



INTERIOR BOARD OF INDIAN APPEALS

CarMac Energy Corp. v. Acting Muskogee Area Director, Bureau of Indian Affairs

33 IBIA 251 (04/13/1999)



United States Department of the Interior

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

CARMAC ENERGY CORP., Appellant	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 98-111-A
ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	
	:	April 13, 1999

This is an appeal from a May 19, 1998, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that Oil and Gas Lease No. 601-5727 (44922) Lydia Harjo, Seminole NB-22, had expired for failure to produce oil and/or gas in paying quantities.

The lease, originally approved in 1922, was assigned to The Seminole Company, Inc. (Seminole) in 1975. The assignment to Seminole was approved by BIA on April 2, 1975. On May 19, 1998, the Area Director notified Seminole that the lease had expired because the last reported production from the lease had occurred in December 1997.

Seminole did not appeal from the notice of expiration. However, CarMac Energy Corp. (Appellant) filed a notice of appeal with the Board, stating that it was the operator of the lease.

The administrative record did not show that the lease had been assigned to Appellant or that Appellant had any BIA-approved interest in the lease. The record, did, however, include a Bureau of Land Management (BLM) form titled "Designation of Operator," in which Seminole had apparently designated Appellant operator of the lease. 1/

In the notice of docketing for this appeal, the Board noted that it had not addressed the question of whether a person in the position of Appellant has standing to appeal a BIA decision concerning the expiration of a lease. It therefore requested the parties to discuss the question of Appellant's standing in their briefs. As it happens, however, no briefs were filed.

1/ Nothing on the "Designation of Operator" form identifies Seminole as the lessee. In the space for the lessee's signature, there appears the signature of an individual, with no indication that he signed on behalf of Seminole, a corporate entity. However, the individual's address is a Post Office box which is the same Post Office box as was shown for Seminole on the 1975 lease assignment. Accordingly, it appears that the individual who signed the form is connected with Seminole in some way.

The Board recently decided a case in which a question was raised concerning the standing of an appellant who was in the same position as Appellant here (i.e., a person who lacked an approved assignment but who was shown as a designated operator on a BLM form). Tesoro Petroleum Corp. v. Acting Albuquerque Area Director, 32 IBIA 296 (1998). In its decision in Tesoro, the Board discussed the standing issue briefly, 32 IBIA at 303-04, but found it unnecessary to decide the issue because there was another appellant in that case with unquestioned standing.

The Board was reluctant to decide the standing issue in Tesoro because the issue had not been fully addressed by the parties 2/ and the Board had little independent information about BLM procedures for designation of operators or about the rights and responsibilities of a designated operator vis-a-vis the lessee or vis-a-vis BIA and BLM. Because the parties did not file briefs in this appeal, the Board finds itself in the same position here.

A decision as to Appellant's standing here might well have far-reaching effect. Therefore, rather than decide the standing issue based on the little information presently available to the Board, the Board will again postpone resolution of the issue and will assume, for purposes of this decision only, that Appellant has standing to bring this appeal.

In its notice of appeal, Appellant stated that it discovered in late December 1997 that "the well had either a tubing leak and/or a problem with the submersible pump." Appellant stated further that, because abnormal weather conditions in January, February, and March 1998 had caused damage to the roads to the well, it was not economically feasible to bring in the necessary repair equipment until April 15, 1998.

Under the circumstances described, it is conceivable that Appellant could show that, following a mechanical breakdown or accident, it had made repairs and resumed production within a reasonable time. See, e.g., P & M Drilling, Inc. v. Acting Muskogee Area Director, 33 IBIA 208 (1999).

However, it appears from the record that production did not resume after April 15, 1998. Appellant stated in its notice of appeal: "If you will check the records, you will find that not only was this lease produced in April, but we also sold a tank of oil." However, that statement was contradicted by a Minerals Management Service (MMS) report included in the administrative record. The MMS report shows that there was no production and no sales from the lease in any of the months from January 1998 through May 1998. 3/

2/ Although the Albuquerque Area Director raised the standing issue in Tesoro, he did not discuss the fact that the appellant whose standing he challenged was the designated operator for the lease.

3/ May 1998 is the last month shown on the report.

Appellant had an opportunity to respond to the MMS report, and other materials in the record, by filing a brief in this appeal. It did not do so. Thus, Appellant has failed to dispute the information in the MMS report and has offered no explanation for its apparent failure to produce the lease following the April 15, 1998, repair.

The Board finds that Appellant has failed to show error in the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's May 19, 1998, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge