INTERIOR BOARD OF INDIAN APPEALS

Gilbert Miles v. Southern Plains Regional Director, Bureau of Indian Affairs

60 IBIA 257 (05/05/2015)

Judicial review of this case:
Vacated and remanded to Board, *Cimarex Energy Co. v. Gilbert Miles*, No. CIV-15-1163-F (W.D. Okla. 2016)

Order on remand:
63 IBIA 55

United States Department of the Interior

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

GILBERT MILES, Appellant,	)	Order Vacating Decision and Remanding
v.	)	
	)	Docket No. IBIA 13-019
SOUTHERN PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	May 5, 2015

Gilbert Miles (Appellant), an Indian mineral owner, appealed to the Board of Indian Appeals (Board) from an August 21, 2012, decision (Decision) of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director affirmed a March 1, 2012, decision by BIA's Concho Agency Superintendent (Superintendent) to approve a communitization agreement (CA) allowing for the cooperative development of oil and gas minerals within a 641.98-acre "communitized area," which included Appellant's 80-acre restricted allotment, Cheyenne-Arapaho Allotment 1414 (Allotment 1414). Appellant had leased Allotment 1414 to an oil and gas producer under a lease with a primary term ending on February 1, 2012 (Lease).

In his Decision, the Regional Director agreed with the Superintendent that the CA was timely filed, but for different reasons, and agreed that approval was in the best interest of Appellant. In addition, while the Superintendent concluded that delays in reviewing the CA past the primary term of the Lease of Allotment 1414 "tolled" the Lease's expiration date, the Regional Director made the date of approval of the CA "retroactive" to the time of its submission. Both the Regional Director and the Superintendent apparently concluded, in the alternative, that the Lease was extended because drilling began on a tract other than Allotment 1414 within the proposed communitized area before the Lease's primary term ended. They reasoned that this preserved the Lease beyond its primary term and until after the CA was approved.

While Appellant objects to the Decision on the grounds that the CA was not timely filed with BIA as required by 25 C.F.R. § 212.28, and that the Lease expired before the CA was approved, the lessee and the operator under the CA do not participate in this appeal to defend the Decision. In our *de novo* review of BIA's interpretation of its regulations and the

Lease terms, as well as the sufficiency of the record to support the Decision, we conclude that the record does not support BIA's determination that the CA was timely filed. Moreover, although we conclude that BIA has discretion to review a late-filed communitization agreement, BIA lacked authority to approve the CA after the expiration date of the Lease, and the Lease was not extended by drilling operations on a tract other than Allotment 1414. Therefore, we vacate the Decision.

Statutory and Regulatory Framework

A communitization agreement is a type of cooperative agreement "for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement." 25 C.F.R. § 212.28(a); *see id.* § 212.3 (definition of "cooperative agreement"). "[O]perations conducted anywhere within the unit area are deemed to occur on each lease within the communitized area and production anywhere within the unit is deemed to be produced from each tract within the unit." *Kenai Oil & Gas, Inc. v. Department of the Interior*, 671 F.2d 383, 384 (10th Cir. 1982). In general, a communitization agreement is fitting "[w]hen a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program." 43 C.F.R. § 3105.2-2.

Under the Federal law of Indian mineral leasing, "[a]ll operations under any oil, gas or other mineral lease . . . affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior" (Secretary). 25 U.S.C. § 396d. "In the discretion of the . . . Secretary, any lease for oil or gas . . . shall be made subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by [the] Secretary . . . ." *Id.* Pursuant to the Secretary's implementing regulations, BIA may approve a communitization agreement "[f]or the purpose of promoting conservation and efficient utilization of minerals," and if BIA determines that approval is "advisable and in the best interest of the Indian mineral owner." 25 C.F.R. § 212.28(a). BIA need not obtain the consent of the Indian mineral owner to the communitization agreement unless consent is specifically required in the lease. *Id.* § 212.28(b).

Unless the communitization agreement provides otherwise, "approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date." *Id.* § 212.28(f). The regulations require that a communitization agreement "must be filed with the [BIA] superintendent or area director[1] at least ninety (90) days prior to the first expiration date of any of the Indian

[1] BIA area directors are now known as regional directors.

leases in the area proposed to be covered" by the agreement. *Id.* § 212.28(e). In this case, the Lease of Allotment 1414 is the sole Indian lease included in the CA.

Background

On March 6, 2008, Appellant, as lessor, and Questar Exploration & Production Company (Questar), as lessee, entered into Oil and Gas Mining Lease No. 14-20-205-14021 (Lease) for Allotment 1414, comprising an 80-acre portion of the original allotment of In Nen Bah A or Fighting Man, Cheyenne-Arapaho Allottee No. 1414. Lease at 1 (Administrative Record (AR) Tab 1). The leased property is more particularly described as the E/2 NW/4 of Section 18, Township 13 North, Range 10 West, less and excepting the Springer Formation, in Canadian County, Oklahoma. *Id.* The Superintendent approved the Lease on February 2, 2009. *Id.* at 4. The Lease is for a 3-year primary term, ending on February 1, 2012, "and as much longer thereafter as oil and/or gas is produced in paying quantities from said land."[2] *Id.* at 1 ¶ 1.

With respect to communitization agreements, the Lease provides that Appellant will abide by any cooperative or unit plan of development affecting the leased lands that may be required by the Secretary, "but no lease shall be included in any cooperative or unit plan without prior approval of the Secretary." *Id.* at 3 ¶ 12; *see also* 25 C.F.R. § 213.31(b) (same). Further, the Lease states that, "notwithstanding anything to the contrary in this lease, all acreage not included in a unit or cooperative agreement and not producing or upon which drilling operations have not commenced, shall be released at the expiration of the primary term of this lease." Lease at 3 ¶ 6.

On November 2, 2011, which was 91 days prior to the expiration date of the Lease,[3] the Bureau of Land Management (BLM), Oklahoma Field Office, in Tulsa, Oklahoma, received the CA in question. *See* Communitization Agreement, Contract No. OKNM127543 (CA) (AR Tab 8).[4] The CA covers specified formations underlying

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[2] The Lease allows that if, before the expiration of the primary term, the lessee commences drilling, the lessee may drill the well to completion with reasonable diligence and, if oil or gas is found in paying quantities, the Lease will continue as if the well had been completed within the primary term. Lease at 1 ¶ 1.

[3] November 2, 2011, was the 91st day counting backward from January 31, 2012—the last day prior to the February 1, 2012, expiration date. *See* 25 C.F.R. § 212.28(e).

[4] The CA was apparently submitted by Reagan Smith Energy Solutions, Inc., on behalf of Devon Energy Production Company, L.P. (Devon)—the operator of the communitized

(continued…)

Section 18, Township 13 North, Range 10 West, comprising 641.98 acres and referred to as the "communitized area," including 80-acre Allotment 1414. *Id.* at 4. The communitized area is based on a 640-acre "spacing unit" (i.e., the acreage allocated to a single well) that was previously created by orders of the Oklahoma Corporation Commission (Commission) for the specified formations. *See* Decision, Aug. 21, 2012, at 3 (AR Tab 17); CA, Attachments (copies of Commission orders).

According to a BLM memorandum dated November 2, 2011, BLM forwarded a copy of the CA to BIA's Southern Plains Regional Office (SPRO) in Anadarko, Oklahoma. Memo from BLM to SPRO (AR Tab 3). On or about November 18, 2011, the Regional Realty Officer for SPRO forwarded the copy of the CA to the Concho Agency Superintendent. Memo from SPRO to Superintendent, Nov. 18, 2011 (AR Tab 4). It is undisputed that the Superintendent received the copy on November 21, 2011. *See* Superintendent's Decision, Mar. 1, 2012, at 1 (AR Tab 10). SPRO's transmittal memorandum to the Superintendent stated that, "[u]nder agreement of our respective offices," BLM submitted the proposed CA to SPRO, and that upon receipt the Superintendent should complete the review of the CA as soon as possible. AR Tab 4.

