



## INTERIOR BOARD OF INDIAN APPEALS

Hall-Houston Oil Company, Cornerstone Energy Corporation, and Ridgewood Energy Corporation v. Acting Western Regional Director, Bureau of Indian Affairs

42 IBIA 227 (03/03/2006)

Related Board case:

40 IBIA 33



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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HALL-HOUSTON OIL COMPANY, : Order Affirming Decision  
CORNERSTONE ENERGY :  
CORPORATION, AND :  
RIDGEWOOD ENERGY :  
CORPORATION, :  
Appellants, : Docket No. IBIA 04-108-A  
v. :  
ACTING WESTERN REGIONAL :  
DIRECTOR, BUREAU OF INDIAN :  
AFFAIRS, :  
Appellee. : March 3, 2006

Appellants Hall-Houston Oil Company, Cornerstone Energy Corporation, and Ridgewood Energy Corporation have appealed an April 16, 2004 decision of the Acting Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying Appellants' request that BIA "administratively modify" the rental schedules for Allotted Oil and Gas Exploration and Development Lease Nos. 14-20-H62-4130, 14-20-H62-4131, 14-20-H62-4132, and 14-20-H62-4177. For the reasons stated below, the Board affirms the Regional Director's decision.

### Background

The oil and gas leases that are the subject of this appeal, which cover four forty-acre tracts in Uintah County, Utah, were issued pursuant to an advertised lease sale held on December 15, 1983. <sup>1/</sup> The leases are between the Walker Energy Group, as lessee, and numerous individual Indian owners of the allotted lands covered by the leases. <sup>2/</sup> The four leases were approved by the Superintendent of the Uintah and Ouray Agency

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<sup>1/</sup> The lease sale was held pursuant to 25 C.F.R. § 212.4 (1983).

<sup>2/</sup> It appears there presently are approximately 100 current Indian landowners. Lease documentation in the record shows over 40 Indian landowners in 1984.

(Superintendent) on May 9, 1984. Appellants are the successors-in-interest to Walker Energy Group (Walker).

Each lease had a primary term of two years, and “as much longer thereafter as oil or gas is produced in paying quantities,” for a maximum term of thirty years. The leases provided for the payment of a signing bonus to the allottees at the time of the lease execution. The leases require the lessees to pay royalties. <sup>3/</sup> The rental schedule attached to each lease provides:

<u>Year</u>	<u>Minimum or Percentage of bonus whichever is greater</u>
1	\$5.00/acre or 3% of bonus/acre
2	\$7.50/acre or 6% of bonus/acre
3	\$10.00/acre or 9% of bonus/acre
4	\$12.50/acre or 15% of bonus/acre
5	\$15.00/acre or 20% of bonus/acre and thereafter.

This rental format shall control regardless of the length of the primary term of the lease. The procedures covering payment of such fees and the due date thereof shall operate in accordance with past practices (see the rental schedule section of the applicable lease forms).

Production of the well associated with the four leases, Chasel Sprouse 1-18, began in April 1986, during the second year of the lease. <sup>4/</sup> Once production was achieved, Appellants apparently only paid the amount of rental fees in effect during “Year 2” of the rental schedule, based on their position that the parties intended that the rental fees were to be capped at the rate in effect in the year of first production.

In July 2000, the Minerals Management Service (MMS) ordered Appellants to pay “additional rentals” for the period between May 1987 through May 2000. The MMS orders apparently were based on an interpretation of the lease as not capping the rental

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<sup>3/</sup> On November 8, 1985, the leases were amended to adjust the royalty rates. Regional Director’s Decision at 2.

<sup>4/</sup> The Regional Director’s decision says production began on April 23, 1986; Appellants identify the date as April 25, 1986. The exact date is not material to this appeal.

schedule at the Year 2 rates. Appellants appealed the orders to the Chief of the Lakewood Compliance Division of MMS.

In the fall of 2001, MMS, BIA, acting on behalf of itself and the Indian mineral owners, and Appellants entered into settlement agreements covering the payment of lease rentals for the period from May 1987 through April 2001. The Assistant Secretary - Indian Affairs approved the settlement agreements on November 2, 2001. The settlement agreements did not resolve the amount of lease rental payments to be paid in the future.

On November 29, 2001, Appellants, through counsel, wrote to a realty officer at the Uintah and Ouray Agency to request that the four leases “be reinterpreted to conform to the understanding of the parties” when the leases were executed. Appellants argued that the parties to the leases intended to freeze the rental rate at the year in which production of the well was achieved, to encourage the early drilling of the well.

In March 2002, the Superintendent notified the allottees of Appellants’ request. As of September 9, 2003, only 13 allottees had agreed to modify the rental schedule. The Superintendent found that the ownership interests represented by these 13 landowners were insufficient to allow the modification of the leases as requested by Appellants, and therefore declined to approve the changes.

On April 5, 2002, Appellants again requested that the Superintendent of the Uintah and Ouray Agency “administratively modify” the subject leases to “effectuate” the intent of the parties that the lease rentals stopped escalating at the year that production was achieved. Three days later, Appellants sent lease modifications to the Uintah and Ouray Agency, and requested the Agency to approve and finalize the modifications. <sup>5/</sup> In a letter attached to the lease modifications, Appellants argued that the modifications need not be signed by the allottees, but only by the Superintendent, because they merely incorporated the original intent of the parties and did not amount to actual amendments of the leases. On July 3, 2002 and August 12, 2003, Appellants submitted additional requests to the Superintendent to administratively modify the leases.

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<sup>5/</sup> Appellants’ proposed language provided that Appellants would “pay the second year annual rental rate \* \* \* as follow[s]: To Pay a Recoupable Rental of \$7.50/acre (\$300.00) or 6% of the bonus/acre (\$2,318.00) which ever is greater, on or before May 9th of each year, beginning May 9, 2000. *(The Escalating Rental Schedule does not apply after May 9, 2000.)*

Meanwhile, Appellants continued to pay the Year 2 rental rates. On August 7, 2003, MMS mailed Appellants' designee an invoice for additional rental payments. 6/

The Superintendent did not issue a decision on Appellants' request to have the leases administratively modified. By letter dated September 10, 2003, Appellants appealed the Superintendent's inaction to the Regional Director, seeking a decision on the merits of their request. Appellants argued that "interpretation of the rental schedule required extrinsic evidence to explain its meaning," because the "past practices" language is ambiguous. Appellants submitted three affidavits as evidence of the parties' intent: one from the Superintendent who approved the leases, one from a person who participated in the lease sale and discussed the leases with the Superintendent, and one from the former Vice-President of Walker, who signed the leases on behalf of Walker. All three individuals stated that the parties intended that the rental schedules would be capped at the year of first production. Appellants also attached a February 1, 1989 letter from MMS to Appellants' designee, stating that the "escalation [of the annual rental fee] stops in the year of production."

On January 15, 2004, Appellants wrote to the Regional Director a second time requesting that he issue a decision on their request to have the leases administratively modified.

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6/ A "designee" is the person designated by a lessee to make royalty or other payments. See 30 C.F.R. § 290.102. It appears that Appellants appealed that invoice to MMS, pursuant to 30 C.F.R. Part 290. See Appellants' Opening Brief at 15 (reference to "pending MMS appeal"). Although it seems likely that the same lease interpretation arguments may be raised in both appeals, the Board clearly has jurisdiction to review the Regional Director's decision at issue in this appeal, and no party has suggested that the Board should stay this appeal or otherwise defer to the MMS proceedings. In fact, Appellants take the position that "MMS cannot resolve [the appeal pending before it] until this \* \* \* appeal is completed." Id. Whether or not that is the case, the Board notes that Appellants requested that BIA "administratively modify" the leases immediately after the 2001 settlement was reached on the pre-2001 rentals — a year and a half before receiving the MMS invoice.

The Regional Director issued a decision on April 16, 2004. <sup>7/</sup> He denied Appellants' request for administrative modifications of the four leases. The Regional Director noted that he did not disagree that the "likely intent" of the parties when the leases were executed was to cap the rental rates. However, he concluded that the "past practices" provision of the leases did not create a "patent ambiguity," as Appellants claimed. Thus, according to the Regional Director, the extrinsic evidence offered by Appellants was irrelevant. The Regional Director also determined that the administrative modifications sought by Appellants were substantive lease "amendments" that required the consent of all parties to the lease. Lacking such consent, the Regional Director therefore ordered that the maximum rental rates of all four leases be enforced against Appellants.

Appellants filed a timely notice of appeal. Appellants and the Regional Director have submitted briefs.

### Discussion

As an initial matter, we note that Appellants have cited no statutory or regulatory authority that would allow the Secretary to actually modify language in Indian mineral leases — "administratively" or otherwise — without the consent of the Indian landowners. Nor do the leases in this case provide such authorization. Indian mineral leases are executed by the Indian mineral owners, not the Secretary (with limited exceptions involving minors, estates, or persons who are legally incompetent). See 25 C.F.R. § 212.21 (2005); 25 C.F.R. §§ 212.5 & 212.9 (1983). Thus, while the Secretary must approve such leases, the lessor parties are generally the Indian landowners and not the Secretary. <sup>8/</sup> In any

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<sup>7/</sup> The Regional Director initially failed to respond to Appellants' January 15, 2004 letter. Appellants filed an appeal with the Board pursuant to 25 C.F.R. § 2.8 (appeal from inaction), seeking review of the Regional Director's failure to respond to Appellants' requests. After the Regional Director issued his April 16, 2004 decision on the merits, the Board dismissed Appellants' section 2.8 appeal as moot. Hall-Houston Oil Company v. Western Regional Director, 40 IBIA 33 (2004).

<sup>8/</sup> The Regional Director's brief states that the Superintendent "signed each lease on behalf of the allottees as lessor," Answer Brief at 2, but the basis for that statement is unclear. The record itself indicates that the Indian landowners were required to sign the leases, although attached "signature pages" referred to on certain documents are missing from the record. The Superintendent's signature on the leases appears below the approval clause, not as a "lessor." Whether or not the leases were executed by the Indian landowners themselves, or by the Superintendent with the landowners' consent, our analysis and conclusion would be the same.

event, whether Appellants' request to BIA is characterized as one to "administratively modify" the leases to effectuate the parties' purported intent, supra at 229, or simply to "reinterpret" the leases to conform to that intent, id., our inquiry with respect to the underlying justification for any such action — as Appellants recognize — must be based on principles of contract law.

Leases are contracts, and the principles of contract construction apply to ascertain their meaning. Wessman v. Pacific Regional Director, 41 IBIA 238, 247 (2005), and cases cited therein. The Board's task when construing or interpreting a contract is to determine and give effect to the intent of the parties. See 17A C.J.S. Contracts § 295a (1963). The starting point for discerning the intent of the parties is the language of the document itself. See Swinomish Tribal Community and Shelter Bay Company v. Portland Area Director, 30 IBIA 13, 22 (1996); Pinoleville Indian Community v. Acting Sacramento Area Director, 26 IBIA 292, 295 (1994); Nevaco, Inc. v. Acting Phoenix Area Director, 24 IBIA 157, 164 (1993). When the parties include language in a contract that is clear, complete, and unambiguous, that language will be given effect as expressing the complete intent of the parties, without resorting to extrinsic evidence. 17A C.J.S. Contracts § 294b(1).

On the other hand, if language in a contract is ambiguous, it is appropriate to look to extrinsic evidence to discern the intent of the parties. 17A Am. Jur. 2d Contracts § 345 (2004). In determining whether a contract is ambiguous, the words of the contract must be given their natural and ordinary meaning. Id. § 356. An ambiguity exists where the terms of the contract are reasonably susceptible to more than one interpretation. Id. § 331; 17A C.J.S. Contracts § 294b(2). Generally, in the absence of an ambiguity in the terms of a lease, there is no need or justification to look beyond those terms to determine the intent of the parties. See Wessman, 41 IBIA at 247; 49 Am. Jur. 2d Landlord and Tenant § 44 (1995).

Appellants contend that the lease language in this case is ambiguous because the "past practices" clause refers to the "rental schedule section" of the lease, but the rental schedule section fails to clarify what those past practices are. Appellants argue that this "ambiguity" requires extrinsic evidence to explain the intent of the parties, and that the three affidavits submitted to the Regional Director demonstrate that the actual intent of the parties was for the rental fees be frozen at the rate in effect during the year of first production.

The Regional Director contends that the language of the lease is clear and unambiguous, and therefore under principles of contract interpretation, it is unnecessary and impermissible to consider extrinsic evidence.

We conclude that the Regional Director correctly determined that the “past practices” clause in the lease is not ambiguous with respect to the issue in this appeal — the amount of rental fees due and whether such fees are capped at the rate in effect in the year of first production. The reference to “past practices” refers to procedures to be followed for the payment of rent and the due dates. We do not think it can reasonably be construed as encompassing the amount of rental fees. Accordingly, we find no ambiguity and under principles of contract interpretation, the intent of the parties can be ascertained and given effect based on the language agreed to in the lease, without resorting to extrinsic evidence. The language in the lease provides no basis for finding that rental fees were to be capped at the year of first production.

Our conclusion is consistent with the conclusion reached by the Interior Board of Land Appeals in Linmar Petroleum Co., 153 IBLA 99, 106 (2000). In Linmar, the Board of Land Appeals considered whether rental fees under an oil and gas lease were capped at the rate in effect the year of first production. The rental schedule in Linmar was identical to the rental schedule in the present case. Linmar argued that the “specified procedures are those determining the extent of the escalation and the alluded to ‘past practices’ are those providing for cessation of rental escalation at first production.” Id. at 104. Linmar asserted that the intent of the parties was that the rentals did not increase after the date of the first production, but did not offer any specific evidence as to the intent of the parties at contract formation. The Board of Land Appeals concluded that Linmar’s attempt to “expand the meaning of ‘procedures for payment of such fees and the due date thereof’ to include the cessation of rental escalation fails because of the absence of any foundation for that interpretation in the language utilized.” Id. at 106.

Appellants argue, however, that Linmar is distinguishable because Linmar did not offer any specific evidence of the parties’ intent at the time the lease was executed. With respect to principles of contract interpretation, Appellants miss the point. When contract language to which the parties agreed is clear and complete, that is the end of the inquiry for determining the parties’ intent. See Wessman, 41 IBIA at 247; Scott v. Acting Albuquerque Area Director, 29 IBIA 61, 69-70 (1996).

Even if we were to disregard the rules of contract interpretation and consider the extrinsic evidence offered by Appellants, we would find the record insufficient to

demonstrate that all the parties to the leases intended that the rental fees were to be capped when production was achieved. 9/

For example, Appellants make much of the fact that in the present case, BIA does not dispute Appellants' assertions regarding the intent of the "parties," referring to Walker and BIA. But even if both Walker and BIA had a common understanding when they drafted the leases, it does not follow that the Indian landowner-lessor parties to the leases shared that understanding.

Regardless of the purported intent of BIA and Walker, the record contains no evidence that any of the Indian landowners who signed the leases or may have given their consent for BIA to sign the leases on their behalf, did so with the intent that the rental fees be capped. For example, the former Superintendent's affidavit states what his intent was at the time the leases were executed, but does not state that he explained to the Indian landowners that rental fees were to be capped when production was achieved — i.e., explained that the leases as drafted did not reflect the "actual" intent of the drafters.

The only extrinsic evidence arguably relevant to what may have been communicated to Indian landowners about this issue is contained in the affidavit of Steven Malnar, President of Sam Oil Company. Malnar states that Sam Oil Company was employed by the successful bidders at the lease sale "to sign up all of the Indian allottees owning the oil and gas rights" in the lands subject to the leases. Malnar Affidavit ¶ 11. Malnar further states that he "personally informed many of the signing [Indian landowners] that because of the rental schedule attached to their leases, there would be oil wells drilled in the early term of the lease to enable the lessees to lock in the lower rental amounts." Malnar Affidavit ¶ 12. As between representations made by an employee of the lessees and the language of the lease itself, we think the Indian landowners were entitled to rely on the lease language for their understanding of its terms. And, of course, Malnar's affidavit is not direct evidence of what the Indian landowners actually understood when they signed or consented to the leases.

### Conclusion

In summary, the Regional Director correctly concluded that the plain language of the leases controls, correctly disregarded Appellants' extrinsic evidence, and correctly found that the rental fees were not capped at the rate in effect when production was achieved. The

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9/ In this regard, the Regional Director's apparent willingness to concede — or at least not disagree with — Appellants' assertions regarding the "parties" intent is not supported by the record with respect to the Indian landowners.

Regional Director properly denied Appellants' requests to "administratively modify" or reinterpret the leases.

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 Board affirms the Regional Director's April 16, 2004 decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Amy B. Sosin  
Acting Administrative Judge