

Editor's note: Reconsideration denied by order dated Jan. 26, 1973

KIRKPATRICK OIL & GAS COMPANY
BEARD OIL COMPANY
JOHN M. BEARD, BRUCE ANDERSON

IBLA 71-44

Decided November 13, 1972

Appeal from decision (NM-017782 (Okla.)) by New Mexico State Office, Bureau of Land Management, holding that oil and gas lease had expired by operation of law.

Affirmed.

Appeals--Rules of Practice: Appeals: Standing to Appeal

An operator, holding under an approved assignment of operating rights, may appeal from a decision that an oil and gas lease expired by operation of law even though the operator was not listed as a party in the decision appealed from.

Oil and Gas Leases: Communitization Agreements--Oil and Gas Leases: Termination

Where the Geological Survey requests some 3 months prior to the termination date of lease a party seeking a proposed communitization agreement to file a necessary document therefor, and such party does not file the document until some 10 months after such request, the lease will be deemed to have terminated according to its normal term.

APPEARANCES: John E. Kirkpatrick, partner, Kirkpatrick Oil and Gas Company.

OPINION BY MR. FISHMAN

The Kirkpatrick Oil and Gas Company, Beard Oil Company, John M. Beard and Bruce Anderson have appealed from a decision dated August 19, 1970, in which the New Mexico State Office, Bureau of Land Management, determined that oil and gas lease NM 017782 (Okla.), dated September 1, 1958, covering 280 acres in Woods County, Oklahoma, had expired by operation of law at the end of its term on July 31, 1970.

The Beard Oil Company, John M. Beard and Bruce Anderson are lessees; the Kirkpatrick Oil and Gas Company is the assignee of operating rights under an approved assignment. All parties filed notice of appeal herein, but only the appellant, Kirkpatrick Oil and Gas Company, filed a statement of reasons for the appeal. Under an approved assignment of operating rights, the Kirkpatrick Oil and Gas Company has standing to appeal the land office decision herein, despite the fact that the company was not listed as a party in the decision appealed from. 43 CFR 4.410.

On or about February 10, 1970, appellant Kirkpatrick completed a Hunton 1/ gas well approximately 400 feet south of the leased acreage. The Oklahoma Corporation Commission is the responsible conservation body in Oklahoma. 2/ It had issued a spacing regulation at 640 acres per well for gas production at the depth of the completed well.

In a letter dated April 1, 1970, the Geological Survey instructed lessees Anderson and Beard Oil Company to submit a communitization agreement to the Geological Survey for the leased lands. Section 2(b) of the lease terms required that within 30 days from demand a communitization agreement be signed and operations conducted thereunder:

(b) Cooperative or unit plan.--Within 30 days of demand * * * to subscribe to and to operate under such reasonable cooperative or unit plan for the development and operation of the area, field, or pool, or part thereof, embracing the lands included herein as the Secretary of the Interior may then determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States.

On April 23, 1970, appellant, Kirkpatrick Oil and Gas Company, filed with the Geological Survey a proposed communitization agreement. On April 30, 1970, appellant Kirkpatrick was advised by telephone that Exhibit A 3/ of the proposed agreement had been omitted when the agreement was submitted. In a letter dated July 23, 1970,

1/ Hunton is a particular stratum.

2/ Spacing orders of that Commission Control operations on federal oil and gas leases. Texas Oil and Gas Corp., 277 F. Supp. 366 (W.D. Okla. 1967), aff'd., 406 F.2d 1303 (10th Cir. 1968), cert. denied, 396 U.S. 829 (1969).

3/ The record indicates that Exhibit A was an itemized list of the leases involved in the proposed agreement.

the Geological Survey advised appellant Kirkpatrick that two additional changes should be made in the proposed communitization agreement. This letter was received by appellant Kirkpatrick on July 27. These changes required endorsements by parties in several different locations. The lease was due to expire on July 31, 1970.

On April 3, 1972, the Geological Survey informed this office that the proposed agreement had been executed and filed with the oil and gas supervisor on February 23, 1972. The Geological Survey indicated that, but for the expiration of the lease on July 31, 1970, it would approve the communitization agreement.

The only issue before us is whether the appellants have established any basis for remedial action in this case. We think they have not.

One who holds an oil and gas lease from the United States is presumed to know the law and regulations and is required to conduct his affairs relative to the lease strictly in conformance therewith. Margaret H. Paumier, 4 IBLA 151 (1971). Lease NM 017782 (Okla.) was issued September 1, 1958, and was thereafter extended until July 31, 1970. By virtue of the State's spacing order, any further extension of the lease was contingent upon an action by the lessee timely performed in compliance with the order for communitization.

Despite the telephone advice given by the Geological Survey to a representative of the Kirkpatrick Oil and Gas Company on April 30, 1970, that Exhibit "A" was required to be filed, no action was taken by any of the involved parties to furnish it until early in 1972. Moreover, the Geological Survey letter of July 23, 1970, reiterated that requirement, inter alia. Exhibit "A", a list of the leases to be included in the proposed agreement, was obviously an essential element of such proposed agreement. Moreover, no valid reason for the failure to file Exhibit "A" prior to the normal termination of the lease has been offered by the appellants.

Concededly, the letter of July 23, 1970, apparently was not received by the operator, Kirkpatrick, until July 27, 1970, giving it only four days in which to comply, a difficult task to meet. However, this factor cannot vitiate the failure to act on the telephone call of April 30, 1970, until almost 10 months later, some 7 months after the lease had expired. But cf. Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7, 79 I.D. ___ (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

