

**AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL**

In the Matter of the Arbitration between

Case 77 198 00301 05 DEAR

Bonanza Creek Oil Company
Claimant

and

Coronado Oil Company
Respondent

Administrator: Deizha Arellano

Interim Award of 23 May 2006

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement contained within the Exploration and Development Agreement effective November 15, 2002 by Claimant Bonanza Creek Oil Company and Respondent Coronado Oil Company, and having been duly sworn and having duly heard the proofs and allegations of the Parties, and having reviewed the filings of the parties, **HEREBY DETERMINE AS FOLLOWS:**

Terms, claims and requested relief.

1. The following terms are used in this Award:
 - a. "AAA" means the American Arbitration Association.
 - b. "Bonanza" means Claimant Bonanza Creek Oil Company.
 - c. "Coronado" means Respondent Coronado Oil Company.
 - d. "Case" means Case 77 198 00301 05 filed with the AAA.
 - e. "Party" or "Parties" mean Bonanza or Coronado, or both.
 - f. "Agreement" means the Exploration and Development Agreement effective November 15, 2002 between the Parties pertaining to the Red Springs Oil Field.
 - g. "Option" means the option to develop a pilot steam flood as set forth in Article II of the Agreement.
 - h. "Option Payment" means the USD 250,000 payment to Coronado described in Article II, § A of the Agreement.
 - i. "Pilot Period" means the three year period for development of the pilot steam flood as described in Article II, § E of the Agreement.
 - j. "July 2005 Tender of the Option Payment" means the attempt by Bonanza in July 2005 to tender to Coronado the Option Payment.

- k. “Project” means the activities of the Parties under the Agreement in the Project Area as defined in the Agreement.
2. The Case pertains to disputes about performance under the Agreement.

Bonanza claims

3. Bonanza contended that Coronado wrongfully refused to accept the July 2005 Tender of the Option Payment and thereby materially breached the Agreement.
4. Bonanza sought a declaratory ruling that Coronado’s refusal to accept the Option Payment was a breach of the Agreement. Bonanza also sought specific performance under Article XI of the Agreement directing Coronado to accept the payment of USD 250,000 and invoke the Option.
5. Bonanza sought an alternative claim of damages for unjust enrichment.

Coronado claims

6. Coronado contended the Agreement is unambiguous, and sought a declaration, that Coronado has no obligation to accept the payment and deliver the Option because the conditions for the option were not fulfilled; and, the exercise of the Option was improper and untimely.
7. Coronado further contended that it was compelled by Bonanza’s breach and loss of financial benefits from the Agreement to find a third party, Rockwell Petroleum LLC of Wyoming, to develop the Project and that Project development is delayed pending the outcome of this Case.
8. Coronado further contended that Bonanza has damaged the Project properties and that Coronado was entitled to an Award that required Bonanza to return the Project properties to their original condition. Coronado also sought a declaration that Coronado has no further obligations under the Agreement.

Arbitral process

9. This Case advanced through discovery and a series of motions including motions for summary judgment. After reviewing extensive submissions, the Panel denied the summary judgment motions in order to receive testimony in this Case.
10. The Parties presented the evidence on the claims and disputes in this Case at a hearing in Denver, Colorado during the period of 01 through 04 May 2006. Thereafter, the Panel conferred extensively and engaged in detailed assessments of the law and facts surrounding each claim and defense presented in this Case.

Key issues in dispute and the panel’s determinations.

Whether Agreement was valid and enforceable.

11. Although Coronado presented testimony suggesting the Agreement was null and void from its inception, the evidence does not support such a determination. Rather the Agreement was valid and enforceable.

Fraud in the inducement

12. Although not identified as a claim or defense in the Scheduling Order in this Case, Coronado presented argument and evidence suggesting that Bonanza had fraudulently induced Coronado to sign the Agreement. The evidence does not support such a determination.

Failure of Berry Family/Bonanza to fund, Decision to seek other funding.

13. Coronado presented evidence suggesting the Bonanza decision in or near March of 2003 to seek a funding partner for the Project was a breach or rejection of the Agreement. In support of this contention, Coronado contended that Bonanza had committed to fully fund the Project. Neither the Agreement, nor the evidence at hearing, supports such a determination. Bonanza had the right to seek such funding and therefore was not in breach of, nor rejecting the Agreement.

February 1, 2003 termination.

14. Although Coronado maintained in briefs and argument the Agreement terminated on February 1, 2003, this contention was not supported by the evidence.

October 23, 2004 termination

15. Coronado contended the Agreement was terminated on October 23, 2004 – such date being 60 days after an alleged Coronado notice of termination given to Bonanza. Coronado contended such notice was delivered in a phone call in August 2004. The Parties' testimony differed significantly on this subject. The claimed notice was not in writing. Bonanza contended the Coronado testimony, at best, was that the Bonanza recipient of the call may not have heard the message.

16. The evidence did not support the Coronado claim that the Agreement terminated on October 23, 2004. Rather, the Agreement remained in effect after that date.

Bonanza actions regarding existing lease burdens or claimed conditions precedent.

17. Coronado presented evidence suggesting that Bonanza was in breach of the Agreement for failing, under Agreement Article I, § A (i), to reduce existing lease burdens, or otherwise meeting conditions necessary before the tender of the Option Payment. Coronado further asserts that such failures legally prevented Bonanza from tendering the Option Payment.

18. The evidence did not establish that Bonanza had failed to perform any Agreement obligations regarding existing lease burdens. Further, there were no unsatisfied conditions precedent preventing Bonanza from tendering the Option Payment.

19. Although Coronado claimed in this Case that conditions precedent were not met, the evidence demonstrated that Coronado had regularly requested that Option Payment from Bonanza.

Coronado claims of Bonanza's failure to timely perform.

20. Coronado contended that Bonanza failed to perform under the Agreement in accordance with times shown on a Gantt chart attached as Exhibit B to the Agreement.

21. The Gantt chart, although establishing general sequence and timing of activities, did not rise to the level of a mandatory commitment by Bonanza to meet any specific deadlines in the Gantt chart. Moreover, written provisions of the Agreement were different from, or inconsistent with, the Gantt chart. The conduct of the Parties under the Agreement demonstrates there was not a breach of the Agreement caused by a failure to satisfy times within the Gantt chart.

Bonanza offers to let Coronado walk away from the Agreement.

22. On several occasions Bonanza offered to let Coronado 'walk away' from the Agreement without penalty but Coronado declined to walk away from the Agreement.

23. The multiple Bonanza offers to Coronado permitting Coronado to walk away from the Agreement were not open-ended offers of unlimited duration. Coronado had not accepted any such offer. Rather, after such offers Coronado continued to let Bonanza perform under the Agreement. Because of Coronado's subsequent conduct under the Agreement, Bonanza's offers to Coronado were not timely or reasonably accepted by Coronado. Therefore, as of the date of the July 2005 Tender of the Option Payment, Coronado was bound by the Agreement and could not refuse the Bonanza tender without breaching the Agreement.

Parties conduct under the Agreement.

24. The evidence showed that on many occasions Coronado had acted and communicated as though Coronado was bound by the Agreement. This evidence was inconsistent with Coronado's claim the Agreement had been terminated, or that Coronado had accepted an offer to walk away from the Agreement.

25. Although Coronado expressed disappointment and frustration with the speed of activities under the Agreement, Coronado regularly treated the Agreement as binding throughout 2003, 2004 and up to the July 2005 Tender of the Option Payment.

26. Under these facts, Coronado had no right to (a) accept the benefits of the Agreement, (b) repeatedly request the tender of the Option Payment, (c) treat the Agreement as binding in dealings with Bonanza and third parties, and thereafter refuse to accept Bonanza's tender of the July 2005 Tender of the Option Payment.

Conclusions in this Case

27. The Panel has concluded that, as of the July 2005 Tender of the Option Payment:
 - a. Bonanza was not in breach of the Agreement;
 - b. The Agreement had not terminated; and
 - c. Bonanza was not prevented from tendering the Option Payment by unsatisfied conditions precedent.
28. The Panel has further concluded that:
 - a. Coronado did not have the right to refuse the July 2005 Tender of the Option Payment nor demand additional commitments from Bonanza beyond the commitments Bonanza had made in the Agreement;
 - b. Under the facts and circumstances of this Case and the Parties' commitments in Article XI, § D of the Agreement, specific performance is an appropriate remedy in this Case; and,
 - c. Having determined to grant specific performance, Bonanza's alternative claim for unjust enrichment is denied.
29. In ordering and as part of the relief of specific performance, taking into consideration the evidence presented surrounding the interpretation of the Agreement, the Panel has concluded and determined that, under Article II, § E of the Agreement, the start date of the Pilot Period is July 25, 2005 and continued through October 3, 2005.
30. The Panel has concluded that: (a) the Pilot Period was tolled from October 4, 2005 through the date of this Interim Award, and (b) the Pilot Period restarted on the effective date of this Interim Award.

ACCORDINGLY, THE PANEL DECLARES AND AWARDS AS FOLLOWS:

Bonanza claim for specific performance

1. Bonanza's claim for specific performance directing Coronado to accept the tender of the Option Payment is granted. Therefore, the actions identified in §§ 3 through 5 below are ordered.
2. Promptly but in no event later than 5 p.m. Mountain time on May 30, 2006, Bonanza will deliver to Coronado for the Option a payment of USD 250,000.
3. Promptly but in no event later than 5 p.m. Mountain time on June 6, 2006, Coronado will deliver to Bonanza:
 - 3.1. Subject to Coronado's right to retain a 2½% ORRI as set forth in the Agreement, any and all documents necessary to assign all right title and interest in the Subject Leases and the Project Area, including assignment of the Existing Burdens purchased by Bonanza on behalf of Coronado; and,
 - 3.2. Any and all documents necessary to designate Bonanza as an operator of the Subject Leases in the Project Area.

- 3.3. The documents described in §§ 3.1 and 3.2 above are referred to as “Coronado Documents.” The terms Subject Leases, Project Area, ORRI and Existing Burdens are used as they are defined in the Agreement.
4. Promptly but in no event later 5 p.m. Mountain time on May 30, 2006, the Parties will confer to reach agreement on the payment of any Coronado past expenses due under the Agreement.
5. Promptly but in no event later than seven days after Bonanza’s receipt of the Coronado Documents, Bonanza will begin actions that will successfully establish any necessary state or federal bonding in connection with Bonanza operations under the Agreement.
6. If the Parties do not reach an agreement on the payment of Coronado past expenses or if disputes arise concerning the completion of the specific performance actions ordered in §§ 1 through 5 above, each Party will file a motion regarding such with the Panel on or before 5 p.m. Mountain time on June 8, 2006. A hearing on such motions will be held telephonically at 9:00 a.m. Mountain time on June 12, 2006.

Resolution of Bonanza’s unjust enrichment claim

7. Bonanza’s claim for damages from Coronado for unjust enrichment relating to the Agreement is denied.

Resolution of Coronado claims

8. Coronado’s claims seeking a declaration that Coronado has no obligation to accept the payment and deliver the Option because the conditions for the option were not fulfilled and the exercise of the Option was improper and untimely is denied.
9. Coronado’s claim that Bonanza had damaged the Project properties and that Coronado is entitled to an award that requires Bonanza to return the Project properties to their original condition is denied.
10. Coronado’s claim seeking a declaration that Coronado has no further obligations under the Agreement is denied.
11. Coronado’s claim for a declaration that Coronado was compelled by Bonanza’s breach and loss of financial benefits from the Agreement to find a third party, Rockwell Petroleum LLC of Wyoming, to develop the Project and that Project development is delayed pending the outcome of this Case is denied.

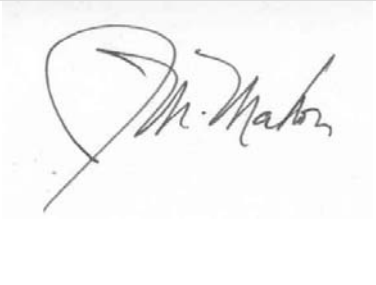
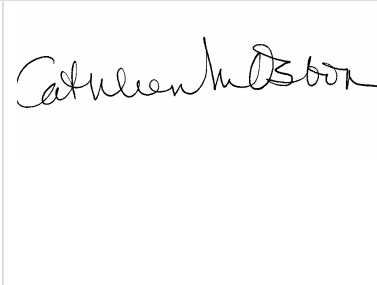

Panel’s retained jurisdiction

12. The Panel has determined to retain jurisdiction in this Case until the date of July 31, 2006, unless otherwise extended by order of the Panel:
 - 12.1. To ensure the prompt completion of the actions above ordered and to resolve any disputes over the timely completion thereof; and,

12.2. To conduct the motion hearing now scheduled for June 12, 2006 as described above.

13. This Interim Award shall remain in full force and effect until a final award is rendered.

BY THE UNDERSIGNED ARBITRATORS:

		
Joseph P. McMahon, Jr. 23 May 2006	Cathleen Osborn 23 May 2006	James Tarpey 23 May 2006