

E. BADEN POWELL, JEAN MARVIN POWELL

IBLA 73-221
IBLA 74-11

Decided December 26, 1973

Appeals from decisions of the California State Office, Bureau of Land Management, holding oil and gas leases to have expired and denying applications to consolidate leases (R-0267, 0267-A and LA-0170895, 0170895-B).

Dismissed.

Oil and Gas Leases: Termination--Rules of
Practice: Appeals: Generally--Rules of Practice: Appeals: Dismissal

Oil and gas leases which have not been extended or suspended in accordance with the Mineral Leasing Act expire at the end of their primary term. Appeals relating to issues rendered moot by the expiration of the leases will be dismissed by the Board of Land Appeals.

APPEARANCES: Richard R. Clements, Esq., of Von Herzen, Catlin, Reinjohn & Clements, Los Angeles, California, for appellants.

OPINION BY MRS. THOMPSON

These appeals challenge two decisions of the California State Office, each of which denied an application for consolidation of two oil and gas leases issued under the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970), on the ground that the leases involved had expired. The two appeals are consolidated because of the identical issues involved.

On May 1, 1962, appellant E. Baden Powell's predecessor in interest entered into ten-year oil and gas lease R-0267, near the Sespe Condor Refuge, within Los Padres National Forest, California. The lease included standard stipulations for the use of National Forest lands. On April 10, 1972, with less than a month remaining in the lease term, the appellant applied to the Bureau of Land Management for approval of a reassignment and consolidation of leases R-0267 and R-0267-A, which had been segregated therefrom by assignment. At the same time, appellant filed an application with the

Forest Service for a special use permit to improve the existing access road to his drill site. The Forest Service denied the road improvement permit on April 21, 1972, and on May 1, 1972, the U.S. Geological Survey informed the Bureau of Land Management that the instant leases had not been extended by the production of oil and gas, nor by commencement of drilling as provided in 43 CFR 3107.2. On the basis of this information, the State Office denied the consolidation application and assignment approval because the leases had expired on April 30, 1972.

On June 1, 1962, appellant Jean Marvin Powell entered into ten-year oil and gas lease LA-0170895, located in the Sespe Condor Refuge and subject to both the standard Forest Service stipulations and special stipulations regarding protection of the condors. Similarly, in the twelfth month of the tenth year of the lease, appellant applied to the Forest Service for a special use permit to build a road to her driller's proposed drilling site, and applied for consolidation of leases LA-0170895 and LA-0170895-B. The base lease had been partially assigned during the lease term, and the reassignment to appellant had already been approved. Again, the Forest Service denied the permit request, and the monthly report of the Geological Survey showed that on May 31, 1972, the leases had expired, since no production or drilling had occurred. On this basis, and on notification from the Forest Service and Geological Survey that neither saw any benefit to the Government in consolidation, the State Office denied this consolidation application.

The asserted grounds for appeal are the same in both cases: (1) the leases have not, in fact, expired; (2) the Government would be benefitted by consolidation; and (3) the memoranda from the Geological Survey and Forest Service concluding that no extensions were justified and that there would be no benefit in consolidation were not issued to each appellant, so that the appellants were unable "to present particulars in that respect."

The allegations that support the assertion that the leases have not expired are contained in the complaint filed in Powell et al. v. Morton et al., Civil No. 73-138-WMB, pending in the United States District Court, Central District of California, which was incorporated by reference into the statement of reasons in these appeals. This complaint asserts that the appellants in both cases sent telegrams to the Secretary of the Interior immediately before the lease terms expired. The telegrams requested that drilling requirements be suspended or that the leases be extended in order to allow the lessees to appeal the Forest Service decision and to allow the Geological Survey to act on the appellants' drilling permit applications.

It is evident from the record, including appellants' own assertions, that the factual conditions giving rise to an extension of

the lease terms, namely, production or commencement of drilling operations prior to the end of the ten-year primary term of the lease, 30 U.S.C. § 226(e) (1970), were not met. The appellants' request for suspension of the leases has been denied by the Secretary of the Interior. As the leases were not extended or suspended in accordance with the Mineral Leasing Act, they expired at the end of their primary term. Only if the leases had been extended or suspended would the other issues raised by appellants warrant any consideration on appeal. As the leases expired, those issues are moot and the appeals will be dismissed for that reason. Duncan Miller, A-27458 (August 12, 1957).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed.

Joan B. Thompson, Member

We concur:

Douglas E. Henriques, Member

Edward W. Stuebing, Member

