

Editor's note: 79 I.D. 23

STANDARD OIL COMPANY OF CALIFORNIA
and ATLANTIC RICHFIELD COMPANY

IBLA 71-166

Decided February 22, 1972

Appeal from decision (Anch.-028404 and Anch.-028407) by Alaska state office, Bureau of Land Management, giving notice of increased oil and gas lease rental rate.

Reversed.

Administrative Practice--Courts--Oil and Gas Leases: Rentals--Oil and Gas Leases: Unit and Cooperative Agreements

Where only a portion of the lands in a unitized oil and gas lease is eliminated from the unit, the leased lands are situated in whole or in part on the known geologic structure of a producing oil or gas field, and the lease terms and factual circumstances are identical to those in the decision, Standard Oil Company of California et al., 76 I.D. 271 (1969), this Department will follow the ruling by the United States Court of Appeals for the Ninth Circuit in Standard Oil Company of California v. Morton, 450 F.2d 493 (1971), which overturned that decision solely upon principles of contract

construction; therefore, the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to non-unitized lands within a known geologic structure.

Standard Oil Company of California et al., 76 I.D. 271 (1969), no longer followed.

APPEARANCES: D. G. Couvillon, Vice President, Standard Oil Company of California, Western Operations, Inc.; Gordon Davis, Attorney in Fact, Atlantic Richfield Company.

OPINION BY MRS. THOMPSON

Standard Oil Company of California and Atlantic Richfield Company have jointly appealed to this Board from a decision dated December 18, 1970, by the Alaska state office of the Bureau of Land Management at Anchorage, affecting their oil and gas leases Anch.-028404 and Anch.-028407. Their appeal relates only to that part of the decision which provided that there would be an increased rental rate beginning September 1, 1971, for the acreage in the leases which was eliminated, effective July 1, 1970, from the Birch Hill Unit Agreement No. 14-08-0001-8693.

The decision of the Alaska state office gave notice that certain lands in these and other leases not involved in this appeal were

eliminated from the Birch Hill Unit, and that the lands in these leases are located partially within and partially outside the contracted boundary of the unit. The decision stated that the eliminated portion of each lease and the portion which remains unitized continue to form one lease which is extended by production, either actual or constructive. (This is due to production within the unit.) The decision indicated that the records of the Geological Survey show the acreage in these leases to be distributed into three categories as follows:

	(1)	(2)	(3)			
Area	Acres in Unit but Partially	Acres Outside Anchorage	Acres Outside ut Within Unit	Participating Area Within KGS	Participating Total	
028404	530.00	190.00	1,360.00	2,080.00	028407	400.00
2,073.00	2,553.00					80.00

The decision held that rentals for these categories, as numbered above, are as follows:

(1) The acreage within the participating area of the unit is on a minimum royalty basis.

(2) The acreage outside the participating area but within the unit is 25 cents per acre or fraction thereof in accordance with regulation 43 CFR 3103.3-2(a)(2) and rental provision sec. 2(d)(1)(a)(iv) of the lease terms.

(3) Acreage outside the unit but partially within a known geological structure (KGS) 1/ would be increased to \$1, the rental rate for leased lands wholly or partially within a KGS of a producing oil or gas field, applicable to leases issued prior to the Mineral Leasing Act Revision of September 2, 1960 (30 U.S.C. § 181 et seq. (1970)), and not subsequently extended pursuant to section 4(a) of that Act (30 U.S.C. § 226-1 (1970)), 2/ beginning with the first lease year after 30 days notice that a portion of the lease is on a KGS.

Portions of each of these leases are within the KGS of the Birch Hill Field.

The appeal concerns only the rental rate in the third category, the land which was eliminated from the unit. Before the contraction of the unit, all the lease acreage outside the participating area of the unit was subject to the rental rate of 25 cents per acre or fraction thereof. The question raised by this appeal is whether the acreage eliminated from the unit remains subject to the 25 cent rate applicable to nonparticipating acreage within a unit, or must be increased to the \$1 rate which would be applicable to non-unitized leases which lie wholly or partially within a

1/ For brevity purposes "KGS" will hereafter be used for the term "known geologic structure".

2/ Both leases issued effective September 1, 1956, and have been extended under other statutory provisions which do not change the rental terms of the lease, as does section 4(a).

The factual circumstances of this case are identical to those considered by this Department in Standard Oil Company of California et al., 76 I.D. 271 (1969), except, as the leases in this case issued prior to July 3, 1958, the lease rental rate of 25 cents for lands not on a KGS is applicable, whereas, in that case, the leases issued after that date. The rental rate for such lands in those leases was changed to 50 cents pursuant to section 10 of the Act of July 3, 1958, 30 U.S.C. § 251 (1964), which made the rental rate for lands in Alaska not on a KGS identical to that in the other states.

In Standard, supra, this Department held that the rental rate for lands within a KGS was applicable to lands eliminated from a unit which were situated in whole or in part on a KGS, where only a portion of the lands in a unitized oil and gas lease was so eliminated, rather than the rate for unitized land not included in a participating area.

Appellants contend that the KGS rental rate should not apply to the lands eliminated from the unit and rely upon the court decision, Standard Oil Company of California v. Hickel, 317 F. Supp. 1192 (D. Alaska 1970), which overruled the Department's determination above as to the rental rate for the lands eliminated from the unit. The court granted a judgment declaring that the correct rental for such lands is the rate prescribed for the nonparticipating lands in

the unit, i.e., 50 cents per acre (which would be 25 cents per acre in the present case as discussed above).

The district court's decision was affirmed in a per curiam opinion of the United States Court of Appeals for the Ninth Circuit, Standard Oil Company of California v. Morton, et al., 450 F.2d 493 (9th Cir. 1971).

This affirmance has now become final. As the Court of Appeals stated at 495:

Had the entire acreage under each of these leases been contracted out of the cooperative unit, it is clear that the \$1.00 per acre rental would be applicable. The district judge concluded, however, that the draftsman of the federal lease had not made provision for the possibility that only part of the acreage under a lease would be affected by contraction while the lease itself would remain pledged to the approved unit development. He charged the Secretary as draftsman of the lease with the confusion resulting from this oversight and ambiguity. Under the general rules of contract construction, he construed the leases against the draftman and his agents. Reading Steel Casting Co. v. United States, 268 U.S. 186, 188, 45 S.Ct. 469, 69 L.Ed. 907 (1925); Reconstruction Finance Corp. v. Sullivan Mining Co., 230 F.2d 247, 250 (9th Cir. 1956).

The Court of Appeals affirmed for the reasons set out in the district court's opinion.

The courts' decisions leave the anomalous result that leases completely eliminated from a unit but within a KGS will be subject to the KGS rental rate, but if the lease is only partially eliminated from the unit, although within a KGS, the eliminated lands are not subject to the higher KGS rental even though they are no longer

bound to the unit agreement provisions. These provisions justify the lower rental for land subject to the agreement which are not within the participating area. The court decisions, however, relied solely upon principles of contract construction and concluded that the gap and ambiguity in the lease terms should be resolved against the United States as drafter of the lease instrument. There is, therefore, nothing in the court decisions which conflicts with the following statement in the Departmental decision in Standard:

We see nothing in the statute which would preclude the Secretary from providing by regulation or by lease terms for a different rental rate between nonparticipating acreage within a unit and acreage eliminated from a unit. (76 I.D. 277).

We understand that existing regulations and the lease form will be revised to cure the gap and ambiguity in the lease terms.

The provisions of the lease and the regulations in the cases now before us, however, are the same as those considered in the Standard decisions mentioned above. 3/ The lands involved here are in the same judicial district and circuit. There are no factual differences which could afford a basis for distinguishing the Standard

3/ The lease terms as to rental and minimum royalty are as follows:

"Rentals.--To pay the lessor in advance an annual rental at the following rates:

- (a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:
 - (i) For the first lease year, a rental of 50 cents per acre or fraction thereof, or if the lands are in Alaska, 25 cents per acre or fraction thereof.

court decisions from the present case. There is no doubt that any further court litigation would reach the same result.

We are compelled, therefore, to conclude that the courts' interpretation of the lease terms in Standard as to the rental rate for

fn. 3 (continued)

- (ii) For the second and third lease years, no rental.
 - (iii) For the fourth and fifth years, 25 cents per acre or fraction thereof.
 - (iv) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, or if the lands are in Alaska, 25 cents per acre or fraction thereof.
- (b) If the lands are wholly or partly within the known geologic structure of a producing oil or gas field:
- (i) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased, \$1 per acre or fraction thereof.
 - (ii) If this lease is committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in subparagraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cents per acre or fraction thereof.

Minimum royalty. --Commencing with the lease year beginning on or after a discovery of the leased land, to pay the lessor in lieu of rental, a minimum royalty of \$1 per acre or fraction thereof at the expiration of each lease year, or the difference between the actual royalty paid during the year if less than \$1 per acre, and the prescribed minimum royalty of \$1 per acre, provided that if this lease is unitized, the minimum royalty shall be payable only on the participating acreage and rental shall be payable on the nonparticipating acreage as provided in subparagraph (b)(ii) above."

lands eliminated from the unit will control this Department's determination of such rental rate in this case and other cases where the lease terms and factual circumstances are identical. The Departmental decision in Standard will no longer be followed in such circumstances, and the decision below must be reversed insofar as it required the KGS rental for the lands eliminated from the unit where part or all of the lands are within a KGS, rather than the rental rate applicable to the unitized nonparticipating acreage. Cf. B. E. Burnaugh, 67 I.D. 366 (1960).

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 to the extent indicated above, and the case is remanded to the Bureau for appropriate action.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

