



INTERIOR BOARD OF INDIAN APPEALS

Louis Kahan and the Louis Kahan Trust v. Acting Muskogee Area Director,  
Bureau of Indian Affairs

18 IBIA 180 (03/02/1990)



# United States Department of the Interior

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

LOUIS KAHAN AND THE LOUIS KAHAN TRUST

v.

ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-8-A

Decided March 2, 1990

Appeal from a decision finding that an oil and gas lease had expired by its own terms.

Affirmed.

1. Administrative Procedure: Burden of Proof--Indians: Mineral Resources: Oil and Gas: Generally

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of was erroneous or not supported by substantial evidence.

APPEARANCES: Louis A. Davidson, Vice-President, Kahan and Associates, Inc., for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Louis Kahan and the Louis Kahan Trust seek review of an August 29, 1989, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (BIA; appellee), finding that oil and gas lease 55706, contract 602-1370, Lowesa Hawkins, Seminole 1290 (lease), had expired by its own terms. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

The lease at issue presently covers the W $\frac{1}{2}$  SW $\frac{1}{4}$ , sec. 36, T. 8 N., R. 7 E., Seminole County, Oklahoma. The initial lease also covered the SE $\frac{1}{4}$  SW $\frac{1}{4}$  and was approved on May 16, 1933. The lease was partially assigned to Louis Kahan on March 10, 1953. On August 1, 1985, Kahan's interest was assigned to Louis Kahan, Trustee of the Louis Kahan Revocable Trust.

The administrative record indicates that on or about February 19, 1988, one of the interest owners in the tract covered by this lease made an inquiry at the Wewoka Agency, BIA, concerning production status. She advised BIA that the wells were shut down for most of 1987, and no royalty payments had been received.

Based on this information and its own investigations, on May 27, 1988, appellee requested an inspection and status report on the lease from the Bureau of Land Management (BLM). BLM's August 31, 1988, response stated:

A lease inspection of the Lowesa Hawkins was completed August 24, 1988. Two wells are producing alternately from month to month. The production is marginal and will average approximately 10 barrels of oil per month.

There was a six month period during 1987 of nonproduction. The lease has been producing the past nine months.

BLM contacted Mr. Davis Wilson, with Louis Kahan, August 31, 1988, and he stated he would sell oil this date from Lease No. 55706.

Attached are copies of the inspection and the monthly production reports. Those reports should answer the questions stated in your memorandum.

On February 1, 1989, BLM wrote appellant concerning its operations under the lease. This letter states at pages 1-2:

The current development pattern for the above formations is 10-acre spacing for the Thurman, Savannah, and Gilcrease Formations, and 20-acre stand-up spacing for the Booch Formation. Since this leasehold contains 80 acres, and there are only three wells, it would appear that up to five additional wells could be drilled on the subject leasehold to the above named formations.

Moreover, a review of our well files indicates that the Cromwell Formation at the Hawkins No. 3 Well was to be tested for potential production (Geologic report by D. W. Bell); however, it is unclear as to whether or not this formation was tested at this well. Therefore, the Cromwell is construed by this office as an additional formation that requires development on the subject leasehold.

By April 15, 1989, you must either (1) advise us of your plans for drilling additional development wells on the undeveloped portions of the Indian leasehold, or (2) submit the engineering, geologic and economic data to justify why a prudent operator would not undertake development activities at this time on the subject leasehold in the Thurman, Savannah, Gilcrease, Booch, and Cromwell Formations. If you choose to do neither, you may relinquish the undeveloped lease portion or this office may recommend to the Bureau of Indian Affairs that the lease be cancelled.

Although the information is not in the present administrative record, appellant apparently responded to BLM's letter. By decision of February 24, 1989, BLM determined

that further development of this lease is not justified at this time due to the current economics, the poor production potential of an additional well in the above listed formations, and the adequate drainage of these formations at the existing wells. We are satisfied that the leasehold is diligently developed. Therefore, no additional drilling will be required.

By memorandum of August 8, 1989, BLM informed appellee that “[a] review of the files shows that the last reported production to be December 1988. A lease inspection on August 1, 1989, verified that all wells are in a shut-in status. It is the opinion of this office that this lease may be subject to expiration.”

Based upon this information, on August 29, 1989, appellee wrote the letter at issue here, which states in part:

Provision Number 2, terms of this lease state that it will remain in effect only as long as “. . . oil and/or gas is produced in paying quantities . . . .” The last day of the month during which there was reported production was December 1988. This is your official notice that this lease has expired under its own terms.

Appellant objected to appellee's letter on September 1, 1989:

Enclosed you will find a copy of a letter dated February 24, 1989, from Ronnie E. Shook, Acting Chief, Branch of Reservoir Management and Solid Minerals, Bureau of Land Management, Tulsa, Oklahoma. This letter indicates an understanding of the situation regarding the lease in the current economic environment. We relied upon that letter as a basis upon which to delay additional operations until the oil industry's economic situation improved.

If your office now wishes to change its position regarding this lease, we should be given a reasonable period within which to evaluate future operations. In view of Mr. Shook's letter, and now yours, we feel that 90 days will be a reasonable period for us to make appropriate evaluations and commence further operations and/or development.

On September 19, 1989, BIA informed appellant of its right to appeal the August 29, 1989, letter. On September 25, 1989, appellee further responded to appellant's September 1, 1989, letter, stating at pages 1-2:

Mr. Shook's letter states that based on current economics, further development of your lease was not justified at that time, and that no additional drilling was required. The BLM's letter did not authorize a delay of additional operations on your existing wells.

The statutes and regulations under which the Five Civilized Tribes' leases are issued do not allow for shut-in of producing

leases. There are circumstances under which the BLM has approved temporary shut-ins. One of these circumstances is not the current economic conditions of the oil and gas industry. Justification for temporary abandonments (shut-in) must be based on future use plans supported by generally accepted engineering, geological, and economic principles. There are no approved temporary abandonment applications on file for the Lowesa lease.

Provision No. 2 of said lease states in part that “. . . this lease shall remain in force as long as such substance (oil, gas, casing head gas, or any one of them) is produced in paying quantities, provided further, that if, while this lease is being held by production alone, the well or wells thereon shall cease to produce for any cause, lessee with the consent of the Secretary of Interior, has a period of 120 days within which, at his election, to commence operations for the drilling of another well, deepen an existing well or wells, or attempt to restore production of such existing well or wells . . . .” The last reported production was December 1988.

There were no royalty payments made during 1987. In 1988, there was one payment of \$89.04 during September, and to date, there have been no payments for 1989.

The BLM reported on August 31, 1988, that there was a six-month period of non-production in 1987; however, on August 24, 1988, a lease inspection showed two wells producing alternately from month to month. Another lease inspection on August 1, 1989, verified that all wells are now in a shut-in status.

The sporadic nature of production, lack of production reports, and failure to make royalty payments do not constitute fulfillment of provisions inherent in restricted departmental leases. We have no authority for the continuation of any departmental leases beyond any month in which there was no production in paying quantities.

You state that if our office now wishes to change its position regarding this lease, you be given a reasonable period within which to evaluate future operations. We are not changing our position regarding operations on this lease. It is our mission to protect the interest of the Indian mineral owner and remain in compliance with the lease provisions and regulations.

We regret we are not authorized to approve your 90-day period to evaluate your lease operations. Our expiration notice of August 29, 1989, remains in force and effect.

The Board received appellant's notice of appeal from this decision on October 2, 1989. The notice of appeal stated:

The purpose of this letter is to serve as a formal notice of appeal of [appellee's] notification of lease expiration. Louis Kahan and the Louis Kahan Trust have operated this lease for over forty years with considerable monetary benefit to its mineral owners. We are now coming out of a period of economic hardship in the oil industry and would like to continue our operations of the lease.

After receiving the administrative record in this matter, the Board issued a notice of docketing on October 23, 1989. The notice set forth the parties' briefing privileges. No briefs were filed.

Discussion and Conclusions

[1] In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of was erroneous or not supported by substantial evidence. Cheepo v. Acting Sacramento Area Director, 18 IBIA 131 (1990); Peall v. Acting Portland Area Director, 16 IBIA 163 (1988). In this case, the notice of appeal does not set forth any grounds for the appeal, and appellant has not filed a brief indicating those grounds.

Because it has not given any reasons for the appeal, appellant cannot sustain its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 29, 1989, decision of the Acting Muskogee 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