



INTERIOR BOARD OF INDIAN APPEALS

Dorothy S. Wolcott v. Acting Muskogee Area Director, Bureau of Indian Affairs

28 IBIA 218 (10/10/1995)



## United States Department of the Interior

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

DOROTHY S. WOLCOTT, : Order Affirming Decision  
Appellant :  
v. :  
ACTING MUSKOGEE AREA DIRECTOR, : Docket No. IBIA 95-68-A  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : October 10, 1995

This is an appeal from a November 28, 1994, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), holding that Departmental Oil and Gas Lease 601-32438 (59737), Wilson Lewis, Choctaw 1972 (the lease), had expired for failure to produce oil and/or gas in paying quantities. Appellant is the personal representative of the estate of Jim L. Wolcott, who was the lessee.

The lease was executed on August 22, 1941, with the Texas Company as lessee, and was approved by the Assistant Secretary of the Interior on October 3, 1941. The lease term was "10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land." Wolcott succeeded to the lease through assignments approved by the Area Director in 1982 and 1985.

Production from the lease ceased in December 1993. Wolcott died in January 1994. After some preliminary correspondence, the Area Director formally notified appellant on November 28, 1994, that the lease had expired for failure to produce oil and/or gas in paying quantities.

Appellant's notice of appeal to the Board enclosed a copy of a December 29, 1994, letter from her attorney to the Area Director. Appellant did not file a brief in this appeal, and therefore the December 29, 1994, letter constitutes her only argument. The letter suggests that the cessation of production should be excused because of Wolcott's death. It also suggests that BIA should approve an assignment of the lease to another individual.

The Board has held that, where the term of an Indian oil and gas lease is for a specified period and "as much longer thereafter as oil and/or gas is produced in paying quantities," the lease, if in its extended term, expires when production ceases. In such a case, the lease expires by its own terms and is not cancelled or terminated by any act of BIA. See, e.g., Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director,

21 IBIA 88, 98 I.D. 419 (1991), aff'd, Benson-Montin-Greer Drilling Corp. v. Lujan, No. CIV-92-210 SC-LFG (D.N.M. Jan. 13, 1993). 1/

The Board has recognized that temporary shut-ins reasonably necessary to repair mechanical breakdowns or to preserve trust property do not result in the expiration of an Indian oil and gas lease. Citation Oilfield Supply & Leasing Ltd. v. Acting Billings Area Director (Citation II), 27 IBIA 210 (1995); Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director, 23 IBIA 163 (1993) ; Duncan Oil, Inc. v. Acting Navajo Area Director, 20 IBIA 131 (1991). However, the Board's recognition of the "temporary cessation" doctrine has been carefully limited. E.g., Citation II, 27 IBIA at 223-24. The Board has never recognized an excuse for nonproduction which is unrelated to the oil and gas operation itself. Nor is the Board aware of any authority in the body of law governing private oil and gas leasing, from which the temporary cessation doctrine derives, which recognizes an excuse such as that put forth by appellant in this case.

While the Board has great sympathy for appellant, it holds that Wolcott's death does not excuse the lack of production and that the lease has therefore expired by its own terms for failure to produce oil and/or gas in paying quantities. The Board also rejects appellant's contention that BIA should approve an assignment of the lease to another individual. BIA has no authority to approve the assignment of a lease which has expired and is thus no longer valid.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's November 28, 1994, decision is affirmed.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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1/ Benson-Montin-Greer addressed leases governed by the Indian Mineral Leasing Act of 1938 (IMLA), 25 U.S.C. §§ 396a-396f. The IMLA is not applicable to this lease. However, the regulations governing this lease, which were promulgated pursuant to the Act of May 27, 1908, 35 Stat. 312, § 2, include a lease term provision similar to that in the IMLA. Compare 25 CFR 213.5 with 25 U.S.C. § 396a.