

HIGH CREST OILS, INC. (NOW TRICENTROL
UNITED STATES, INC. THROUGH CHANGE OF NAME)

IBLA 75-261

Decided February 23, 1977

Appeal from the decision of the Acting Director, Geological Survey, which affirmed an order by the Area Oil and Gas Supervisor, requesting the Unit Operator to submit a revised Exhibit C to a unit agreement showing a tract of unleased Federal land as not committed to the unit agreement. GS-62-O&G.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Unleased Federal lands ordinarily are not committed to unit agreements unless by a specific action of a duly authorized officer of the Department, and a tract of such land is not committed to a unit agreement in spite of the fact that the tract is included in the area described in section 2 of the agreement as the unit area, is shown on the map attached to the agreement as Exhibit A to be within the boundaries of the unit area, and is shown on Exhibit B of the agreement as being unleased federal land.

APPEARANCES: Louis R. Moore, Esq., of Crowley, Kilbourne, Haughey, Hanson & Gallagher, Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal by High Crest Oils, Inc. (now Tricentrol United States, Inc.), from decision GS-62-O&G of November 11, 1974, by the Acting Director, U.S. Geological Survey. This decision affirmed an order by the Area Oil and Gas Supervisor, Casper, Wyoming, dated August 3, 1973, requesting that High Crest Oils, Inc., submit a revised Exhibit C to the Bullhook Gas Unit Agreement

in Hill County, Montana, showing the interest in Unit Tract 7-B, unleased Federal mineral lands, as not committed to the Bullhook Gas Unit Agreement.

High Crest Oils, Inc., is the Unit Operator of the Bullhook Gas Unit Agreement.

After a careful review of the case record and applicable law, we agree with the Acting Director's conclusion and find that the decision correctly states the facts. Accordingly, we adopt the Acting Director's decision, a copy of which is attached as Appendix A.

The main issue in this case is the question of what is required to commit a tract of land to an approved unit agreement, and, second, whether an unleased tract of land may be considered as committed to a unit agreement because of any actions taken by a delegate of the Secretary of the Interior.

Appellant argued that approval by the Geological Survey of a proposed unit area constituted commitment of all unleased Federal land within the exterior boundaries of the unit area. Survey concluded that no action by it could effectively commit unleased Federal lands to the unit agreement and affirmed its Oil and Gas Supervisor. This appeal followed.

It is apparent that appellant misconstrues the actions taken by Survey to approve a unit agreement. 30 U.S.C. § 226(j) (1970). A unit may be formed by the lessees of an area which, for more properly conserving the natural resource, is considered as suitable for operating as a unit. After Survey has accepted a proposal to unitize a specific area, it is then incumbent upon the proposer to obtain joinder to the unit agreement and to the unit operating agreement from all parties having mineral interests therein, who are lessees of record, owners of over-riding royalty interests, and owners of working interests. Commitment is accomplished by signing the unit agreement and unit operating agreement. Accompanying the unit agreement are plats and tables reflecting the ownership of the mineral interests and the extent of their commitment to the unit agreement. The mere action of approving a unit area as suitable for development under a unit agreement does not constitute commitment of unleased Federal acreage therein. That this is so is reflected in the Department's regulations which provide the conditions for issuing leases within approved unit areas. 43 CFR 3110.6 requires a lease applicant for unleased lands within an approved unit area to file evidence of joinder to the unit or a statement showing why he should be permitted to operate independently albeit in conformity with the unit terms and conditions. Survey correctly required appellant to submit a corrected exhibit

showing that unleased tract 7B is not committed to the unit agreement.

We recognize that title to the oil and gas within Tract 7B was uncertain when the unit agreement was being formulated. The Act of May 21, 1974, Public Law 93-285, 88 Stat. 142, has now dispelled all uncertainty on this point--title to the oil and gas is settled in the Chippewa Cree Indian Tribe of Rocky Boy's Reservation. We do not reach the question of whether the Tribe may commit tract 7B as owner thereof, and thereafter participate in the benefits of the unit agreement to the extent of said parcel. However, until Tract 7B is properly committed to the unit agreement by signature of a proper entity in accordance with regulations, the tract must be shown on the unit exhibits as uncommitted land within the unit area.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX A

GS-62-O&G	:	Unleased Federal Lands, Bullhook Gas Unit Area, Hill County, Montana
High Crest Oils, Inc. (Now Tricentrol United States, Inc., through change of name)	:	Appeal from Oil and Gas Supervisor's Order of August 3, 1973, requesting that High Crest Oils, Inc. As Unit Operator under the Bull- hook Unit Agreement. Hill County, Montana, revises schedule of tract participation. (Exh. C of Bullhook Gas Unit Agreement) to show Unit Tract 7-B. unleased Federal land, as not committed.
Appellant	:	Affirmed.

By instrument dated September 4, 1973, entitled "Notice of Appeal, Statement of Reasons, and Argument," Louis R. Moore, attorney for High Crest Oils, Inc., appealed from the Oil and Gas Supervisor's August 3, 1973, order requesting that High Crest Oils, Inc., submit a revised Exhibit C to the Bullhook Gas Unit Agreement showing the interests in Unit Tract 7-B, unleased Federal mineral lands, as not committed to the Bullhook Gas Unit Agreement. The Supervisor had previously requested the submission of revised Exhibit C by letters dated March 23, 1973, and June 25, 1973.

The Supervisor's order was based upon the view that since the record shows Tract 7-B of the Bullhook Gas Unit Area to be unleased Federal mineral land, neither the formulation of a non-voluntary unit agreement by the Board of Oil and Gas Conservation of the State

of Montana by its issuance of Order No. 41-72 dated December 14, 1972, including these unleased Federal mineral lands in the area covered by said Order, nor the Supervisor's subsequent approval of the commitment of oil and gas leasehold interests in Federal oil and gas leases made subject to the Bullhook Gas Unit Agreement effectuated commitment of the unleased mineral interest in Unit Tract 7-B to the Bullhook Gas Unit Agreement. That the Supervisor has consistently held this view is demonstrated by his memorandum report of December 27, 1972, regarding his approval of the Bullhook Gas Unit Agreement. In his report of December 27, 1972, the Supervisor advised the Chief, Branch of Oil and Gas Operations that:

"all lands and interests are fully committed except unleased Federal tract 7B which is not committed and not qualified for participation,"

Appellant contends that "the U.S.G.S. should not be permitted to withdraw commitment of Unit Tract 7-B because it permitted all other owners of unit interests to go along until after the unit was formed and on production assuming that Tract would be unitized." Appellant argues that even though the value of Unit Tract 7-B is virtually inconsequential and it as unit proponent had no real concern relative to the initial inclusion of the Tract, "its retraction would have the effect of invalidating the entire unit, and thus, its continuance as a unit tract far outweighs its value for production."

The facts of the case are not in dispute. The question to be resolved evolves into a determination of the effects of actions taken by Federal Officials under Federal law and those taken by the Board of Oil and Gas Conservation of the State of Montana by issuance of its Order No. 41-72.

The sequence of controlling events was as follows:

By letter of October 6, 1972, James R. Balsley, Acting Director, Geological Survey, approved appellant's request that some 59,395.77 acres of Hill County, Montana, be designated as logically subject to operation under the unitization provisions of the Mineral Leasing Act, as amended. Said letter advised appellant that its use of the form of unit agreement submitted by it for preliminary consideration would be acceptable if the text of said agreement was modified as indicated prior to circulation of the unit agreement for execution by the owners of oil and gas interests within the area proposed for unitization. The lands covered by this action of the Acting Director were identified by reference to appellant's plat marked "Exhibit 'A,' Bullhook Unit Area."

By Order No. 41-72 dated December 14, 1972, the Board of Oil and Gas Conservation of the State of Montana provided for the operation as a unit an area to be known as the "Bullhook Gas Unit Area," approved a unit agreement for that area, and authorized the conduct of gas unit operations within the unit area.

By letter of December 27, 1972, (approximately two weeks after Order No. 41-72 of the Board of Oil and Gas Conservation of the State

of Montana was supposed to have effectuated involuntary unitization of non-committed non-Federal gas interests within the Bullhook Gas Unit Area), C. J. Curtis, Area Oil and Gas Supervisor, advised appellants of his approval of the Bullhook Gas Unit Agreement, contract No. 14-08-0001-12495, and requested that appropriate evidence of his approval be furnished the State of Montana and other interested principals.

The Area Oil and Gas Supervisor's approval of the Bullhook Gas Unit Agreement was effectuated by the affixation of his signature to a "Certificate-Determination" which states that his approval was pursuant to authority delegated under the Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec. 181, et seq., i.e., authority delegated under the Mineral Leasing Act, as amended.

No authorized delegate of the Secretary signed a joinder to the Bullhook Gas Unit Agreement or a "joinder to the Unit Operating Agreement." Section 30, SUBSEQUENT JOINDER, of the Bullhook Gas Unit Agreement requires the commitment of the Working Interest in a Tract to the Unit Operating Agreement in order for either the Royalty or Working Interest in the Tract "to be regarded as committed" to the Agreement.

The original Exhibits to the Bullhook Gas Unit Agreement show Tract 7-B, the SE1/4 section 23, T. 31 N., R. 14 E. to be unleased Federal land. The Exhibits to the Bullhook Gas Unit Agreement should

have shown the land in Unit Tract 7-B as unleased and noted that title to the oil and gas interests under said tract was in dispute. However, said dispute was settled by the Act of May 21, 1974, Public Law 93-285 (88 Stat. 142), whereby all rights, title and interest of the United States in minerals in this land were declared to be held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana. Thus, the outcome of this appeal may be more of academic interest than of practical importance. Appellant recognized in its final argument, "Argument 5," page 7 of the "Notice of Appeal Statement of Reasons and Argument," that enactment of one of the bills which subsequently became Public Law 93-285 would require further action to accomplish the commitment of the interests in Unit Tract 7-B to the Bullhook Gas Unit Agreement.

Appellant specifies in its arguments that it recognizes that the commitment of Federal interests to unit agreements is "by the voluntary act of the Secretary of (the) Interior, acting through the U.S.G.S.," and that the United States is not "bound by any action of the Montana Board of Oil and Gas Conservation or by the Montana Statutory Unit law." Appellant fails to indicate the voluntary act or to identify the Federal official whose action was supposed to have served to effect the contractual commitment of the unleased interests in Unit Tract 7-B. (In view of the specific language of Section 30 of the Bullhook Gas Unit Agreement, commitment of the interests in

Unit Tract 7-B could only have been accomplished by the execution of appropriate joinders to the Unit Agreement and to the Unit Operating Agreement.) Thus, it is difficult to understand appellant's characterization of the Supervisor's request for corrected exhibits as an attempt by the United States to "withdraw commitment of Unit Tract 7-B," and as an "attempt to retract contractual commitment." Contractual commitment cannot be withdrawn or retracted when it never existed.

We need not deal with appellant's arguments regarding the authority of the Secretary of the Interior to effectuate unitization of unleased Federal mineral lands. The Secretary can and has, on occasion, entered into formal contractual arrangements and agreements which have effectively unitized lands covered by the provisions of the Mineral Leasing Act (30 U.S.C. 226(g)). However, such an agreement was not entered or even proposed in the present case.

We believe that the Supervisor's view of the commitment status of the mineral interests in Unit Tract 7-B is correct and that unleased mineral interests owned by the United States or held by the United States in trust for the Indian owners of such interests may not be committed to a unit agreement without a specific readily identifiable action on the part of duly authorized Federal officials.

The Supervisor's Order requesting that High Crest Oils, Inc., submit a revised Exhibit C to the Bullhook Gas Unit Agreement showing

the interests in Unit Tract 7-B as not committed to the unit agreement, is affirmed. However, in view of the enactment of Public Law 93-285 (88 Stat. 142), the corrected Exhibit C should show noncommitted Unit Tract 7-B as unleased lands of the Chippewa Cree Tribe of the Rocky Boy's Reservation.

High Crest Oils, Inc.'s from the Supervisor's order of August 3, 1973, is denied, subject to the appellant's right, if desired, to appeal this decision to the Department of the Interior's Board of Land Appeals. If an appeal is taken from this decision, it should be submitted to the Chairman of the Interior Board of Land Appeals in accordance with 30 CFR 290.7 (38 F.R. 10004, April 23, 1973).

s/Acting Director

