

CORRINE GRACE

IBLA 77-12

Decided June 1, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, holding that eight oil and gas leases participating in the San Isidro Wash Unit had expired by operation of law.

Affirmed.

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

By the terms of the mineral leasing laws, unit agreement, and by regulation, unitized oil and gas leases issued after September 2, 1960, which reach the end of a 2! year extended term by drilling expire by operation of law if there is not production of oil or gas in paying quantities within the unit at that time.

2. Administrative Procedure: Generally! ! Mineral Leasing Act: Generally! ! Oil and Gas Leases: Production! ! Oil and Gas Leases: Unit and Cooperative Agreements

The U.S. Geological Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. The Bureau of Land Management is entitled to rely on mineral determinations of Survey, such as qualification of a test well as a discovery well defined by a unit agreement, in the absence of a clear and definite showing of error.

APPEARANCES: William D. Kramer, Esq., Cox, Langford & Brown, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Corinne Grace, as Unit Operator, appeals from the August 31, 1976, decision of the New Mexico State Office, Bureau of Land Management (BLM), holding that eight oil and gas leases participating in the San Isidro Wash Unit (Unit) expired by operation of law as of January 31, 1976. ^{1/} In its decision, the State Office found that the initial test well failed to qualify as a discovery as defined by the Unit Agreement and therefore the leases expired at the end of their 2! year extensions by drilling. The State Office ordered that the rental payments submitted be refunded. The State Office also "closed pending assignments" to Filon Exploration Corp., Thomas W. Jordan, Jr., and Trend Exploration, Ltd., of partial interests in the following leases: NM! A-0467436! A by Joan Chorney; NM-0510068! A by Raymond Chorney; and NM-0510069 by Chorney Oil Company and William C. Armor, Jr.

The leases were issued for a 10! year primary term which expired January 31, 1974. The Unit Agreement was approved on January 31, 1974, and designated Corinne Grace as Unit Operator. The leases were extended by drilling for 2 years until January 31, 1976, as authorized by 30 U.S.C. § 226(e) (1970) and by the Agreement. In his monthly memorandum dated February 2, 1976, the U.S. Geological Survey (Survey) Acting District Engineer, Durango, Colorado, reported to the Survey Area Oil and Gas Supervisor, Roswell, New Mexico, that an extended production test was being conducted within the Unit to establish whether or not production in paying quantities had been discovered and that a recommendation on extension or expiration would be made when the tests were completed. Similar reports were made in the following months until August 1976 when the Acting District Engineer reported that the test results failed to prove the initial test well on the Unit qualified as a discovery and that the leases had expired on January 31, 1976. (Copies of these memoranda were forwarded to BLM.) The State Office then issued its decision.

Section 9 of the Unit Agreement requires the Unit operator to conduct diligent drilling operations consisting of one test well at a time, allowing not more than 6 months between the completion

^{1/} The leases and lessees are listed in the Appendix. In its decision, the State Office listed Chorney Oil Company as the holder of a 25 percent interest in lease NM-0510069. That case file indicates that Chorney Oil Company holds an 18.75 percent interest and that William C. Armor, Jr., holds the remaining 6.25 percent interest.

of one well and the beginning of the next, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of Survey, *i.e.*, a discovery. The Survey Oil and Gas Supervisor, Albuquerque, New Mexico, informed appellant by letter dated October 15, 1976, that the Unit Agreement terminated as of July 23, 1976, for failure to prosecute drilling operations on the third obligation test well on the Unit. Appellant appealed that ruling to the Director of Survey. The Director has not yet issued his decision. If the decision is adverse to appellant, she has a right of appeal to this Board. 30 CFR 226.11, 290.7.

Appellant filed a "Preliminary Statement of Reasons" in which she argued that the leases were extended by the terms of Section 18 of the Unit Agreement and alleged that the initial test well qualifies as a discovery. She also requested a stay of these proceedings until the Director of Survey issues his decision on her appeal from the termination of the Unit Agreement. In support of this motion, she argued that the question whether the Unit Agreement continues in effect is closely interrelated to the question of whether the leases expired, and should properly be considered first. In the alternative, she requested an extension of time to file evidence showing the test well qualifies as a discovery on the Unit.

Appellant's "preliminary" statement of reasons was filed with the Board on November 8, 1976. On November 22, 1976, the Board granted appellant an extension of time to file additional arguments and evidence until January 31, 1977, stating:

If, due to the interrelated issues being appealed to this Board and to the Director, United States Geological Survey, further time is needed, a request for further extension or other appropriate action, and reasons therefor, should be filed with this Board prior to the extended date for filing the statement of reasons.

Appellant has not filed any evidence, arguments or motions with the Board in response to the extension of time.

Appellant has had ample time to submit her evidence or to suggest why action by the Board should be stayed further. The mere allegation without supporting evidence that the issues before the Board and the issues before the Director of Survey are closely interrelated is an insufficient basis for further delay in deciding appellant's appeal. As the record stands, the issue of whether the leases expired for lack of a discovery of oil or gas in paying quantities is separate and distinct from the issue of whether the Unit Agreement terminated for failure to diligently prosecute test

well drilling. Cf. Tenneco Oil Company, 29 IBLA 157 (1977). Therefore, we will proceed with the determination of appellant's appeal from the BLM decision.

Appellant has misconstrued the effect of the Unit Agreement upon the participating oil and gas leases. In the absence of any showing that a discovery well has been completed, we affirm the decision of the BLM State Office for the reasons set forth below.

[1] Noncompetitive oil and gas leases issued after September 2, 1960, have a primary term of 10 years. 30 U.S.C. § 226(e) (1970); 43 CFR 3107.2-1(b)(2). Extensions for such leases are provided for in 30 U.S.C. § 226(e) as follows:

Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

In addition to the above provision, oil and gas leases participating in a unit agreement may be extended under 30 U.S.C. § 226(j) (1970):

Any other lease [than a 20! year lease] issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. * * * [Emphasis added.]

Contrary to appellant's argument that leases committed to the Unit Agreement are extended without restriction by the terms of the Agreement, the plain language of section 18(e), incorporating the above provisions of the mineral leasing laws, shows otherwise:

Any other Federal lease [than a 20! year lease] committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production is had in paying quantities under this unit agreement prior to the expiration date of the term

of such lease, or in the event actual drilling operations are commenced on unitized land, in accordance with the provisions of this agreement, prior to the end of the primary term of such lease and are being diligently prosecuted at that time, such lease shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities in accordance with the provisions of the Mineral Leasing Act Revision of 1960. [Emphasis added.]

As noted above, the subject leases were in the 2! year extended term, not the 10! year primary term. 43 CFR 3107.2-1(b)(2). According to the above provision of the Unit Agreement, and to 30 U.S.C. § 226(e) (1970), these leases cannot be extended again merely through the diligent prosecution of drilling operations. See Tenneco Oil Co., 21 IBLA 130 (1975); 43 CFR 3107.2-3. Therefore, these leases can only be extended if "production is had in paying quantities" prior to the expiration date of the leases, January 31, 1976. See 30 U.S.C. § 226(j) (1970); 43 CFR 3107.4-2. At a minimum, this requires the successful completion of a well capable of producing unitized substances in paying quantities on the Unit as defined in section 9 of the Unit Agreement. If no such production was obtained, the leases would expire by operation of law. 30 U.S.C. § 226(e) (1970).

[2] Survey is the technical expert of the Department of the Interior in matters concerning geologic evaluations. BLM is entitled to rely on mineral determinations of Survey in the absence of a clear and definite showing of error. See Phillip Shaiman, 25 IBLA 177 (1976); Clear Creek Inn Corp., 7 IBLA 200, 214, 79 I.D. 571, 578 (1972).

Survey advised BLM by the memorandum of August 4, 1976, that the results of the extended production test failed to qualify the initial test well as a discovery. Appellant has not shown how this determination by Survey is in error or that another well qualified as a discovery as of the expiration date of the leases. Since there was no production of oil or gas in paying quantities anywhere on the Unit as of January 31, 1976, the expiration date of the leases, the leases did not qualify for further extension under section 18(e) of the Unit Agreement. The leases therefore expired by operation of law on January 31, 1976. 30 U.S.C. § 226(e) (1970).

Accordingly, 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.

Joan B. Thompson
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX

<u>Leases</u>	<u>Lessees</u>
NM! A 0467436! A	Kirby Exploration Company (25%) Joan Chorney (25%) Aquitaine Oil Corporation (25%) Natural Gas Pipe Line Company (25%)
NM 0510062	Corinne Grace
NM 0510064	Corinne Grace
NM 0510065	Corinne Grace
NM 0510068! A	Kirby Exploration Company (25%) Aquitaine Oil Corporation (25%) Natural Gas Pipe Line Company (25%) Raymond Chorney (25%)
NM 0510069	Kirby Exploration Company (25%) Aquitaine Oil Corporation (25%) Natural Gas Pipe Line Company (25%) Chorney Oil Company (18.75%) *William C. Armor, Jr. (6.25%)
NM 0510072	Allied Chemical Corporation
NM 0510073! A	Allied Chemical Corporation

* See note 1, supra.

