

ALLIED CHEMICAL CORP. ET AL.

IBLA 79-151

Decided April 18, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, canceling oil and gas lease NM 13280 for failure to pay annual rental timely.

Vacated and remanded.

1. Oil and Gas Leases: Cancellation—Oil and Gas Leases: Rentals—Oil and Gas Leases: Termination

An oil and gas lease issued on July 1, 1951, is not controlled by P.L. 83-555, effective July 29, 1954, and the lease therefore does not terminate automatically by operation of law if annual rental is not paid timely, as this law does not apply retroactively to the lease in the absence of written notice from the lessees that they have elected to subject their lease to this law. Rather, the mineral leasing law in effect prior to July 29, 1954, controls, under which the lessees' failure to pay annual rental subjects the lease to cancellation only after BLM gives them 30 days' notice of their failure to pay the rental timely. BLM's decision canceling such lease will be vacated where it did not give the lessees the required notice.

APPEARANCES: Ben H. Welmaker, Jr., Esq., Houston, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The oil and gas lease in question in this appeal dates back to July 1, 1951, when it was originally issued by the New Mexico State

Office, Bureau of Land Management (BLM), as NM 15148. ^{1/} In 1954, lands within the lease went into production, and the term of the lease therefore became indefinite. On February 16, 1971, BLM issued a decision which unitized part of the lands included in lease NM 05148 and which segregated the remaining lands into the lease in question in this appeal, NM 13280. Lease NM 13280 was declared by BLM to be extended for as long as the lease of other lands in the base lease was considered extended by production, subject to collection of annual rental.

Annual rental was duly paid by the lessees on lease NM 13280 each year from 1971 to 1977. However, annual rental was not timely paid in 1978. On December 5, 1978, BLM issued a decision canceling this lease and requiring payment of annual rental for 1978. In this decision, BLM noted that the lease predated the enactment on July 29, 1954, of P.L. 83-555, 68 Stat. 583, 30 U.S.C. § 188(b) (1976), which automatically terminates oil and gas leases rental on which is not timely paid. BLM accordingly did not declare that the lease had terminated automatically by operation of law, but instead held that it should be canceled for failure to pay annual rental. In accordance with its holding that the lease had been canceled rather than merely terminated, BLM demanded payment of annual rental for 1978. The lessees appealed this decision. We vacate and remand.

[1] Prior to the enactment of P.L. 83-555 in 1954, failure to pay annual rental timely on an oil and gas lease did not result in automatic termination of the lease by operation of law. Under the law at the time, failure to pay annual rental was considered a breach of the terms of the lease, which breach justified cancellation of the lease by the Government as lessor. Moreover, as the lease continued in effect until it was declared canceled, that is, until after the annual rental had come due, the lessee remained obligated to pay the annual rental for the year in which the lease was canceled. Rena Mae Baker, A-25963 (Feb. 5, 1951). A failure to pay the rent was regarded as creating a debt owed the United States.

Upon the passage of P.L. 53-555 in 1954, ^{2/} the situation was altered, so that a lessee's failure to pay annual rental timely caused the lease to terminate automatically without any action having to be taken by the Government to cancel it. Moreover, as the lease terminated automatically, rental for the forthcoming rental year did not accrue and the lessee was no longer regarded as being indebted to the Government for this rental.

^{1/} The lease was originally issued to Phillips Petroleum Company and Anderson-Prichard Oil Company. Several assignments, duly approved by BLM, followed, and the present lessees, all of which filed notices of appeal are Allied Chemical Corporation, Phillips Petroleum Corporation, and Texas Pacific Oil Company, Inc.

^{2/} Act of July 29, 1954; 68 Stat. 585; 30 U.S.C. § 188(b).

Where a lessee of a lease which has been eliminated from a unit and returned to annual-rental status has not filed written notice, per 43 CFR 192.161(a) (1954), that he has elected to subject his lease to the automatic-termination provisions of P.L. 83-555, this law does not apply retroactively. The provision of P.L. 83-555 that a lessee's failure to pay rental on or before the anniversary date for any lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates the lease, does not apply retroactively to leases entered into prior to July 29, 1954, its effective date, in the absence of such written notice. Pan American Petroleum Corp. v. Gibbons, 168 F. Supp. 867, 875 (D.C. Utah 1958), aff'd Gibbons v. Pan American Petroleum Corp., 262 F.2d 852 (10th Cir. 1958).

The lease in question here dates back to July 1, 1951, when it was issued as part of lease NM 05148, and there is nothing in the record showing that the lessees filed written notice that they elected to subject the lease to the terms of P.L. 83-555, per 43 CFR 192.161(a) (1954). Therefore, as BLM properly concluded, it must be treated under the law in effect before the passage of P.L. 83-555. BLM's decision followed this law insofar as it declared the lease "canceled" rather than "terminated" and demanded the payment of the annual rental for 1978 as a debt owed to the Government. Robert E. O'Keefe, 57 I.D. 216 (1940).

However, BLM's decision failed to take into account that before an oil and gas lease may be canceled for the lessee's failure to comply with any of the provisions thereof, including the provision requiring payment of annual rental, the lessee must be given 30 days notice that he has failed to comply. 30 U.S.C. § 188 (1952); see Rena Mae Baker, supra; Robert E. O'Keefe, supra at 218. We hold that BLM erred by failing to provide lessees with notice that they had failed to pay the annual rental 30 days prior to canceling the lease, and we accordingly vacate its decision and remand the matter to allow lessees 30 days in which to pay the annual rental.

On November 20, 1978, more than 2 weeks before BLM issued a decision canceling this lease, it included the subject lands in a notice of lands available for simultaneous noncompetitive filings. On December 13, 1978, BLM drew three offers for this parcel, designated as NM-222 in the December 1978 drawing, and opened lease file NM 35613 for these offers. BLM has suspended consideration of these offers pending resolution of the present appeal. On remand, BLM must reject these offers, as the lands applied for therein were included in an existing lease at the time the offers were filed. Eleanor S. Avedisian, A-30402 (May 14, 1965); Mike Epstein, A-30277 (February 3, 1965); George W. Denkhous, A-29614 (September 17, 1963); Edwin G. Gibbs, 67 I.D. 229 (1960).

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 vacated and the matter is vacated and remanded for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Newton Frishberg
Chief Administrative Judge