On February 8, 2012, Appellant sent a letter to the Superintendent asserting that because BIA had yet to approve the CA, the Lease had expired on February 1, 2012. Letter from Appellant to Superintendent at 1-2 (AR Tab 5). Appellant explained that, although Devon "spudded" (i.e., commenced drilling) a well on a tract other than Allotment 1414 within the spacing unit on December 8, 2011, Allotment 1414 "was not drilled through," and therefore, in the absence of an approved CA, there was nothing to prevent the Lease from expiring at the end of its primary term. *Id.* (emphasis omitted).

Also on February 8, 2012, BLM recommended that BIA approve the CA. Memo from BLM to Superintendent (AR Tab 6). In light of BLM's recommendation, on February 29, 2012, the Concho Agency's Office of Real Estate Services recommended that the Superintendent approve the CA. Memo from Real Estate Services to Superintendent at 1-2 (AR Tab 7). The Superintendent signed the CA the same day. *See* CA at 7.

(…continued)
area. CA at 1, 4. Questar's successor-in-interest, QEP Energy Company, signed the CA as a working interest owner. *Id.* at 8.

Pages of the CA bear different BLM date stamps of "2011 NOV – 2 P 1:40," "2011 NOV – 3 P 2:41," and "2012 FEB – 8 A 5:54," indicating that BLM received the proposed CA no sooner than November 2, 2011. *See* CA at 3, 10; Statement of Reasons (SOR), May 22, 2012, Attachment (copy of CA) at 1 (AR Tab 15).

On March 1, 2012, the Superintendent issued her decision approving the CA. Superintendent's Decision at 1 (unnumbered). First, the Superintendent found that the CA "was submitted prior to the 90 day regulatory requirement . . . in 25 C.F.R. [§] 212.28(e)." *Id.* Relying on an April 22, 2009, Southern Plains Region guidance memorandum (2009 Memo),[5] she reasoned that the CA was timely filed by its submission to BLM on November 2, 2011, and that a copy of the CA was subsequently received by the Concho Agency on November 21, 2011. *Id.*

Next, apparently responding to Appellant's assertion that the Lease had expired, the Superintendent determined that "[c]onsidering the CA was submitted prior to the 90 day regulatory period, any inaction by the Secretary that extended approval beyond the lease terms would be considered to 'bring into play the equitable application of the tolling doctrine.'" *Id.* at 2 (unnumbered) (quoting *Cotton Petroleum v. Department of the Interior*, 870 F.2d 1515, 1524 (10th Cir. 1989)). Further, the Superintendent noted that Devon spudded a well on a tract other than Allotment 1414 within the spacing unit on December 8, 2011. *Id.* at 1 (unnumbered). The Superintendent concluded that:

> In view of the unreasonable cost of independent development, the established spacing to conserve and produce from the proposed resource, and that the *drilling operations were in progress prior to the expiration of the subject lease and the fact the Secretary has delayed approval of the CA beyond the 90 day limit and thereby tolling the leases*, we believed this agreement to be in the long range best interest of the Indian mineral owner and thereby approved it.

Superintendent's Decision at 2 (unnumbered) (emphasis added).

Appellant appealed the Superintendent's decision to the Regional Director. Notice of Appeal to Regional Director, Mar. 29, 2012 (AR Tab 11). First, Appellant disputed the Superintendent's determination that the date of submission to BLM is considered the date of filing. SOR at 4-5. Appellant argued that, notwithstanding the Superintendent's interpretation of the 2009 Memo, 25 C.F.R. § 212.28(e) requires that a proposed cooperative agreement "must be filed with the superintendent or area director," and that the proposed CA was not filed with BIA at least 90 days before the expiration date of the Lease. *Id.* (internal quotations omitted).

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[5] The 2009 Memo is not contained in the administrative record but it is attached to Appellant's opening brief. Opening Brief (Br.), Feb. 11, 2013, Exhibit (Ex.) R. BIA is reminded that all documents relied on or utilized for a decision must be included in the administrative record.

Next, Appellant disputed the Superintendent's conclusion that delayed approval of the CA beyond the expiration date of the Lease "tolled" the Lease. Appellant argued that because the primary lease term expired before the CA was approved, the Lease terminated and could not be tolled by delays in reviewing the CA. *Id.* at 5-6. Appellant also argued that the Lease could not, based on the well that was spudded on a tract other than Allotment 1414, be held past the expiration date of the Lease. *Id.* at 7-8.

On August 21, 2012, the Regional Director issued the Decision affirming the Superintendent's decision. Decision at 1. First, the Regional Director found that the CA was timely filed not based on the date of BLM's receipt, but because the CA "was received [by SPRO] on November 2, 2011 . . . , which is ninety (90) days from the lease expiration date."[6] *Id.* at 2. He then stated that, even if the CA was not timely filed, BIA may still review the CA and determine that approval of the CA would be in the best interest of Appellant. *Id.* The Regional Director affirmed the Superintendent's "best interest" determination as supported by the record. *Id.* at 3. The Regional Director concluded that, instead of the Lease being "tolled" as the Superintendent had found, the Lease did not expire because the CA "was received before the date of . . . lease expiration," and the Superintendent's approval of the CA had "a retroactive date of November 1, 2011."[7] *Id.*

Finally, responding to Appellant's argument that the Lease expired, prior to approval of the CA, because Allotment 1414 had not been drilled through, the Regional Director agreed that "[t]his [argument] would apply to a stand[-]alone lease." *Id.* But the Regional Director concluded that because the "[L]ease had been spaced" pursuant to Commission orders creating a 640-acre spacing unit, because BLM concurred with the state spacing orders, and because Devon spudded a well on a tract other than Allotment 1414 for one of the formations included within the spacing unit, Appellant's minerals "were penetrated" when the well was spudded on December 8, 2011. *Id.*

Appellant appealed to the Board. Appellant filed an opening brief and the Regional Director filed an answer brief. No other interested parties filed responsive pleadings in the proceedings below or in this appeal to the Board.

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[6] As explained *supra* note 3, November 2, 2011, was actually 91 days before the expiration date of the Lease.

[7] The CA recites an effective date of November 1, 2011, upon execution by the parties and approval by the Secretary of the Interior. CA at 5 ¶ 10.

Discussion

I. Standard of Review

The Board reviews a regional director's decision to determine whether it comports with the law, is not arbitrary and capricious, and is supported by substantial evidence. *Hicks v. Northwest Regional Director*, 59 IBIA 285, 290 (2015). The Board applies a *de novo* standard when reviewing the sufficiency of the evidence. *Id.* This appeal raises several questions of law, which we also review *de novo*. *See Dobbins v. Acting Eastern Oklahoma Regional Director*, 59 IBIA 79, 87 (2014). The appellant bears the burden of showing error in a regional director's decision. *Id.*

II. Analysis

On appeal, Appellant again argues that the CA was not timely filed pursuant to 25 C.F.R. § 212.28(e) and that the Lease expired before the CA was approved. Opening Br. at 5-6, 11. The Regional Director responds that "the Superintendent and the Regional Director both concluded that the [CA] was submitted to the Regional Director on November 2, 2011," and "was therefore timely submitted." Answer Br., Mar. 13, 2013, at 2. But the Superintendent and the Regional Director relied on different theories and sets of facts to support their respective findings that the proposed CA was timely filed, and we conclude that the Superintendent's theory is contrary to law, while "facts" relied on by the Regional Director are not supported by evidence in the record. Thus, we conclude that the Decision's finding that the CA was timely filed pursuant to § 212.28(e) is unsupported. Moreover, even accepting BIA's position that it may review a late-filed communitization agreement, BIA lacked authority to approve the proposed CA after the Lease expired and the Lease was not extended by drilling on a tract other than Allotment 1414 within the spacing unit or proposed communitized area.

A. The Record Does Not Support BIA's Determination That the CA Was Timely Submitted

The regulations require that a CA "*must be filed with the superintendent or area director* at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement." 25 C.F.R. § 212.28(e) (emphasis added); *see also id.* § 212.28(c) ("Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director."). The mandatory and precise language of § 212.28(e) contradicts the Superintendent's theory that the proposed CA was timely filed

upon receipt by BLM, and the Regional Director, correctly, did not rely on that theory.[8] But while the Regional Director found that "[t]he records show" and "[t]he records reflect" that a copy of the proposed CA was "provided" to, "submitted to," and "received in" SPRO on November 2, 2011, Decision at 1-2, the Regional Director did not identify the evidentiary basis for that assertion, and we have found no documents in the record to support the Regional Director's statements.

