

PEACOCK OIL COMPANY, INC.
TWIN ARROW, INC.

IBLA 76-668
76-671

Decided May 2, 1977

Petition for reconsideration of Peacock Oil Company, Inc., 29 IBLA 74 (1977), which affirmed the Colorado State Office, Bureau of Land Management, holding that oil and gas lease C-028499 expired December 31, 1971, and rescinding decisions of August 6, 1974, and June 5, 1975, approving certain assignments of shallow operating rights on portions of the lands subject to such lease.

Petition for reconsideration granted; Peacock Oil Company, Inc., 29 IBLA 74 (1977), reversed. BLM decision appealed from reversed and remanded.

1. Oil and Gas Leases: Production! ! Oil and Gas Leases:
Renewals! ! Oil and Gas Leases: Twenty! year Leases

A 10! year renewal of a 20! year oil and gas lease expires by its own terms where no timely application for further renewal is made by the lessee, pursuant to 43 CFR 3107.8-2; however, the language of the regulation is permissive and a delay in filing a renewal application may be excused in the presence of special circumstances.

APPEARANCES: David J. Myler, Esq., Feldhamer, Plotz & Eskwith, Rangely, Colorado, for Peacock Oil Company, Inc.; John W. Coughlin, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for Twin Arrow, Inc.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Appellants have petitioned for reconsideration of Peacock Oil Company, Inc., 29 IBLA 74 (1977), which affirmed a decision of the

Colorado State Office, Bureau of Land Management (BLM), dated May 24, 1976, holding that oil and gas lease C-028499 expired December 31, 1971, and rescinding decisions of August 6, 1974, and June 5, 1975, approving certain assignments of shallow operating rights on portions of the lands subject to such lease.

The facts in the present case, as set forth in our previous decision are not in dispute. Appellants are the holders of shallow operating rights on certain portions of oil and gas lease C-028499, having received such rights through assignments approved by BLM in 1974 and 1975. However, the record title holder of lease C-028499, a 20! year lease in its first 10! year renewal term, did not file a renewal application prior to the expiration of C-028499 on January 1, 1972. Appellants did not learn such fact until service of the May 24, 1976, BLM decision.

In our earlier decision we held that failure to make a timely application for renewal resulted in automatic termination of the lease on its final anniversary date. Appellants admit that no renewal application was filed, but they argue that the circumstances of the case are such that the appellant should be allowed to obtain renewal of this producing lease.

The pertinent regulation, 43 CFR 3107.8-2, prescribing the time for filing applications for renewal leases reads:

Twenty! year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3103.3-2, 3103.3-4 and 3103.3-5. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3000.5 at least 90 days, [but] not more than 6 months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of \$ 10.

[1] The language of the regulation is clearly permissive and the Department has held that the requirement may be waived where there is a clear and persuasive showing that the delay in filing the renewal application was not unreasonable. Oscar L. Butcher, 61 I.D. 120 (1953); Phillips Petroleum Company, Cheyenne 028477a, GFS BLM 1957-35, approved by the Under Secretary, February 11, 1957. While we originally held that the regulation should not be waived in this case because of the long delay (4-1/2 years) involved, reconsideration of the circumstances of this case impels us to the conclusion that appellants should be allowed to file a renewal application following approval of assignments from the record title owners.

In this case appellants had their assignments of shallow operating rights approved by BLM in 1974 and 1975, after the apparent term of the lease had expired. Such approval indicated to appellants that the subject lease had not terminated and they assert that they relied on such approval. Appellants, not being the record title holders of C-028499, were not in a position to file a renewal application, and, in fact, they argue that until they received notice of the May 24, 1976, BLM decision, they had no knowledge that a proper application had not been filed. Upon learning of the problem, appellants acted diligently to place themselves in a position to make application for a renewal lease. Appellants state that C-028499 is a producing lease and that they have been paying royalties to the United States. Appellants have expended funds to acquire the property rights. No intervening rights in any third party have arisen, and there is no evidence that the United States has been disadvantaged by the delay in this case. Cf. Henry Offe, 64 I.D. 52, 56 (1957).

While appellants have not explained why the record title holders failed to file a renewal application, such a showing is not absolutely essential. In Oscar L. Butcher, supra at 122, the Assistant Secretary stated:

In view of these factors, which show that a considerable investment has been made in the lease, it appears equitable to waive the time requirement for the filing by Mr. Butcher of his renewal application, despite the fact that he has offered no explanation for his delay in applying for a renewal.

As stated above, in this case appellants have made an investment, the lease is producing, royalties have been paid, and while appellants were not in a position to file a renewal application because they were not record title owners of the lease, upon learning of the failure to file they have acted diligently in an effort to rectify the situation.

In view of all the circumstances, the delay in filing of the renewal application may be excused.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision in Peacock Oil Company, Inc., 29 IBLA 74 (1977),

is reversed and the BLM decision of May 24, 1977, is reversed and the case is remanded for action not inconsistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

