

**Editor's note: 79 I.D. 21**

HUSKY OIL COMPANY OF DELAWARE  
DEPCO, INC.  
79 I.D. 21

IBLA 70-667

Decided February 18, 1972

Appeal from decision (M 15502) by Montana state office, Bureau of Land Management, holding oil and gas lease terminated for failure to pay rental timely.

Reversed and remanded.

Oil and Gas Leases: Rentals

The failure to pay annual rental on or before the anniversary date for an oil and gas lease, segregated from a producing lease because of partial commitment to an approved unit agreement effective at 7 a.m. on that anniversary date, does not cause the segregated lease to terminate by operation of law under 30 U.S.C. § 188 (1970).

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.

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 for appellants, Husky Oil Company of Delaware, Inc. and Depco, Inc.; James S. Holmberg for Samuel Gary, et al.

OPINION BY MR. FISHMAN

Husky Oil Company of Delaware and Depco, inc., have appealed 1/ to the Director, Bureau of Land Management, 2/ from a decision dated June 18, 1970, in which the Bureau's Montana state office held that oil and gas lease M 15502 had terminated effective April 1, 1970, because rental had not been timely paid for the lease year commencing on that date. 30 U.S.C. § 188(b) (1970).

The facts are these: noncompetitive oil and gas lease Montana 021711 was issued effective April 1, 1956, for 2,121.80 acres. This lease was extended to March 31, 1966, pursuant to 43 CFR

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1/ Samuel Gary, Robert T. Birdsong, Fla Lewis, Jr., Exeter Drilling and Exploration Company and R. G. Boekel, all having interests in oil and gas lease, M 15502, also filed a joint appeal.

2/ 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, on July 1, 1970, to the Board of Land Appeals, effective that date. Circular 2273, 35 F.R. 10009, 10012.

3127.1(a)(1961) (now 43 CFR 3107.1-1(a)(1971), 3/ further extended to February 29, 1968, by partial assignment of 40 acres, pursuant to 43 CFR 3128.5(a)(1966) (now 43 CFR 3107.6-1 (1971)), 4/ and further extended to February 28, 1970, by drilling operations pursuant to 43 CFR 3127.2 (1968) (now 43 CFR 3107.2 (1971)). 5/ Notice of increase in rental rate was served by decision of December 4, 1967, which described 400 acres within the leasehold as having been determined to be within the known geologic structure of Bell Creek Field. A producing well was completed within the leasehold of Montana 021711 in the SE 1/4 NE 1/4 sec. 11, T. 8 S., R. 54 E., P.M., on January 14, 1970. On March 1, 1970, lease Montana 021711 became a lease extended by production. Effective 7 a.m., April 1, 1970, 80 acres of lease Montana 021711 were committed to Bell Creek "A" unit agreement, 14-08-0001-11706, approved by the Geological Survey March 31, 1970. The land office decision of May 4, 1970, gave notice of the segregation of the uncommitted 2,001.80 acres of Montana 021711 into a new lease, M 15502, effective April 1, 1970. When it was ascertained that no rental had been paid on or before April 1, 1970, for the segregated lease M 15502, the land office decision of June 18, 1970, held lease

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3/ This regulation relates to the single extension of a 5-year lease issued prior to September 2, 1960, and is based on the Act of August 8, 1946, § 3, 60 Stat. 951.

4/ This regulation pertains to extensions granted because of segregation by assignment after discovery upon another portion of the original lease and is based on 30 U.S.C. § 187a (1970).

5/ This regulation is based on 30 U.S.C. § 226(e) (1970).

M 15502 to have terminated effective April 1, 1970, since the lease had no well capable of producing oil or gas in paying quantities.

The Bell Lake "A" unit agreement was not effective at the commencement of April 1, 1970, but at 7 a.m. on that date, so that lease Montana 021711 was a lease containing 2,081.80 acres and held by production when its lease year commenced April 1, 1970. The segregation of the uncommitted lands did not occur until 7 a.m., April 1, 1970, after the lease year had commenced. Therefore the segregated lease M 15502 was not in effect until that time. Accordingly the state office erred in applying retroactively the termination provision of 30 U.S.C. § 188 (1970).

Our conclusion is also predicated upon Solicitor's Opinion, 64 I.D. 333, 336 (1957) that the automatic termination provision of 30 U.S.C. § 188 (1970) was intended by the Congress:

. . . to apply to the regular, annual rental payment, the necessity for which the lessee had continuous notice and . . . was not intended to apply to a case where the lessee had no way of knowing that the obligation had accrued. The Ingersoll case . . . [Donald C. Ingersoll, 63 I.D. 397, 400 (1956)] . . . recognizes 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.

See Transco Gas and Oil Corp., A-28363 (August 2, 1960).

In view of our conclusions no useful purpose would be served by granting the request by some of appellants for oral argument. Accordingly, the request for oral argument is denied.

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

Frederick Fishman, Member

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We concur:

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Douglas E. Henriques, Member

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Newton Frishberg, Chairman