Rather, the record shows that on November 2, 2011, the CA was filed with BLM in Tulsa, and was time stamped 1:40 PM. *See supra* note 4. That same day, BLM addressed a memorandum to SPRO in Anadarko, supposedly enclosing a copy of the CA. AR Tab 3. There is no evidence of the date of mailing (e.g., a postmarked envelope) or receipt by BIA (e.g., a date stamp by SPRO), and no supporting affidavits are contained in the record or were submitted by BIA on appeal. Furthermore, while BLM's memorandum was addressed to SPRO, it was not addressed to the Regional Director, and the copy of the memorandum in the record does not enclose the copy of the CA that was supposedly transmitted. At best, the record shows that BIA received the CA by November 18, 2011, when the Regional Realty Officer apparently sent a memorandum to the Superintendent, enclosing a copy of the CA, and the Superintendent apparently received it on November 21, 2011. AR Tab 4; *see also* Superintendent's Decision at 1 (unnumbered) ("The agreement was submitted to the [BLM] on November 2, 2011, and an information copy was received by the [Concho A]gency on November 21, 2011.").

Regardless of how, for purposes of § 212.28(e), the term "filed" should be interpreted (e.g., date of mailing, date of personal delivery, etc.), there is no evidence that the CA was actually mailed to, delivered to, or otherwise received by the Superintendent or the Regional Director at least 90 days before the expiration date of the Lease. Therefore, we must conclude that the Regional Director erred in finding that the CA was timely filed.[9] *See Hicks*, 59 IBIA at 290 (requiring substantial evidence to support a BIA decision).

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[8] We note that the Regional Director's 2009 Memo instructed that in the Southern Plains Region, "[t]he operator will submit the CA to the Tulsa BLM office." Opening Br., Ex. R. Although Devon followed that procedure, it did not satisfy the express mandate of 25 C.F.R. § 212.28(e), which is controlling, and it did not appear before the Board and argue otherwise.

[9] Appellant also contends that the CA was not filed in approvable form until after the Lease's expiration date, as portions of the CA bear BLM date stamps of February 8, 2012—several days after the Lease expired. Opening Br. at 10 (citing CA at 10-43). Because we vacate the Decision for other reasons, we need not reach that issue.

B. BIA Has Discretion to Review a Late-Filed Communitization Agreement

While we have determined that there is insufficient evidence to support a finding that the CA was timely filed, we conclude that BIA nonetheless had authority to review and approve the CA, but not beyond the expiration date of the Lease.

Section 212.28(e) states that a communitization agreement "must" be filed at least 90 days prior to the first expiration date of any of the Indian leases in the proposed communitized area. 25 C.F.R. § 212.28(e). As we understand the Regional Director's position, even if an agreement is received fewer than 90 days from the date of lease expiration, there may still be sufficient time for review. *See* Decision at 2.

The Regional Director's position is supported by the regulatory history of § 212.28(e). In response to comments on the proposed rule, including a suggestion that agreements submitted after the 90-day deadline be reviewed in the discretion of BIA, BIA stated that "[c]ooperative agreements submitted after the 90 day deadline will be considered by the Department, but the lessee bears the risk that leases may expire prior to the Department being able to take action to approve the agreement." 61 Fed. Reg. 35634, 35645 (July 8, 1996). In light of this clarification, we agree that BIA may review an untimely request for approval of a CA, but not indefinitely. For the reasons discussed below, we agree with Appellant that BIA exceeded its authority in this case.

C. BIA Lacked Authority to Approve the CA After the Expiration Date of the Lease

Appellant's lease could not be included within the CA because the Lease expired before the untimely CA was approved. We find no support in BIA's regulations or the Lease for the Regional Director's conclusion that the Lease will "remain in effect" because "the CA was received before the date of . . . [L]ease expiration," and that approval of the CA could be made "retroactive" to the date of the application. Decision at 3. Further, we disagree with BIA's apparent alternative reasoning that the Lease was extended by drilling on a tract other than Allotment 1414 within the spacing unit, and thus the CA was approved before the Lease expired. *Id.*

The regulations provide that approval of a CA "commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, *as long as the agreement is approved before the lease expiration date*. 25 C.F.R. § 212.28(f) (emphasis added). By its plain terms, the rule refers to the date of approval. Irrespective of whether BIA's approval of an agreement may, in some cases, "relate back" to the date an agreement is deemed to become "effective," by agreement of the parties, the regulations refer to the date of approval—not a date of "effectiveness."

The rule does not state, as posited by the Regional Director, that BIA may "retroactively" approve a communitization agreement for an expired lease. Decision at 3. On appeal, the Regional Director does not explain the basis for his position, and in the Decision he simply stated, without explanation, that the Lease was written on a BIA lease form containing a stipulation whereby Appellant agrees to abide by any cooperative agreement that may be required by the Secretary. *Id.* But the referenced stipulation contains the critical limitation that "*no lease* shall be included in any cooperative unit or plan without *prior* approval of the Secretary." *Id.* (quoting Lease ¶ 12) (emphases added); *see also* 25 C.F.R. § 213.31(b) (same). The Board has previously held that "an Indian oil and gas lease expires by its own terms when there is no production during the primary term and the lease is not included within a producing unit under a CA approved *prior to the expiration of the lease*." *Black Hawk Oil Co. v. Acting Anadarko Area Director*, 18 IBIA 414, 421 (1990) (citing *Continental Oil Co.*, 2 IBIA 116 (1973)) (emphasis added). Accordingly, we reject the Regional Director's determination that his approval of the CA was retroactive.

Further, the Lease was not preserved or extended by drilling operations on a tract other than Allotment 1414, and the Lease therefore expired at the end of its primary term, before the CA was approved. Appellant's lease stated that it would expire after 3 years unless it was producing or included in a communitization agreement. *See* Lease at 1 (stating that the Lease is for a term of 3 years "and as much longer thereafter as oil and/or gas is produced in paying quantities from said land"); *id.* at 3 ¶ 6 ("[A]ll acreage not included in a unit or cooperative agreement and not producing or upon which drilling operations have not commenced, shall be released at the expiration of the primary term of this lease . . . .").

The Regional Director found that Appellant's "minerals were penetrated" when a well was spudded on a tract other than Allotment 1414. Decision at 3. That analysis is flawed. Allotment 1414 is part of a 640-acre spacing unit established by orders of the Oklahoma Corporation Commission. *See* Order No. 546177, Nov. 2, 2007, and Order No. 97684, May 21, 1973 (CA, Attachments). On July 20, 2011, the Commission approved an application by Devon for an order pooling interests on the spacing unit, finding that Devon holds the right to drill on the unit. Order No. 587452 at 1-2 (CA, Attachment). One week later, the Commission granted Devon permission to drill a lateral well on the spacing unit. Interim Order No. 587634, July 27, 2011, at 1-2 (CA, Attachment). The Commission orders regarding the spacing unit are not a communitization agreement. *See Woods Petroleum Corp. v. Department of the Interior*, 47 F.3d 1032, 1040 (10th Cir. 1995) (distinguishing a state-ordered spacing unit from a Secretarially-approved communitization agreement). The CA at issue is based on the spacing unit, but the Regional Director cannot rely on a state spacing unit, in lieu of an approved communitization agreement, to preserve Appellant's lease.

There is no dispute that Devon spudded the well on December 8, 2011. However, because the Regional Director did not approve the CA for the spacing unit before the primary term of the Lease expired, the drilling on a tract other than Allotment 1414 within the spacing unit and *proposed* communitized area cannot preserve Appellant's lease as if the Lease were part of an approved communitization agreement. Because Appellant's lease expired before BIA approved the CA, and because no regulations or Lease provisions were triggered that would hold the lease beyond its primary term, BIA erred in approving the CA.

Conclusion

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 vacates the Regional Director's August 21, 2012, decision and remands the matter for further proceedings consistent with this decision.

I concur:

// original signed	//original signed
Thomas A. Blaser	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge