

Editor's note: 79 I.D. 17

HUSKY OIL COMPANY OF DELAWARE DEPCO, INC.
79 I.D. 17

IBLA 70-636

Decided February 18, 1972

Appeal from decision (M 15508) by Montana state office, Bureau of Land Management, holding oil and gas terminated for failure to pay rental timely.

Reversed and remanded.

Oil and Gas Leases: Rentals

Where a producing oil and gas lease is partially committed to a unit agreement and the segregated uncommitted lands do not contain a well capable of producing oil or gas in paying quantities, the segregated lease is subject to payment of annual rental on or before the anniversary date of the lease. Where the lessee is not informed of approval of the unit agreement and segregation of the uncommitted lands into a new lease effective April 1, 1970, and he did not receive notice until some five weeks thereafter of such actions and subsequent to anniversary date of the lease, May 1, 1970, the segregated lease is not automatically terminated under 30 U.S.C. 188 (1970) for failure to pay the annual rental on or before the anniversary date of the lease.

Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases:
Rentals

Notice given in 1967 that an oil and gas lease is subject to increased rental because of inclusion of some of its lands in a known geologic structure of a producing oil or gas field is considered to be adequate notice that a lease segregated therefrom in 1970, containing some lands on such known geologic structure, is also subject to payment of the increased rental.

Oil and Gas Leases: Rentals--Oil and Gas Leases:
Termination--Statutory Construction: Generally

Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

APPEARANCES: Donald L. Jensen and James S. Holmberg for appellants.

OPINION BY MR. FISHMAN

Husky Oil Company of Delaware and Depco, Inc., have appealed to the Director, Bureau of Land Management, 1/ in which the Bureau's land office at Billings, Montana, held that oil and gas lease M 15508 had terminated effective May 1, 1970, because the rental for the lease year commencing on that date had not been timely paid.

A noncompetitive oil and gas lease, Montana 073179, issued effective May 1, 1966, for 1,999.36 acres. Notice of increase in rental rate for lease M 073179 was given by land office decision of December 4, 1967, which also described 320 acres of the leasehold which had been determined to be within the known geologic structure of Bell Creek Field. On February 19, 1968, a producing oil well was completed in SW 1/4, SW 1/4, sec. 1, T. 8 S., R. 54 E., P.M., Montana, within the leasehold thereby changing the status of the lease from one subject to payment of annual rental in advance to one subject to payment of minimum rental at the end of the lease year. The land office decision of September 18, 1968, notified the lessees that the Bell Creek Field known geologic structure had been expanded to include an additional 120 acres in the lease. The Bell Creek "A" unit agreement, 14-08-0001-11760, was approved effective April 1,

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Cir. 2273, 35 F. R. 10009, 10012.

1970. 2/ Only 440 acres of lease M 07319 was committed to this unit agreement. The land office decision of May 6, 1970, gave notice that the segregated lands, containing 1,559.36 acres, were now identified as lease M 11508 effective as of April 1, 1970. 30 U.S.C. § 226(j) (1970). This was the first notice to the lessees that the Bell Creek "A" unit agreement had been approved. Lease M 15508 had no well capable of producing oil or gas in paying quantities. Therefore, such lease was subject to payment of annual rental in advance. 43 CFR 3101.2(a)(2) (1971). Since the segregation of lease M 15508 from lease M 073179 was made effective April 1, 1970, rental for the lease year commencing May 1, 1970, at the rate of \$2 per acre, was due and payable on or before that date. When it was ascertained that no rental had been paid timely for the lease, the land office decision of May 22, 1970, held that the lease had terminated pursuant to 30 U.S.C. § 188 (1970). Rental in the amount of \$2 per acre was paid with the notice of appeal.

The appellants contend that the segregation of lease M 15508 from lease Montana 073179 was effective by the decision of May 6, 1970, and even though the effective date of M 15508 was recited in

2/ The U.S. Geological Survey approved the Bell Creek "A" unit agreement on March 31, 1970, but under the terms of the agreement, the unit operator was permitted to select the effective date of the unit agreement after he had complied with certain requirements of the State of Montana. On April 22, 1970, the unit operator advised the Regional Oil & Gas Supervisor, Geological Survey, that the effective date of the Bell Creek "A" unit agreement was 7 a.m., April 1, 1970.

that decision to be April 1, 1970, in fact the original lease M 073179 was a single subsisting lease on May 6, 1970. They contend they were entitled to proper and timely notice of the rental requirement, since there had been a change in the status of the segregated lease from one which permitted payment of minimum royalty at the conclusion of the lease year to one which required payment of annual rental in advance. They cite Roy M. Eidal, Kern County Land Co., A-29300 (February 19, 1962); C. W. Trainer, 69 I.D. 81 (1962); and Transco Gas & Oil Corp., A-28363 (August 2, 1960), as support for their argument that the automatic termination provisions of the law do not apply in the absence of notice that the lease has been changed from royalty to rental status.

In Eidal, rescission of a land office approval of a partial assignment of a noncompetitive oil and gas lease after commencement of a lease year left a lease without a well capable of production of oil or gas in paying quantities and so subject to payment of annual rental in advance. The Department held that the lease did not become subject to termination under 30 U.S.C. § 188 on a retroactive basis, saying:

To so hold would be to place the lessee in an impossible situation and to demand of him that he meet the requirements of a statute from which he is explicitly exempted on the supposition that some later action of the Department might deprive him of the protection afforded by the statute. If a lessee is not obligated to pay the annual rental on the day it would normally fall due, the automatic termination provisions of the statute do not

apply to his lease. If it is later determined that the well which protected the lease ought not have been part of it, the lessee is obligated to pay the rental due, but only after he has been notified of the changed circumstances and the rental demanded of him. See Transco Gas & Oil Corp., A-28363 (August 2, 1960) and Solicitor's Opinion, 64 I.D. 333 (1957).

Transco relates to the failure of a lessee of an oil and gas lease to pay the 7th lease year rental in advance when it had not been informed that its application for extension of the lease beyond the initial 5-year term had been approved. The Department held that the automatic termination provision of 30 U.S.C. § 188 (1958) did not apply in such a situation.

The Solicitor's Opinion holds that Congress intended that the automatic termination provision of 30 U.S.C. § 188 (1970) to apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued. The opinion further recited that such a view is consonant with a salient principle of law that this Department has been scrupulous to follow, and that is that no one should be deprived of his rights without adequate notice.

Trainer relates to leases segregated by partial assignment from a lease issued December 1, 1948, and which had been granted extensions of 2 years from October 1, 1958. Rentals for the 12th lease year had been paid on a pro-rated basis for 10 months, December 1, 1959, to September 30, 1960. On September 29, 1960, the first producing well

was completed within the original leasehold so that each segregated lease was entitled to a further extension of 2 years from that date. 30 U.S.C. § 187a (1970). The land office held that the segregated leases terminated October 1, 1960, because additional rental had not been paid in advance. The Department reversed, holding that the automatic termination provisions of 30 U.S.C. § 188 (1958) do not apply in a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of the lease.

The present situation is not directly analogous to any of the cited cases, but the rationale of those cases and that opinion is controlling. In the case at bar, where no notice of the date of approval of the unit agreement was given to the appellants prior to the anniversary date of their lease, and the identification (by number) of the segregated lease was not disclosed, both of which actions together would have afforded the appellants the opportunity to make rental payment with proper identification on or before the anniversary date of the lease, the land office erred in holding that the lease terminated pursuant to 30 U.S.C. § 188 (1970). The appellants cannot be held to be obligated retroactively to pay rental for the segregated lease on the date it would normally fall due, and the automatic termination provisions of the law do not apply. We hold that payment of the rental due for the lease year commencing

May 1, 1970, for lease M 15508 made June 18, 1970, after notice of segregation of lease M 15508 from lease M 073179 had been given, was timely, and that lease M 15508 did not terminate.

The argument of the appellants that no notice had been given that lease M 15508 was subject to increased rental because some of the lands therein have been determined to be within the known geologic structure of a producing oil or gas field is not persuasive. Notices of increased rental for lease Montana 073179 had been given on December 4, 1967, and on September 18, 1968, with the description of the lands within the known geologic structure set forth in each notice. The notice of segregation of lease M 15508 from lease Montana 073179 likewise set forth the description of the lands in each lease. We consider that the lessees were given timely and adequate notices that the lands in lease M 15508 were subject to the increased rental.

In view of the result reached in this decision, the request for oral argument is denied since it would serve no useful purpose.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is reversed and the case is remanded

to the Bureau of Land Management for further appropriate action not inconsistent herewith.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Newton Frishberg, Chairman

