



INTERIOR BOARD OF INDIAN APPEALS

Craig McGriff Exploration, Inc. v. Acting Anadarko Area Director,  
Bureau of Indian Affairs

22 IBIA 265 (09/08/1992)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

CRAIG McGRIFF EXPLORATION, INC.

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-118-A

Decided September 8, 1992

Appeal from the cancellation of an oil and gas lease.

Affirmed.

I. Indians: Leases and Permits: Generally--Regulations: Publication

A lessee of Indian trust or restricted property has a duty and responsibility to familiarize itself with the regulations governing its lease.

APPEARANCES: Craig McGriff, President, for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Craig McGriff Exploration, Inc., seeks review of a decision cancelling oil and gas lease #14-20-0208-4819 (lease). The decision was issued December 12, 1991, by the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

The lease covers a portion of the original Sac and Fox Allotment of Caroline Grant, Allottee No. 430, described as the SE $\frac{1}{4}$  LESS SE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ , sec. 28, T. 16 N., R. 6 E., Indian Meridian, Lincoln County, Oklahoma, containing 147.50 acres, more or less. The original lease, with Randal Petroleum Corp., was approved by the Acting Shawnee Agency Superintendent (Superintendent) on May 28, 1985. On the same day, the Superintendent approved an assignment of the lease to appellant.

The property was inspected by representatives of appellant, BIA, and the Bureau of Land Management (BLM), on August 28, 1985. Certain surface use requirements were discussed and agreed upon at that inspection. The requirements were memorialized in an August 29, 1985, memorandum from the Superintendent to BLM. The memorandum states:

The following stipulations were discussed and agreed upon by those on-site.

The access road will enter off Highway 99 and proceed westerly through an existing gate located approximately 1150 feet north of the southeast corner of the SE $\frac{1}{4}$  28-16N-6E. The road will then turn west-northwest at an approximate distance of 2600 feet and terminate at the well site. The access road will cross approximately nine terraces. The road will be constructed so that the terrace functions will be maintained.

\* \* \* \* \*

In constructing the pad and pit areas, a section of terrace two (2) will be removed and the water re-routed away. The topsoil will be removed and stockpiled. If well abandonment occurs, the areas will be reshaped, terrace two will be placed back, topsoil resurfaced, and the area re-seeded to Native pasture.

If production is achieved, the access road to Morris 1-28 well will be maintained. The tank battery will be placed approximately 500 feet west of the entrance gate, diked to hold 1 $\frac{1}{2}$  times tank capacity, graveled, and fenced.

The flow lines will follow parallel with the access road and be buried at least 24 inches deep.

On August 30, 1985, Communitization Agreement No. NM041140-85C397 was approved. This agreement affected the leased property. On September 5, 1985, BLM approved appellant's application for a permit to drill the No. 1-28 Morris well. The well was spudded on September 16, 1985, and was completed as a producing oil well on November 18, 1985.

One of the landowners complained to the Sac and Fox Tribe (tribe) that there had been an oil spill and fire on the leasehold. BIA inspected the property on January 13, 1986. The inspection report states:

[I]t was found that the fire had been confined to the fiberglass salt water tank only and the area around the tank battery had not been burned. \* \* \* The access road to the Morris 1-28 well has some ruts on it which will occur on any oil surface road. The salt water tank which was burned needs to be removed from the premises.

In reviewing the presite stipulations, it was agreed by all that the access road would be maintained; the flow lines be buried at least 24 inches deep and parallel the access road; the tank battery be diked to hold 1  $\frac{1}{2}$  times tank capacity, surfaced with gravel, and properly fenced; the reserve pit area needs to be reshaped, terrace two needs to be rerouted to divert water drainage. If these requirements are met, this will satisfy the agreement made at the August 28, 1985 pre-site.

The administrative record contains a copy of a February 3, 1986, letter about the inspection from BIA to the tribe's Principal Chief, but there is no indication that appellant was informed of the problems BIA noted.

By letter dated March 24, 1986, the surface lessee of the property complained to BIA concerning appellant's operations. The letter states:

The company used my lease road to move all of their heavy equipment in and out and much of the time, the ruts were so deep I could not get over the road to feed my cattle. Also, on numerous occasions my gate was left open. A salt water tank burned and was left in the pasture for cattle to nose about and chew on.

The company never filled in or fenced the pits, pumping unit, oil tanks and separator. About four months ago, they acidized and fracture-treated the Prue Sand leaving oil in the pits and chemicals piled on the ground. In December, I took my cattle out because of the sloppy manner in which they were operating. This has worked a hardship on me since I had saved this place for winter pasture and then was unable to use it.

In January 1989, the tribe contracted the real estate service function under the Indian Self-Determination Act, P.L. 93-638 (P.L. 93-638), 25 U.S.C. § 450-450n (1988). Pursuant to this contract, by letter dated May 1, 1990, the tribe informed appellant that the access road needed repair and that it appeared the road was being moved. Appellant was advised to repair the road immediately.

On January 17, 1991, the tribe again inspected the property. By letter dated January 23, 1991, the tribe advised appellant that it needed to correct erosion along the access road and terraces, and to gravel the eroded areas. Appellant was also assessed a \$1,000 fine for damages caused by neglect, and was given 30 days to correct the problems. Because the letter was not sent to appellant by certified mail - return receipt requested, the tribe was unable to determine when appellant received the letter in order to calculate the 30-day period. However, there is no evidence in the record that appellant took any action in response to the letter.<sup>1/</sup>

In accordance with paragraph 7 of the lease, by letter dated July 10, 1991, the tribe gave appellant 30 days to correct seven surface use violations: (1) failure to bury flow lines at the specified depth, (2) failure to maintain the access road, (3) failure to repair the terraces, (4) failure to construct a berm, (5) failure to remove the burned salt water tank battery debris, (6) unauthorized relocation of the access road, and (7) failure

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<sup>1/</sup> At page 1 of its opening brief, appellant states that each time it received written notification of problem, it "contacted the owner and/or agency offices in response."

to pay penalties. The letter noted that appellant was notified of problems on January 23, 1991, but had made no effort to effect repairs. Appellant received the tribe's letter on July 12, 1991.

A memorandum for the record indicates that appellant contacted the tribe on July 25, 1991, and stated that the well was not making enough profit to warrant the repairs and that it would plug and abandon the well. The tribe informed appellant that the repairs would still need to be made.

When repairs were not made, by letter dated August 12, 1991, the Superintendent advised appellant that it had breached the lease for the reasons set forth in the tribe's July 10, 1991, letter. The Superintendent informed appellant that the lease was being cancelled upon appellant's receipt of the letter.

Appellant appealed this decision to the Area Director, who affirmed the Superintendent's decision on December 18, 1991. The Board received appellant's notice of appeal and statement of reasons on January 22, 1992. Although interested parties were advised of the right to do so, no further briefs were filed.

#### Discussion and Conclusions

On appeal, appellant does not dispute that the cited conditions exist, or that the conditions constitute breaches of its lease. Instead, it argues that the breaches should be excused.<sup>2/</sup>

In regard to the first and fourth grounds for cancellation, failure to bury the pipeline and to construct a berm, appellant argues that the person it assumed to be the head of the family owning the land agreed that these actions were unnecessary. Appellant indicates that it was not aware that the lease could or should have been modified to address this issue, and asks that the lease now be modified to allow the pipeline to remain above the surface and to remove the requirement to construct a berm.

[1] As a lessee of Indian trust or restricted property, appellant has the duty and responsibility to familiarize itself with the rules governing its lease. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); All Materials of Montana, Inc. v. Billings Area Director, 21 IBIA 202, 210 (1992), and cases cited therein. One such rule is that both original leases

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<sup>2/</sup> Concerning appellant's failure to pay the fine imposed by the tribe, the Area Director stated: "The issue of this action [*i.e.*, the Area Director's decision] is limited to lease violations. The fine issue which was imposed by the [tribe] for your failure to comply with its directive is [a] matter between you and the [tribe]" (Dec. 18, 1991, letter at 5). Based upon this statement, appellant did not fully address this issue on appeal. The Board finds that the question of appellant's failure to pay the fine is not properly before it.

and lease modifications must be approved by BIA. Failure to obtain approval results in the lease or modification being void. See, e.g., Citation Oil & Gas, Ltd. v. Acting Billings Area Director, 21 IBIA 75, 83 (1991), and cases cited therein. Therefore, any verbal agreement appellant may have reached with the landowner was void.

Appellant contends that if it is permitted to retain the lease, it will make the repairs cited as the second and sixth grounds for cancellation, failure to maintain the access road and unauthorized relocation of the road. As an alternative to the previous argument as it relates to construction of a berm, and in response to the fifth ground for cancellation, failure to remove the burned salt water tank, appellant states that it will construct a berm, if the lease is not modified to remove this requirement, and it will remove the burned debris.

Appellant was given ample opportunity to repair the road, including the problem with mud holes that apparently resulted in the allegation of unauthorized relocation of the road. The first documented notice of problems with the road was given to appellant in May 1990. Additional notices were given in January and July 1991. Appellant's failure to cure this problem in response to those notices does not justify granting additional time. As the Board stated in Mast v. Aberdeen Area Director, 19 IBIA 96, 99 (1990), "[i]n considering whether a breach may be cured, it is entirely appropriate for BIA to take into account the lessee's past performance under the lease, particularly where the breach at issue is one of long duration or frequent recurrence." See also French v. Aberdeen Area Director, 22 IBIA 211, 216 (1992), and cases cited therein. The lease could properly be cancelled for failure to maintain the access road.

The same reasoning applies to appellant's belated statements that it will construct a berm and remove the burned salt water tank if ordered to do so. Appellant was ordered to correct these problems by the tribe on July 10, 1991. It failed to take the actions necessary to comply. Appellant need not be given yet another opportunity to cure the breaches. Mast, supra.

The third ground for cancellation related to appellant's failure to restore terraces. Appellant argues that it should not be required to repair the terraces because the way they are cut allows for a flat access road and the surface has not been leased for other uses. Additionally, appellant contends there is natural erosion on other areas of the property that is worse than what is being caused by its operations.

Appellant essentially argues that the manner in which it is operating is easier for it, and the property is in bad shape anyway. These arguments are irrelevant to a determination of whether or not appellant breached the lease. Appellant has failed to show error in the Area Director's decision. See, e.g., French 22 IBIA 214, and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 12, 1991, decision of the Acting Anadarko Area Director is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge