

TNT OIL CO.

IBLA 94-195

Decided November 22, 1995

Appeal from a decision of the California State Office, Bureau of Land Management, denying extension of the term of oil and gas leases CACA 22257 and CACA 22259 and also denying suspension of operations and production on those leases.

Affirmed.

1. Oil and Gas Leases: Drilling--Oil and Gas Leases: Extensions--Oil and Gas Leases: Suspensions

Extension of oil and gas leases at the expiration of their initial 5-year terms was properly denied in the absence of any showing that actual drilling operations were commenced on the leases prior to the end of the lease terms or that there was any other circumstance that would authorize lease extension or suspension.

APPEARANCES: Richard S. Fox, Land Manager, TNT Oil Company, Laguna Hills, California.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

TNT Oil Company (TNT) has appealed from a November 4, 1993, decision of the California State Office, Bureau of Land Management (BLM), denying a request to extend the 5-year lease terms of competitive oil and gas leases CACA 22257 and CACA 22259 or to suspend lease obligations in light of circumstances arising during attempts to develop the leases. Both leases were issued effective October 1, 1988.

On June 23, 1993, TNT requested a suspension of the leases pursuant to Instruction Memorandum (IM) 92-331 (Suspension Policy for Federal Leases Affected by Leasing Delays) (August 28, 1992), dealing with suspensions of Federal leases whose development was affected by the unavailability of adjacent, unleased Federal lands considered critical to such development. TNT sought suspension because "it would not be reasonable for us to continue with our exploration and development program on our Federal oil and gas leases (CACA 22257 and CACA 22259) without having control of, or an agreement with, [adjacent] Federal lands currently unleased" (Letter from TNT to BLM dated June 18, 1993). As earlier explained in a letter dated

May 4, 1993, TNT hoped to "obtain a lease as the successful bidder and then drill a well through the anniversary date and have time to finish drilling and evaluating before the permit expires." Because the identified unleased lands were included in an oil and gas lease sale scheduled for June 29, 1993, BLM found that IM 92-331 did not apply and denied the request for suspension on June 28, 1993, and notified TNT that it should bid for the desired leases at the pending sale.

After the sale, at which TNT was an unsuccessful bidder, TNT sought clarification of the lease suspension policy set forth in IM 92-331 in a letter dated August 14, 1993, sent to the Director's office, BLM, Washington, D.C. On September 20, 1993, the Director's office replied that TNT did not qualify for suspension of the leases under current BLM policy. The initial 5-year term of both leases was set to expire on September 30, 1993; on September 28, 1993, however, TNT filed with BLM an "Appeal of Denied/Disapproved Suspension of Federal Oil/Gas Leases," and, on September 30, 1993, TNT filed a "Petition for Extension - Federal Oil/Gas Leases."

The BLM decision here under review denied the request for lease extension and rejected TNT's claims that unreasonable delays in negotiation of access across private lands to the leased land and unnecessary administrative delays by BLM justified suspension and extension of the leases. The decision found that BLM lacked authority to extend the leases because there were no drilling operations being conducted on the leases at the end of the primary lease term; it was concluded that the prior decision denying TNT's request for lease suspension was correct. It was concluded by BLM that "delays which can be attributed to the BLM would not have prevented TNT from meeting its lease development obligations under the law" (Decision at 4). We approve this finding and affirm BLM.

[1] When these leases were issued, section 17(e) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(e) (1988), provided that competitive oil and gas leases issued thereunder for a primary term of 5 years would continue for so long as oil or gas was produced in paying quantities. Extension of the lease term beyond the primary term could be accomplished by actual, diligently prosecuted, drilling operations commenced prior to the end of the primary term. 30 U.S.C. § 226(e) (1988); 43 CFR 3107.1.

In order to qualify for an extension by reason of drilling over the lease expiration date, however, drilling operations then underway must be "conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts." 43 CFR 3107.1. TNT does not claim that drilling operations were being conducted over the expiration date of the lease; the lease therefore did not qualify for an extension by reason of drilling. Accordingly, the decision of BLM must be affirmed unless there was error in BLM's refusal to approve a suspension of operations.

The Secretary or his delegated representative is empowered by section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1988), to suspend operations and production on an oil and gas lease "in the interest of conservation," and thereby extend the term of the lease for the suspension period. An approved suspension of operations and production has the effect of extending the term of a lease by adding thereto any period of suspension. 43 CFR 3103.4-2(b). Such relief is available only in order to "provide extraordinary relief when lessees are denied beneficial use of their leases." Solicitor's Opinion, Oil & Gas Lease Suspension, 92 I.D. 293, 298-99 (1985).

A suspension application may be considered only if it is properly filed with BLM before a lease ends. See Jones-O'Brien, Inc., 85 I.D. 89, 91, 94-95 (1978). The burden of showing entitlement to such relief rests with the lessee. Cf. 43 CFR 3103.4-2(a) ("Complete information showing the necessity of such relief shall be furnished"). The record shows there was a suspension application pending at the end of the terms of the TNT leases; the question before us, therefore, is whether TNT demonstrated sufficient reasons to justify lease suspension. We find it did not.

TNT argues that the Department negligently omitted or purposely failed to disclose that no right of access was acquired with the Federal leases. Contending there should be an implied right of access, TNT alleges that the Department's failure to provide a right-of-way to both leases caused approximately 30 months of delay while TNT negotiated the needed rights-of-way, thereby reducing the effective lease terms of the Federal leases. It is also argued by TNT that time spent by BLM preparing a lease sale for adjacent lands and BLM delay of TNT's concurrent request for an application for permit to drill (APD) extension on the TNT lands interfered with TNT's right of quiet enjoyment of the leases so as to constitute negligent or wrongful performance by the Department. Further, because BLM required TNT to move its drill site away from a nest of Paraguayan parrots, TNT argues that the resulting 3-1/2-month delay in drilling provides additional grounds for relief. Altogether, TNT seeks a 2-year extension of the leases, by way of suspension, in recognition of the cited delays, and argues the Department has authority to allow such relief.

The Board has construed section 39 of the Mineral Leasing Act to provide for suspension where, through some act or omission by a Federal agency, beneficial enjoyment of a lease has been frustrated. See Nedvak Oil & Exploration, 104 IBLA 133, 137 (1988). Such circumstances are not shown to be present here. While an oil and gas lease is a contract between the Secretary and the lessee, that relationship cannot obscure the fact the Secretary's authority to engage in leasing is statutory and that the Department's actions are controlled by those statutes and implementing regulations. The Mineral Leasing Act, unlike the mining law, provides no right of access to minerals subject to its provisions. Nonetheless, TNT argues there should be an implied right of access associated with Federal oil and gas leases under familiar tenets of traditional contract law

designed to discourage lease forfeiture; this rubric does not apply in the case of Federal oil and gas leases, however, because they are

not subject to the familiar rule that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. The courts have held that in connection with [Federal] oil and gas leases, forfeitures are favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

KernCo Drilling Co., 71 IBLA 53, 58 (1983), and authorities cited. The repeated references made by TNT to general oil and gas leasing principles in cases other than those involving the Federal lessor do not, therefore, apply to the leases here under consideration and must be rejected.

Nor has TNT shown that IM 92-331 provides support for the relief sought. While TNT cites IM 92-331 as authority for the proposition that lease suspension was warranted in this case in order to permit TNT to negotiate with parties expected ultimately to acquire the additional acreage desired by TNT to augment the two leases here at issue, BLM correctly rejected this argument as without foundation in fact. After first explaining there were BLM delays in leasing new tracts caused by a need to prepare environmental documentation, IM 92-331 found that under certain conditions lease suspension could be ordered in order to promote efficient exploration and development of resources. Nonetheless, the IM does not contemplate an indefinite suspension in order to permit lease holders to assemble economic leasing blocks: once a previously unleased tract needed to complete a desirable block of available land has been leased to another applicant, as happened in this case, the IM indicates that any suspension previously ordered must be reviewed. Id. at 2, 3. Nor, in cases such as this, where leasing was currently in progress, was the IM intended to have any application. This was the conclusion stated by BLM's Chief, Division of Fluid Minerals, in his letter to TNT dated September 20, 1993, when he explained in response to a request for opinion from TNT that:

The 600-acre tract adjacent to your lease, which you mention in your letter, was not unavailable when you requested a suspension under IM 92-331. The tract was in a parcel offered for leasing through the competitive bidding process in accordance with regulations at 43 CFR 3120. The sale was held in Bakersfield, California, on June 29, 1993.

TNT has not shown that this analysis was incorrect. Under the circumstances, therefore, TNT failed to show that there was any factual foundation for its stated reliance on IM 92-331. Any delays in assembling an economically desirable prospect appears not to have been caused by the timing of the BLM lease offering, but were more directly related to the failure by TNT to acquire the desired tract when it was sold by BLM.

With respect to other claimed delays by BLM, TNT has not shown that the passage of 17 months between nomination of adjacent lands for leasing and lease sale was unnecessary or unreasonable, nor has it explained how it may have been incorrect for BLM to rework a drill site clearance after discovery of the presence of a protected species thereon. None of the delays described prevented TNT from the enjoyment of the leases; the record shows BLM did not prevent TNT from commencing drilling before the expiration date of the two Federal leases here at issue, and in fact an APD, originally approved on June 30, 1992, was extended on July 1, 1993, for a period of 180 days. We therefore find that BLM properly denied TNT's request for an extension of the subject leases, having correctly found that no legal grounds had been shown to warrant lease suspension so as to achieve an extension of the lease terms.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

