



INTERIOR BOARD OF INDIAN APPEALS

Oxley Petroleum v. Acting Muskogee Area Director, Bureau of Indian Affairs

29 IBIA 169 (04/12/1996)



# United States Department of the Interior

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

OXLEY PETROLEUM,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	
	:	Docket No. IBIA 95-151-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 12, 1996

This is an appeal from a July 21, 1995, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs, holding that Oil and Gas Lease 503-8263, Heirs of Hoover James, Choctaw NE, had expired for failure to produce oil and/or gas in paying quantities. The decision stated that production had last been reported in October 1993.

In its notice of appeal, 1/ appellant states:

Oxley's Hemphill #1 well, located in Section 21-6N-18E, has been shut-in since November, 1993, due to high line pressure. We have been (and still are) attempting to connect the well to a low pressure gas pipeline in the immediate area. In addition to poor gas prices during the recent past, the difficulty and expense of laying pipeline in the mountainous terrain surrounding our well, have been impediments to accomplishing the connection of the well to the low pressure system.

We have perpetuated the other Oil and Gas leases in the subject unit by the payment of shut-in gas royalties. Unfortunately, the subject lease contains no shut-in gas provision. To date, we have invested in excess of \$800,000 in drilling and developing the leases situated in our Hemphill #1 unit.

While we do not expect you to allow the subject lease to remain intact without production forever, in light of the substantial investment we have made in the lease and realizing that the industry has been hampered by low gas prices, it is respectfully requested that you reconsider your position to terminate the lease to allow additional time to connect the Hemphill #1 to a low pressure pipeline.

(Appellant's Notice of Appeal at 1-2).

1/ Appellant did not file a brief, although advised of its right to do so. Therefore, the only arguments before the Board are those presented in the notice of appeal.

Oil and Gas Lease 503-8263 was approved by the Area Director on August 25, 1989, with Exxon Corporation as lessee, for a term of "3 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land." In 1991, BIA approved inclusion of the lease in a drilling and spacing unit established by orders of the Oklahoma State Corporation Commission issued in 1966 and 1967. On September 23, 1993, the Area Director approved an assignment of the lease to appellant.

Appellant concedes that the last production from the lease occurred in October 1993. Appellant suggests, however, that the period of non-production should be excused because of difficulties in connecting the well to a low pressure gas pipeline; because of low gas prices; and/or because of the investment appellant has made in the leases in the unitized area.

When an Indian oil and gas lease has a term like that in appellant's lease--i.e., a primary term and "as much longer thereafter as oil and/or gas is produced in paying quantities"--the lease, if in its extended term, expires when production ceases. Expiration occurs by operation of law and not because of any action taken by BIA. Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, 21 IBIA 88, 98 I.D. 419 (1991), aff'd Benson-Montin-Greer Drilling Corp. v. Lujan, No. CIV-92-210 SC-LFG (D.N.M. Jan. 13, 1993).

Under certain circumstances, expiration may be avoided if a shut-in is deemed temporary. However, the Board has been cautious in applying the so-called "temporary cessation" doctrine to Indian leases. See, e.g., Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director (Citation I), 23 IBIA 163, 170 (1993):

[T]he rules developed for non-Indian oil and gas leasing may not be applied mechanically to Indian oil and gas leases. Rather, such rules may be applied only where they are not inconsistent with the statutes governing oil and gas leasing of Indian lands and the fiduciary duty of the Department to act in the best interest of the Indian landowners.

Even so, the Board has recognized that an Indian lease does not expire because of a temporary shut-in caused by a mechanical breakdown or accident, as long as the shut-in does not continue beyond the time reasonably necessary to make repairs and resume production. Citation I; Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director, 27 IBIA 210 (1995). The Board has also held that an Indian lease does not expire when an operator shuts in a well in the reasonable belief that the shut-in is necessary to avoid waste or damage to trust property. Duncan Oil, Inc. v. Act Navajo Area Director, 20 IBIA 131 (1991).

However, the Board has never found a shut-in excused for the reasons advanced by appellant. Appellant cites no authority under which the extended shut-in of its well could be deemed "temporary," even under the body of law governing non-Indian oil and gas leasing.

The burden was on appellant to show error in the Area Director's decision. Larry Boyer Land & Cattle Co. v. Portland Area Director, 23 IBIA 135 (1995), and cases cited therein. Appellant was advised of this burden in the notice of docketing for this appeal. In failing to demonstrate that its shut-in was "temporary" or excusable, appellant has failed to carry 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 Area Director's July 21, 1995, decision is affirmed.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge