

BRUCE ANDERSON

IBLA 76-629
77-125

Decided May 19, 1977

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, and Director, Geological Survey, respectively, holding oil and gas lease W-0324411 to have expired and setting aside the Area Oil and Gas Supervisor's decision not to approve a subsequent joinder of W-0324411 to the Delaney Rim Unit Agreement. GS-81! O&G.

GS-81! O&G affirmed; Bureau of Land Management decision set aside and remanded.

1. Geological Survey! ! Oil and Gas Leases: Unit and Cooperative Agreements

A determination of an Area Oil and Gas Supervisor, Geological Survey, that a subsequent joinder could not effectuate commitment of an oil and gas lease to a unit agreement prior to expiration of the lease is properly set aside by the Director, Geological Survey, as not being within the authority of the Area Oil and Gas Supervisor to determine.

2. Oil and Gas Leases: Extensions! ! Oil and Gas Leases: Unit and Cooperative Agreements

An oil and gas lessee, who files the necessary subsequent joinder documents with the Area Oil and Gas Supervisor, Geological Survey, in accordance with the subsequent joinder procedures outlined in the unit agreement, will have his lease committed to the unit as of the date of filing with the Area Oil and Gas Supervisor for the purpose of

extension of the lease on the basis of production within the unit. However, the commitment does not become effective for determining the benefits and obligations under the unit agreement, as to the parties to the agreement, until the first day of the month following the filing.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Oil and gas lease W-0324411 was issued effective May 1, 1966, for a primary term of 10 years. The lease covers the NW 1/4 SE 1/4 of Section 12, T. 18 N., R. 98 W., 6th P.M., Sweetwater County, Wyoming. The lands are located within the Delaney Rim Unit Area.

Lease W-0324411 was not initially committed to the Delaney Rim Unit Agreement; however, lessee, Bruce Anderson, executed the necessary subsequent joinder instruments. The unit operator (Texaco, Inc.) and other working interest owners of leases within the unit area consented and agreed to the acceptance of the subsequent joinder.

Thereafter, the unit operator submitted the joinder documents to the Area Oil and Gas Supervisor, Geological Survey (GS), on April 22, 1976. The Area Oil and Gas Supervisor returned the documents to the unit operator without approval and by letter, dated April 28, 1976, stated in part:

Section 28 of the unit agreement requires that subsequent joinders become effective the first day of the month following filing with the Supervisor. In this case, the effective date would be May 1, 1976. Unfortunately, lease Wyoming 0324411 has an expiration date of April 30, 1976, making the subject joinder ineffective.

Following receipt of a courtesy copy of the Area Oil and Gas Supervisor's letter, the Wyoming State Office, Bureau of Land Management (BLM), issued a decision dated May 3, 1976, stating that oil and gas lease W-0324411 was held to have expired at the end of its 10! year term, as of midnight, April 30, 1976.

Bruce Anderson filed an appeal of the Area Oil and Gas Supervisor's decision with the Director, GS, and he filed an appeal of the BLM decision with this Board. By order dated

June 25, 1976, the Board granted appellant an extension of time within which to file his statement of reasons until 45 days after the Director, GS, issued his decision.

[1] The Director, GS, issued a decision (GS-81! O&G) dated December 3, 1976, setting aside the Area Oil and Gas Supervisor's determination that the subsequent joinder could not effectuate commitment of W-0324411 to the Delaney Rim Unit Agreement prior to expiration of the lease. The basis for the Director's decision was his holding that the Area Oil and Gas Supervisor lacked jurisdiction to make such a determination. The Director stated in his decision:

The Area Oil and Gas Supervisor's return of subsequent joinder documents to the unit operator failed to reflect the division of jurisdiction between the United States Geological Survey and the Bureau of Land Management. Area Oil and Gas Supervisors are not authorized to make the determination of whether subsequent joinder documents submitted by a unit operator, in an effort to commit leasehold interests in a Federal oil and gas lease to a unit agreement, will or will not result in an extension of the lease term.

On October 6, 1972, the Secretary of the Interior issued a policy directive, Secretarial Order 2948, governing the Division of Responsibility between the Bureau of Land Management and the Geological Survey for Administration of the Mineral Leasing Laws ! Onshore. Although Secretarial Order 2948 does not address the specific issue presented in this case, the whole tenor of the Order clearly demonstrates that in a situation pertaining to the expiration or extension of a lease, the Bureau of Land Management has jurisdiction. For instance, Section 2 of the Secretarial Order states in pertinent part:

The BLM exercises at the Bureau level the Secretary's discretionary authority to determine whether or not leases, permits, and licenses are to be issued. The Bureau of Land Management is responsible for issuing mineral leases, permits, and licenses, and is the office of record in mineral leasing matters. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral management program.

We interpret the Secretarial Order to mean that the Bureau of Land Management's responsibilities include matters not only pertaining to the issuance of leases, but also to questions concerning their expiration or extension. The Geological Survey, on the other hand, has jurisdiction over operations conducted under a lease once it has been issued and before it expires.

Appellant has appealed the Director's decision to this Board. The two appeals have been consolidated for consideration in this decision.

Appellant argues concerning the Director's decision that GS does have the jurisdiction to make determinations concerning the construction of unit agreement provisions. Appellant asserts, however, that he is only concerned with a speedy decision in this matter whether it be within the jurisdiction of GS or BLM.

We are in agreement with the decision of the Director, GS, in light of Secretarial Order 2948, and we affirm his decision. Since the BLM decision was apparently based on the Area Oil and Gas Supervisor's determination, we could remand the case to BLM to allow reconsideration of its decision; however, we have a complete record before us and appellant's counsel asserts that he has been informed by BLM that it would not reconsider its decision.

[2] The issue presented is whether the subsequent joinder of W-0324411 to the Delaney Rim Unit Agreement became effective upon filing of the necessary documents with the Area Oil and Gas Supervisor. Appellant contends that it did.

Appellant directs our attention to a letter dated January 30, 1953, from Assistant Secretary of the Interior, Joel D. Wolfsohn, responding to a letter dated January 8, 1953, from one Neil F. Stull, Esq., requesting the Secretary of the Interior to construe Section 23, "Counterparts and Subsequent Joinders," of the Huerfano Unit Agreement, with respect to oil and gas lease Santa Fe 007950.

The facts surrounding that correspondence are similar to the present case. Lease Santa Fe 077950 was held in common by three owners in undivided shares on one! half, one! fourth and one! fourth. The owner of one! half was an original party to the Huerfano Unit Agreement and committed its interest. Subsequent joinders were filed with GS as to the balance of the undivided interests on January 21, 1953. The primary term of the lease expired January 31, 1953.

The Assistant Secretary stated in his letter of January 30, as follows:

As provided in Sec. 23 of the Huerfano unit agreement the rights of new parties shall attach only from the date of their admission to the unit agreement. It is further provided that the separate counterparts, consents, or ratifications executed by such new parties shall be effective on the first day of the month next following the filing thereof with the Supervisor and the State Land Commissioner unless objection thereto is made by the director of the Geological Survey or the Commissioner and notice of such objection is served upon the appropriate parties within 60 days after such filing. This provision of the unit plan is a part of the contract or agreement between the parties. So far as the elements of the private agreement are concerned, it is final and binding. Thus, the instruments filed by the parties will not vest in them any right to share in the proceeds from the unit operation or impose on them any obligations under the agreement until February 1.

This is not to say, however, that the interests of the parties are not committed until then in contemplation of the law (section 17b of the Act of February 25, 1920, 60 Stat. 952, 30 U.S.C. sec. 226e). The owners of an interest in a lease can be said to have committed that interest to a unit plan when he has complied with all the requirements set forth in the plan for making a binding commitment of the interest, even though the commitment does not become operative until a later date for the purpose of establishing when obligations will be assumed and benefits will be shared under the unit plan.

We, therefore, conclude that if the holders of the Hardie and Byrd! Frost interests have fully complied with all the requirements of section 23 of the Huerfano unit agreement, their interests may be considered to have been committed to the agreement prior to February 1, 1953, and, since there is production under the unit plan and the plan contains a general provision for the allocation of oil and gas, the commitment will serve to extend the lease so long as it remains subject to the Huerfano unit plan. [Emphasis added.]

While the language of the subsequent joinder provisions of the Huerfano Unit Agreement and the Delaney Rim Unit Agreement are not exactly similar, the language construed by the Assistant Secretary is the same, i.e., "shall be effective on the first day of the month * * * following the filing * * *."

We are not cognizant of any changes in the relevant oil and gas regulations or in the Mineral Leasing Act, 30 U.S.C. § 188 et seq. (1970), which would alter the construction made by the Assistant Secretary.

A unit agreement is essentially a contract between private parties! ! the lessees or holders of oil and gas rights in lands committed to the unit agreement. Duncan Miller, 25 IBLA 125, 128 (1976); Shannon Oil Company, 62 I.D. 252, 255 (1955). All the necessary parties had apparently executed the subsequent joinder documents when they were submitted to the Area Oil and Gas Supervisor on April 22, 1976. Assuming all other aspects of the joinder documents are in order, we find that lease W-0324411 was committed to the Delaney Rim Unit Agreement upon being filed with the Area Oil and Gas Supervisor.

The fact that the unit agreement provides that the effective date for a subsequent joinder will be the first day of the month following the filing, is not determinative of the date of commitment. As recognized by the Assistant Secretary, commitment is accomplished when there has been compliance with all the requirements set forth in the unit plan. However, the commitment becomes effective or operative on the first day of the month following the filing for the purpose of determining obligations and benefits under the plan, as among the parties to the plan.

The present situation is analogous to the difference between the date of issuance of a noncompetitive oil and gas lease and the effective date of such a lease. Issuance of a lease is accomplished by the signature of the appropriate officer. 43 CFR 3111.1-1(c). Upon being signed by the authorized officer a lease becomes a binding contract. See Charles D. Edmondson, 61 I.D. 355, 369 (1954). However, the effective date of a lease is provided for by 43 CFR 3110.1-2. Such regulation states:

All noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

Therefore, although a lease becomes binding on the parties upon signature by the authorized officer, the effective date is ordinarily the first day of the month following the date the lease is signed by the authorized officer, unless there has been a written request pursuant to the regulation. The effective date becomes the determinative date for benefits and obligations under the lease, e.g., the effective date is the anniversary date for rental payments.

In yet another, but distinguishable, situation the Department has held that a partial assignment of a noncompetitive oil and gas lease filed in the last month of the extended term of a lease could not, pursuant to Section 30a of the Mineral Leasing Act, as amended, 30 U.S.C. § 187(a) (1970), serve to extend the lease term. Franco Western Oil Company, 65 I.D. 316 (1958). Section 30a provides that "any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office." Under the Franco doctrine, regardless of when approval is given, the effective date prevails. Duncan Miller, 12 IBLA 201 (1973).

We do not find the Franco rationale applicable to the extension of a lease term through commitment to a unit agreement. Section 30a specifically provides for the effective date of assignments. There is no statutory language concerning the effective date of subsequent joinders; however, the language of the unit agreement itself provides that subsequent joinders to the agreement will be effective as of the first day of the month following filing with the Oil and Gas Supervisor.

Despite the similarity in language, as pointed out, supra, such language as it relates to subsequent joinders has been construed by the Assistant Secretary to allow commitment of the lease to a unit when the lessee has complied with all the requirements for making a binding commitment of the interest, even though the commitment does not become operative until a later date for the purpose of establishing obligations and benefits under the unit plan.

Since W-0324411 was committed to the Delaney Rim Unit prior to April 30, 1976, the expiration date of the lease, the lease was extended pursuant to 30 U.S.C. § 226(j) (1970). It is provided in such statute that an oil and gas lease which is committed to a unit plan "shall continue in force and effect as to the land committed so long as the lease remains subject to the plan," provided that there is production in paying quantities under the plan prior to expiration of the lease. The unit contains a well which has been classified by GS as capable of producing gas in sufficient quantities to constitute a unit well.

For the reasons stated above, and assuming all aspects of the joinder documents are in order, W-0324411 was committed to

the unit on April 22, 1976, and such commitment to the producing unit extended the term of the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Director, GS-81! OGS, is affirmed and the BLM decision is set aside and the case remanded.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Martin Ritvo
Administrative Judge

