



INTERIOR BOARD OF INDIAN APPEALS

K.S. Hays v. Muskogee Area Director, Bureau of Indian Affairs

18 IBIA 380 (07/20/1990)



# United States Department of the Interior

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

K. S. HAYS

v.

MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-52-A

Decided July 20, 1990

Appeal from a determination that an Indian oil and gas lease had expired by its own terms because of failure to produce oil and/or gas in paying quantities.

Affirmed.

1. Indians: Leases and Permits: Generally--Regulations: Publication

All persons dealing with the Federal Government are presumed to have knowledge of duly promulgated regulations.

2. Indians: Leases and Permits: Generally--Indians: Mineral Resources: Oil and Gas: Generally

No prior notice to the lessee is required when an oil and gas lease for restricted lands of members of the Five Civilized Tribes expires by its own terms.

3. 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 is erroneous or not supported by substantial evidence.

APPEARANCES: K. S. Hays, pro se; Janet L. Spaulding, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for appellee.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant K. S. Hays seeks review of a December 20, 1989, decision of the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that Oil and Gas Lease No. 15305, Contract No. 601-8715, Jane Hill, Cherokee 31678, had expired by its own terms because of failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board affirms the Area Director's decision.

### Background

The lease at issue was approved by the Assistant Secretary of the Interior on December 18, 1907, and covers the W $\frac{1}{2}$ , NW $\frac{1}{4}$ , SW $\frac{1}{4}$  of sec. 35, T. 29 N., R. 13 E., Indian Meridian, Washington County, Oklahoma, containing 20 acres. It was modified by stipulation approved on August 22, 1922, which provided that the lease term was "ten years \* \* \* and as much longer thereafter as oil or gas is found in paying quantities." It was assigned to appellant on February 5, 1986.

On December 8, 1989, the Acting Chief, Branch of Fluid Operations, Tulsa District Office, Bureau of Land Management, notified the Area Director that there had been no reported production on the lease since April 1988. By letter of December 20, 1989, the Area Director informed appellant that her lease had expired by its own terms because of failure to produce oil and/or gas in paying quantities.

Appellant's notice of appeal from this decision was received by the Board on February 7, 1990. No briefs were filed.

### Discussion and Conclusions

In her notice of appeal, appellant states:

We are filing this appeal in hopes of reversing the decision to expire our lease. We had the lease shut down due to low oil prices and high operating cost. Due to our own ignorance we thought we had 2 years to be shut in before we would need to produce it again. Had we received notice that our lease would be expiring soon if we did not produce it, we would have put it back in production immediately.

[1] Appellant concedes that the lease was shut in. No provision of appellant's lease or of the regulations at 25 CFR Part 213 1/ authorized the shutting in of the lease. Appellant was responsible for acquainting herself with the regulations governing her lease. See, e.g., Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Estate of Eugene Patrick Dupuis, 11 IBIA 11 (1982).

[2] Further, when an Indian oil and gas lease expires by its own terms, there is no requirement that prior notice be given to the lessee. See Mobil Oil Corp. v. Albuquerque Area Director, 18 IBIA 315, 331-33, 97 I.D. 215, 223-24 (1990), concerning similar lease provisions and regulations under the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396f (1982).

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1/ 25 CFR Part 213 governs leasing of restricted lands of members of the Five Civilized Tribes for mining purposes.

[3] In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence. E.g., Kahan v. Acting Muskogee Area Director, 18 IBIA 180 (1990). Appellant has not made such a showing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Muskogee Area Director's December 20, 1989, decision is affirmed.

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//original signed

Anita Vogt  
Administrative Judge

I concur:

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge