

TEXACO, INC.

IBLA 78-56

Decided January 10, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting application for renewal of oil and gas lease LC 033706(a).

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Renewals -- Oil and Gas Leases: Twenty-Year Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

APPEARANCES: Clarence E. Hinkle, Esq., Hinkle, Cox, Eaton, Coffield & Hensley, Roswell, New Mexico, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This is an appeal from the September 28, 1977, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting Appellant's application for renewal of oil and gas lease LC 033706(a).

The lease originates from a lease issued in 1957 for a 20-year term and a preferential right of renewal for successive terms of 10 years. It was renewed for 10 years in 1957. A further 10-year extension was granted beginning June 1, 1967. The present application

for a 10-year renewal was filed February 25, 1977. The BLM decision indicates that the lease was committed to the South Penrose Skelly Unit Agreement on May 14, 1965. The record is not clear as to the status of the lands when the 1967 renewal was granted, nor does Appellant indicate whether the land was within the unit at that time. The lease is presently committed to the unit. For the purpose of this decision we are only concerned with Appellant's present renewal application. However, as our discussion, infra, will show, after and so long as the lease was committed to the unit, it could only have been extended properly pursuant to 30 U.S.C. § 226(j), and not the 10-year preferential renewal provision in the lease. We shall discuss the issues raised by Appellant as if the lease were viable under a proper 10-year renewal lease, rather than because of extension under the unit agreement.

As authority for its rejection of the present renewal application, the State Office cited Texaco, Inc., 76 I.D. 196 (1969), which held that a 20-year lease which is subject to a unit agreement at the end of its term may not be renewed but may only be extended pursuant to the following provisions of § 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j):

Any lease issued for a term of twenty years, or any renewal thereof, * * * that has become the subject of a cooperative or unit plan of development or operation * * * shall continue in force until the termination of such plan. * * * Any lease which shall be eliminated from any such approved or prescribed plan, * * * and any lease which shall be in effect at the termination of any such approved or prescribed plan, * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

[1] The issue in the instant case is whether continued tenure of a unitized 10-year renewal lease is governed solely by the extension provisions quoted above, or whether the lessee enjoys an option to renew the lease for another 10-year term, even though the lease remains committed to the unit. What Appellant is asking is approval of another 10-year renewal pursuant to the terms of the lease and, at the same time, continuing the lease within the unit. Recently, this issue had been thoroughly reconsidered by the Board in Anne Burnett Tandy, 33 IBLA 106 (1977), in which the Board adhered to the Texaco doctrine and refused to grant another 10-year renewal to a renewal lease which was committed to a unit. Most of Appellant's arguments are fully answered in that decision. After considering in detail the legislative history of the extension provisions for unitized leases, the Board in Tandy concluded that Texaco correctly

held the above-quoted provision to constitute the exclusive method of continuing tenure for 20-year or renewal leases which were committed to units at the end of their terms and that the substitution of that provision for the 10-year renewal is most consistent with the Congressional intent in enacting the provision in 1931 ^{1/} and re-enacting it in 1935. ^{2/} Anne Burnett Tandy, *supra*, 109-113.

Appellant notes that if a 20-year lease or renewal lease is excluded from a unit 1 day before the end of its term, it may be renewed pursuant to the renewal provision in the lease, but if the lease is not excluded from the unit until one day after the term expires, it may not be renewed under that provision. Instead, the lease is subject to the automatic extension provision in 30 U.S.C. § 226(j) quoted above, which extends the lease for at least 2 years "and so long thereafter as oil or gas is produced in paying quantities." The inequity Appellant perceives in this situation escapes us; extension provisions generally require certain conditions to exist on the last day of the term of a lease, and the status of a lease on the last day of a term may often not only determine how tenure may be continued but whether tenure may be continued at all.

Furthermore, the difference here is not arbitrary; it arises from the fact that continued tenure of a lease which is in a unit at the end of its term is governed by a different statutory provision than a lease which has left a unit before the end of its term. The extension provision for leases in units at the end of their terms, which extends the lease so long as it remains subject to a unit plan, was added in 1931 and reenacted in 1935 and constitutes the exclusive means of continuing lease tenure. Continued tenure of a lease which has left a unit before the end of its term is subject to a provision which first appeared in the 1946 amendments to the Mineral Leasing Act. ^{3/} This provision was not exclusive but was an addition for 20-year leases by virtue of section 15 of the 1946 amendments. Anne Burnett Tandy, *supra* at 113; H. Leslie Parker, 62 I.D. 88 (1955).

Appellant argues that Section 19 of the South Penrose Skelly Unit Agreement maintains the preference right of renewal for Appellant's lease. That section provides:

Leases and Contracts Conformed and Extended. The terms, conditions and provisions of all leases, sub-leases and other contracts relating to exploration,

^{1/} Act of March 4, 1931, 46 Stat. 1523-1524.

^{2/} Act of August 21, 1935, 49 Stat. 674.

^{3/} Act of August 9, 1946, 60 Stat. 953.

drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect, and the parties hereto hereby consent that the Secretary and the Land Commissioner, respectively, shall and by their approval hereof or by the approval hereof by their duly authorized representatives, do hereby establish, alter, change or revoke the drilling, producing, rental, minimum royalty and royalty requirements of Federal and State leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this agreement. [Emphasis added.]

Appellant argues that because it is not necessary to modify or amend the 10-year renewal provision to conform the lease to the unit agreement, the preference right to renew remains in effect. This assertion contravenes the very reason Congress gave for enacting the extension provision for unitized leases in the first place, which was to provide a more certain method of continuing tenure for unitized leases than the mere preference right of renewal, an application for which was still subject to denial by the Department if it determined in its discretion that the land should no longer be leased. See Anne Burnett Tandy, supra at 110, 113, citing Report of the Senate Committee on Public Lands and surveys, S. Rep. No. 1087, 71st Cong., 2d Sess. at p. 2. Far from being unnecessary, the Senate Committee regarded the extension provision as "essential." Id. Because this statutory extension provision for unitized leases is interpreted as being the exclusive means of continuing the tenure of such leases, it follows that this Department has no authority to issue a 10-year renewal for a unitized lease. We cannot interpret section 19 of the unit agreement to create in this Department a power denied it by statute. A fair reading of the provision in the unit agreement together with the applicable statutory provisions compels a different interpretation than the one Appellant would have us make.

Appellant argues that the statute cannot be construed in a manner which derogates its "property rights." Our decision in no way detracts from Appellant's property rights. Texaco, supra, noted that the renewability of 20-year leases from the beginning was made subject to subsequent statutory provisions such as the exclusive extension provision for unitized leases. We note that Appellant's lease was issued after the 1931 and 1935 amendments, and thus has always been subject to the exclusive extension provision for leases in units at the end of their terms.

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.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

