

WEBB RESOURCES, INC.

IBLA 78-499

Decided December 19, 1978

Appeal from a May 9, 1978, decision of the Montana State Office, Bureau of Land Management, holding the 10-year term of oil and gas lease M-6760(SD) to have expired at midnight, March 31, 1978.

Affirmed.

1. Oil and Gas Leases: Production—Oil and Gas Leases: Royalties—Oil and Gas Leases: Termination

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

APPEARANCES: Robert T. Birdsong, Land Manager, Webb Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Webb Resources, Inc., and Farmer's Union Central Exchange, Inc., appeal from the May 9, 1978, decision of the Montana State Office, Bureau of Land Management (BLM), holding oil and gas lease M-6760(SD) to have terminated by its own provisions upon the expiration of its 10-year primary term at midnight on March 31, 1978. Lease M-6760(SD) has never been brought into production, no drilling has been conducted on the leasehold, and the lands have not been committed to a producing communitization agreement or unit agreement. Appellants, however, have brought a well, the # 8-2 Anderson, into production on adjoining fee lands and assert their willingness to pay compensatory royalty calculated on the drainage from lease M-6760(SD) occasioned by their production on the adjoining tract. Thus, they argue that M-6760(SD)

should be preserved by a compensatory royalty agreement beyond its primary term until such time as a communitization agreement is approved covering the lease. To this end appellants have requested a decision ordering both the reinstatement of their lease and the approval of an appropriate communitization agreement by Geological Survey.

According to appellants' statement of reasons on appeal, Rule 52:02:03:10 of the South Dakota Board of Natural Resource Development states that the discovery of oil or gas in a pool not covered by a previous order of that Board shall result in a hearing at which a temporary well spacing pattern shall be prescribed. Prior to such hearing, appellants state, no permits shall be issued for drilling offsets to the discovery well. Appellants contend, that due to this regulation, they "were precluded from continuation of prudent drilling in the area on M-6760(SD) prior to the primary term expiration." We note, however, that the # 8-2 Anderson well was brought into production only on the last day of appellants' primary lease term and their failure to drill on the M-6760(SD) lands cannot, therefore, be attributed to the preclusive effect of the South Dakota regulations.

[1] Appellants correctly contend that a Federal lessee may be charged with compensatory royalty to compensate the Government for drainage from Federal leased lands. Regulation 30 CFR 221.21(c) states that:

The lessee shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage, or, in lieu thereof, with the consent of the supervisor, he must pay a sum estimated to reimburse the lessor for such loss of royalty, the sum to be computed monthly by the supervisor.

On March 31, 1978, the expiration date of lease M-6760(SD), there had been but a single day's test production on # 8-2 Anderson. As the foregoing regulation notes, compensatory royalty is charged in an amount, "estimated to reimburse the lessor for such loss of royalty, the sum to be computed monthly by the supervisor." We cannot say, on the basis of the record before us, that any loss of royalty had occurred on March 31, 1978, or that operations on the # 8-2 Anderson have, at any time, resulted in drainage from lease M-6760(SD). We therefore, find that appellants' lease expired on March 31, 1978, at the conclusion of the primary term, there being no basis on that date for the calculation of compensatory royalty in connection with lease M-6760(SD).

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.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

