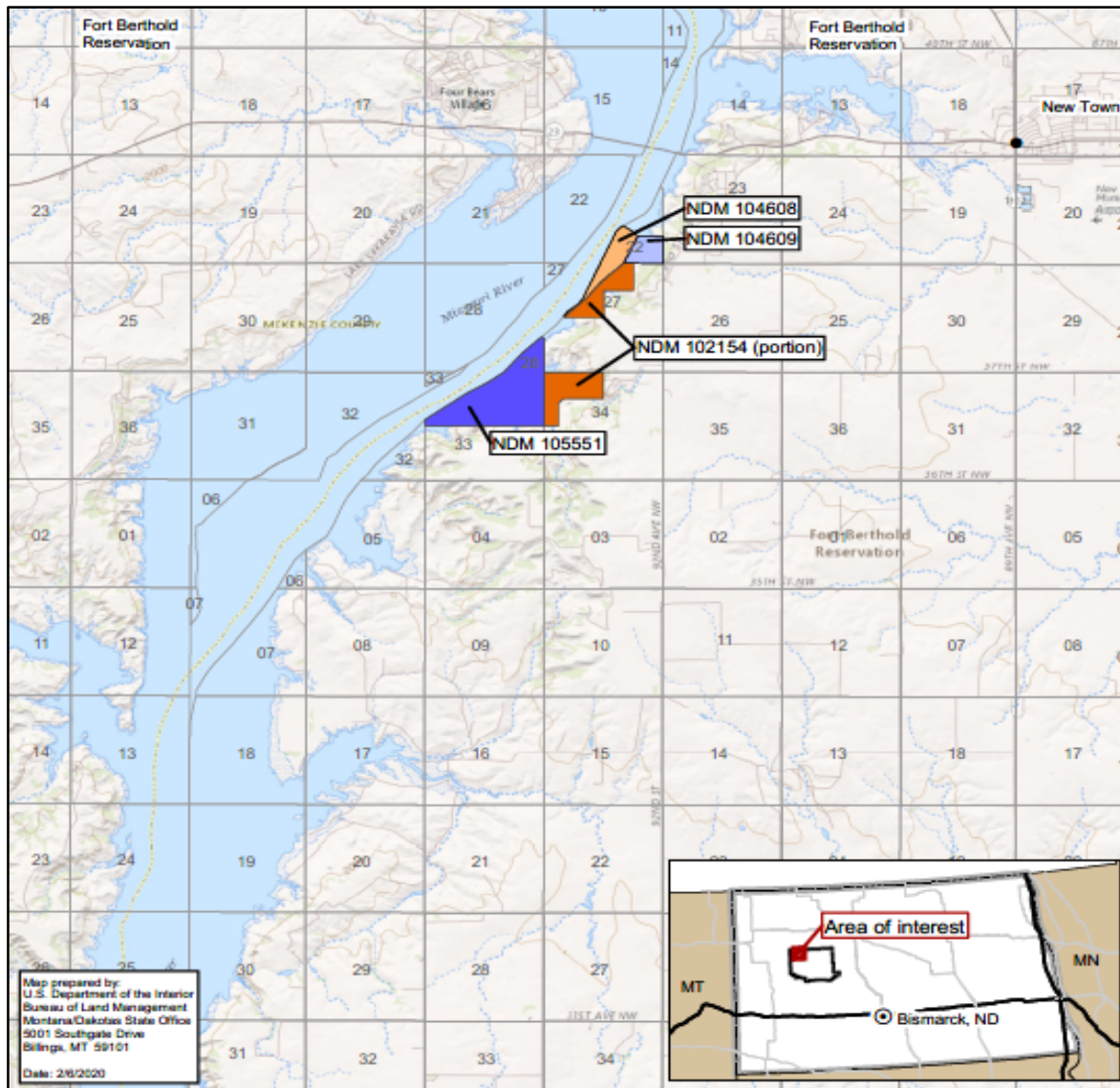
ALLEGATIONS

13. The Lease covers minerals underlying lands located on the eastern shore of Lake Sakakawea, a large reservoir in central North Dakota impounded from the Missouri River by Garrison Dam in 1953 (the “Leased Lands”). See Fig. 1 below (depicting the location of leases cancelled by the United States in 2020, including the Lease).

14. The Leased Lands were part of a larger area reserved for the MHA Nation as the Fort Berthold Indian Reservation (“FBIR”) by Executive Order in 1870. The Leased Lands were then, at least in part,¹ transferred to the ownership of the United States in fee simple absolute following the passage of the 1949 Takings Act, which helped facilitate the United States’ construction of Lake Sakakawea. P.L. 437 § 1, 63 Stat. 1026, 1044 (Oct. 29, 1949).

15. Some of the lands that were transferred to the United States’ ownership pursuant to the 1949 Takings Act were transferred back to the MHA Nation in 1984 following enactment of the Fort Berthold Reservation Mineral Restoration Act, Pub. L. No. 98-602, tit. 2, 98 Stat. 3149, 3152 (1984). The United States, however, has stated that the Leased Lands were excluded from the lands that were returned to MHA Nation following the construction of Lake Sakakawea. Ex. 3, Letter from BLM State Director John Mehlhoff to Lario at Enclosure 3 (Sep. 4, 2020). Thus, the United States indisputably held a part of the Leased Lands in fee simple absolute even after 1984.

¹ Consisting of the area defined as: “South quarter line to the North boundary of the Ft. Berthold Indian Reservation line as surveyed; thence East with said Reservation line approximately two (2) miles to the low water line of the Missouri River at the left bank of said stream; thence downstream with said low water line approximately seven (7) miles to the East and West quarter line of Section 7[.]”



**Figure 1 – Sakakawea Lease Area
(highlighting subject tracts, including Lario’s Lease - NDM 102154)**

16. On September 27, 2010, Marathon Oil Company (“Marathon”) submitted to BLM a communitization agreement covering the Leased Lands along with other lands. On November 1, 2010, the BLM approved the communitization agreement and assigned it the number NDM-101124 (“Communitization Agreement”). The Communitization Agreement had the effect of attributing operations on, and production from, one communitized tract to all communitized tracts, including the Leased Lands. The Communitization Agreement covered ten tracts, totaling

approximately 1280 acres (“Communitized Area”), and it specified that Marathon would serve as the operator for production of oil and gas from the communitized tracts. (Ex. 4, November 1, 2010 Communitization Agreement NDM-101124 at PDF pg. 21).

17. The Communitization Agreement provided that proceeds attributable to unleased federal lands would be placed into an interest-bearing account until the land is leased. *Id.* at PDF pg. 3.

18. Marathon subsequently drilled and completed one well between November 2010 and July 2011.

19. In July 2011, BLM held a competitive oil and gas lease sale, at which it auctioned the Lease, which consisted of two tracts in the Communitized Area operated by Marathon. The two tracts totaled 236.23 acres and were leased for an initial term of 10 years. (Ex. 1, August 10, 2011 Offer to Lease and Lease for Oil and Gas NDM-102154 at pg. 1). Lario was the high bidder for the Lease and paid approximately \$1.9 million in lease bonuses and first-year’s rentals to the United States.

20. On August 10, 2011, the United States issued the Lease to Lario with an effective date of September 1, 2011. *Id.*

21. The Lease granted Lario the “exclusive right to drill for, mine, extract, remove and dispose of all the oil and gas (except helium)” in the Leased Lands. The Lease further provided for royalty on all production “removed or sold” from the Leased Lands at a standard rate of 12.5%. (*Id.* at 2).

22. After it acquired the Lease, Lario expended significant resources to participate in developing the leased oil and gas resources. For example, Lario as a participating working

interest owner has invested nearly \$13 million in establishing production at and funding ongoing operations of the nine wells that penetrate the Leased Lands.

23. In addition to the one well drilled prior to the effective date of Lario's Lease, Marathon subsequently drilled and completed an additional eleven wells accessing the Lands covered by the Communitization Agreement, with nine of the wells in total directly accessing Lario's Leased Lands. Lario participated financially in each of these wells.

24. On September 4, 2020, Director of the State Office John H. Mehlhoff wrote to Lario to inform Lario "of an error made by the Bureau of Land Management [] regarding mineral leasing within the Fort Berthold Indian Reservation." Ex. 3, Sept. 4, 2020 Mehlhoff Letter at PDF pg. 1. The letter explained that the BLM had concluded that four oil and gas leases—including Lario's Lease and three Marathon leases—had erroneously been issued as federal minerals, when the United States now believed them to cover MHA Nation minerals. *Id.* To resolve this issue, Director Mehlhoff stated that the BLM proposed "entering into an interim agreement with the MHA Nation," and asserted that if "[Lario] want[s] to hold an [Indian] trust lease, [Lario] and the MHA Nation would need to come to an agreement on lease terms." *Id.*

25. On September 18, 2020, Lario replied to Director Mehlhoff's September 4 letter by email, seeking additional information and inquiring about next steps. Ex. 5, September 18, 2020 Email from Lario's Lori Blundell to Director Mehlhoff.

26. In response, on September 25, 2020, Director Mehlhoff wrote to Lario warning that the BLM would cancel the Lease no later than November 1, 2020, "and [would] require all wells to be shut in unless Lario reaches an agreement with the MHA Nation concerning ongoing production before November 1, 2020." Ex. 6, Letter from BLM State Director John Mehlhoff to Lario at 1 (Sep. 25, 2020). Thus, the BLM gave Lario 37 days to negotiate a comprehensive lease

agreement with the MHA Nation. The State Office itself later acknowledged the difficulty of the situation it had created for Lario, noting that “Tribal lease amounts would be more due to a higher minimum royalty rate per statute.” Ex. 2, February 13, 2020 Memo for the Deputy Director – Bureau of Land Management at 2.

27. Beyond increased royalty rates, BLM’s decision put Lario at a significant bargaining and timing disadvantage, particularly because the MHA Nation refused to negotiate with Lario until the Nation had completed negotiations with the operator Marathon and insisted that Lario would have to agree to whatever terms the Nation negotiated with Marathon, all of which made it impossible for Lario to meet the BLM’s November 1, 2020 deadline.

28. In the Decision, Director Mehlhoff informed Lario that the United States was cancelling the Lease with respect to approximately 168 of the original 236 acres covered by the Lease. *See* Ex. 7, Letter from BLM State Director John Mehlhoff to Lario at 1 (Nov. 3, 2020). The Director stated that the cancellation was effective as of the date of issuance of the Lease. The Director granted Lario an additional 30 days, until December 1, 2020, to enter into a lease with MHA Nation before requiring the wells to be shut in. *Id.* The letter further stated that Lario would be paid a refund of a proportionate amount of the bonus bid, rental payments, and royalties based on the acreage cancelled. *Id.* Meanwhile, the MHA Nation continued to engage in negotiations only with Marathon.

29. The Decision stated that it was a final agency decision appealable to the Interior Board of Land Appeals (“IBLA”). On December 1, 2020, Lario filed a Notice of Appeal of the Decision with the IBLA.

30. In a December 9, 2020, letter to Lario, Director Mehlhoff extended the deadline to enter into a lease agreement with the MHA Nation to January 4, 2021. Ex. 8, Letter from BLM

State Director John Mehlhoff to Lario at 1 (Dec. 9, 2020). (The Director repeatedly extended this deadline until the parties eventually reached an agreement in October 2023.)

31. On March 24, 2021, the MHA Nation finally presented a lease offer to Lario. [REDACTED]
[REDACTED] Thereafter, the parties exchanged multiple offers and counteroffers until June 1, 2021 when, despite Lario's efforts to continue discussions, the MHA Nation cut off communication with Lario.

32. On June 5, 2022, after months of failed attempts to communicate with the MHA Nation, Lario transmitted a revised lease and settlement proposal. Lario did not receive a response to this offer until February 1, 2023, when the MHA Nation finally sent Lario a draft Indian Minerals Development Agreement ("IMDA"), i.e. a lease agreement for the development of tribal oil and gas resources authorized by the Indian Mineral Development Act, 25 U.S.C. §§ 2101–2108.

33. Lario and the MHA Nation negotiated the terms of the IMDA until they reached a comprehensive agreement on October 10, 2023, and forwarded it to the Bureau of Indian Affairs ("BIA") for approval that same day. Thus, while the BLM originally gave Lario 37 days to come to an agreement with the MHA Nation, it ultimately took Lario 1110 days to enter into a lease to replace the Lease the United States breached and cancelled, though it took even longer for the lease with MHA Nation to become effective given the necessary approval by the BIA.

34. The BIA officially approved the IMDA on April 5, 2024, and Lario paid the full consideration for the IMDA to the BIA on April 30, 2024. The IMDA became effective May 1, 2024.

35. [REDACTED] Lario filed a motion to dismiss its IBLA appeal on July 12, 2024. (Ex. 9, October 10, 2023 Indian Minerals Development Agreement between the

Mandan, Hidatsa, and Arikara Nation and Lario Oil and Gas Company at 12). On July 15, 2024, the IBLA granted the motion and dismissed Lario's appeal.

36. As the extended negotiations indicate, the final lease terms with the MHA Nation are very different from those that Lario had in the Lease with the United States. In particular, the financial terms are far less favorable to Lario, including with respect to a lease bonus and royalties on production of oil and gas. For example, the IMDA provides for a [REDACTED] royalty on production, as compared to the 12.5% royalty Lario paid to the federal government.

37. The United States' partial cancellation of Lario's Lease directly resulted in extensive damages suffered by Lario, including at least the following:

- Lario was required to pay MHA Nation a [REDACTED] lease bonus. Comparing this to the \$1,352,820.48 lease bonus Lario paid to the United States on the Lease yields damages of [REDACTED]
- Lario was required to pay the MHA Nation an [REDACTED] lump sum settlement payment to cover royalties from past production from the Leased Lands prior to November 3, 2020. This was partially offset by BLM's refund of \$3,263,620 in royalties, yielding [REDACTED] in additional damages.
- Lario was deprived of proceeds from production of oil and gas for the period between the November 3, 2020 lease cancellation and the May 1, 2024 effective date of the IMDA, resulting in additional losses of **\$3,130,913.22**.
- Lario will face additional losses going forward given that it must pay a [REDACTED] royalty to the MHA Nation as compared with the 12.5% royalty that Lario would have paid to the United States. Based on production and sales estimates, the incremental loss from this higher royalty for periods after May 1, 2024 going forward is at least [REDACTED]

- Thus, factoring in offsets, Lario has incurred or expects to incur damages of at least [REDACTED]
- Lario may have additional damages beyond this amount, to be determined at trial.

38. Lario's damages resulting from the United States' breach are discrete, quantifiable, and based on the express terms of Lario's Lease with the United States and the IMDA with the MHA Nation.

39. The United States' breach cannot be disputed, nor can Lario's resulting damages, which were a direct result of the breach and a foreseeable consequence given the circumstances.

40. In addition, by granting the oil and gas Lease, and pursuant to the provisions thereof, the United States promised that Lario would have the right to explore for, produce, and sell oil and gas produced from the Lease minerals. To its detriment, Lario relied upon these granting clauses, investing millions of dollars towards developing the Leased Lands, only to have the United States invalidate these efforts with its unilateral breach. Lario's reliance was both reasonable and should have been expected by the United States.

COUNT I - BREACH OF CONTRACT

41. Plaintiff incorporates the preceding paragraphs as though fully set forth at length herein.

42. The Lease was a valid contract between the United States and Lario. The BLM had the authority to enter into the Lease on behalf of the United States.

43. In cancelling the Lease, the United States revoked Lario's right to explore for, produce, and sell oil and gas and thereby breached the contractually guaranteed rights under the Lease.

44. Lario provided consideration for the Lease. Moreover, before the United States cancelled the Lease, Lario had complied in all material respects with the terms of the Lease for nine years and was fully ready and able to continue performing its duties under the agreement before the United States' unilateral cancellation.

45. As a result of the breach of the Lease by the United States, Lario has suffered and will continue to suffer damages, including, but not limited to, those specified in the paragraphs above.

COUNT II - BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

46. Plaintiff incorporates the preceding paragraphs as though fully set forth at length herein.

47. Once an oil and gas lease is issued, the United States, as owner of the executive rights, owes a duty of utmost good faith to parties to the lease.

48. As a party to the Lease, Lario was owed a duty of good faith and fair dealing in the United States' performance of its obligations under the Lease.

49. The United States breached its duty of good faith and fair dealing to Lario through its cancellation of the Lease, as described above, that interfered with Lario's ability to obtain the intended benefits of the Lease.

50. As a result, Lario has suffered and will continue to suffer damages, including, but not limited to, those specified in the paragraphs above.

PRAYER FOR RELIEF

51. WHEREFORE, Lario requests the Court order the following relief:

52. Award damages for breach of contract and breach of the covenant of good faith and fair dealing;

53. Award costs and reasonable attorneys' fees to the maximum extent allowed by law; and

54. Grant any other relief available that is just or proper.

Submitted this 1st day of November, 2024.

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