

EXXON COMPANY, U.S.A.

IBLA 78-331

Decided June 13, 1979

Appeal from decision of the Acting Director, Geological Survey, denying a request for extension of the term of the Santa Ynez Unit Agreement.

Reversed.

1. Geological Survey: Oil and Gas Leases: Unit and Cooperative Agreements -- Outer Continental Shelf Lands Act: Oil and Gas Leases

It is not proper to deny a creditable request for approval of unavoidable delay time under sec. 16 of the Santa Ynez Unit Agreement, even though the Geological Survey considers the unit agreement extended by diligent drilling operations.

APPEARANCES: Thomas H. Krueger, Esq., Los Angeles, California, for Exxon.
OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Exxon Company, U.S.A. (Exxon), has appealed from a decision of the Director, Geological Survey (Survey), dated February 1, 1978, denying Exxon's request for approval of unavoidable delay time totalling 4 years and 2 months to extend the term of the Santa Ynez Unit Agreement, 14-08-0001-8979, approved November 12, 1970.

Exxon made these statements in its application to Survey for the extension:

Reference is made to Section 16: Unavoidable Delay of the captioned Unit Agreement. As you know, Exxon has experienced substantial unavoidable delays since this Unit became effective on November 12, 1970, which are summarized as follows:

1. On January 18, 1971, Exxon, as Unit Operator, filed application for the Supplemental Plan of Operations for Development of Actual Production. Although the plan submitted had as much as or more detail than other OCS plans, our application was orally rejected on April 15, 1971 as being too broad and general. Exxon then prepared a Supplemental Plan of Operations for Development of Production of unprecedented detail and filed such Plan for approval on November 11, 1971. An extensive Environmental Impact Statement was prepared by the USGS, and hearings were held on the draft EIS in October 1973. The final EIS was submitted to the Council on Environmental Quality and made available to the public on May 3, 1974, and the Plan itself was approved by the Acting Secretary of the Interior on August 16, 1974. We believe that under ordinary circumstances an application for a Supplemental Plan of Operations could be expected to be approved within one hundred eighty (180) days after filing, and that the time beyond 180 days is "Unavoidable Delay". This unavoidable delay time was from January 18, 1971 to August 16, 1974 less 180 days -- three years and one month.

2. On January 28, 1974, prior to the USGS approval, Exxon applied to the County of Santa Barbara for shoresite rezoning. Even though aware of the extensive Federal EIS under preparation, Santa Barbara County elected to prepare its own Environmental Impact Report in connection with our application, and this took most of 1974. Subsequently, on February 10, 1975, the Santa Barbara County Board of Supervisors approved the rezoning of Exxon's Corral Canyon property. The approved rezoning was, during May 1975, subjected to a countywide referendum vote in which the majority voted in favor of the rezoning. On June 4, 1975, the referendum vote was certified. Under California law, zoning approval is required before application can be made to the Coastal Zone Commission, and on June 4, 1975, Exxon applied to the South Central Regional Coastal Zone Conservation Commission for approval of our onshore plan. A public hearing was held by the Commission on September 11, 1975, and Exxon's application was approved on that date, subject to certain conditions. Opponents appealed the Regional Coastal Zone Commission's decision to the State Coastal Zone Commission. On March 3, 1976, the State Coastal Zone Commission refused to approve Exxon's onshore plan, and instead offered a permit which included terms and conditions unacceptable to Exxon and the Department of the Interior. The Coastal Zone Commission's action left Exxon no alternative but to move ahead with the onshore plan initially approved by the Secretary of the Interior on August 16, 1974 and confirmed by telegram dated

March 3, 1976 from Kent Frizzell, Under Secretary of the Department of the Interior, to Melvin B. Lane, Chairman of the California Coastal Zone Conservation Commission, and by letter dated July 21, 1976 from Ronald G. Coleman, Assistant Secretary - Program Development and Budget of the Department of the Interior, to Melvin B. Lane. Exxon entered into an agreement with Ameron Process Systems Division on January 14, 1975 for engineering design of both onshore treating and storage facility and the offshore storage and treating system that would be necessary if onshore approvals could not be obtained. Ameron did perform work for Exxon in connection with both the onshore and offshore facilities. The agreement with Ameron was terminated during January 1976, and on March 10, 1976 Exxon entered into an agreement with the Ortloff Corporation for Ortloff to perform the detailed engineering and to write the equipment specifications for the offshore treating facilities. Exxon worked diligently but unsuccessfully to obtain the necessary approvals for the onshore facility during the period from January 28, 1974 to March 3, 1976. Upon learning on March 3, 1976 that the State Coastal Zone Commission would not approve Exxon's onshore plan, we commenced devoting our full time to the offshore plan. Allowing a one-year period for State and Local approvals, which, in our opinion, is more than a reasonable amount of time, we were delayed by those agencies from January 28, 1975 (one year following the date Exxon filed its application to the County of Santa Barbara for shoresite rezoning) to March 3, 1976 -- one year and one month.

Pursuant to the provisions of the said Section 16 of the Unit Agreement, the Operator has determined that the creditable "Unavoidable Delay" time is four years and two months. It is respectfully requested that the Director approve this determination.

Survey acknowledged that Exxon has timely submitted plans of operation for the Santa Ynez Unit Agreement and declared that there is no obligation imposed by the Santa Ynez Unit Agreement which has not been timely met by Exxon. Thus, Survey concluded, there is no period of time which qualified as "unavoidable delay" under section 16 of the unit agreement, and "since your request is not based upon a delay in compliance with a unit obligation, your request for approval for 4 years and 2 months as creditable 'Unavoidable Delay' time is denied."

On appeal, Exxon concedes that other provisions of the unit agreement other than section 16, Unavoidable Delay, may serve to maintain the unit agreement, but argues that "[I]rrespective of whether the delays were of unit obligations, Exxon is entitled to approval

of the Unavoidable Delay request because Sections 16 and 13(c) of the Unit Agreement allow an extension of the term of the agreement where operations are delayed for the causes set forth therein." (Emphasis in original.)

The following provisions of the Santa Ynez Unit Agreement appear to be pertinent to this controversy:

SECTION 6: PLANS OF OPERATIONS

* * * * *

Prior to the expiration of the Initial Plan of Operations or any supplemental plan, Unit Operator shall submit for the approval of the Supervisor an acceptable Plan of Operations for the Unit Area which, when approved by the Supervisor, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operator under this Agreement for the period specified therein.

Until there is actual production of Unitized Substances, the failure of Unit Operator to timely drill any of the wells provided for in a Plan of Operations required under this Section or to timely submit an acceptable supplemental Plan of Operations shall, after notice of default or notice of prospective default to Unit Operator by the Supervisor and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the Supervisor), result in termination of this Agreement, effective as of the first day of the default.

Any plan submitted shall provide for the exploration of the Unit Area and for the determination of the lands thereof capable of producing Unitized Substances and/or for the development of the Unit Area, and shall be as complete and adequate as the Supervisor may determine to be necessary for timely exploration and/or development and to ensure proper conservation of the oil and gas resources of the Unit Area. Such plans shall (a) specify the number and locations of any wells to be drilled and the proposed order and time for such drilling, and (b) to the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment.

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SECTION 12: LEASES AND CONTRACTS CONFORMED AND EXTENDED

The terms, conditions and provisions of all leases, subleases and other contracts relating to exploration,

drilling, development, or operations for oil and 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 Supervisor by his approval hereof, does hereby establish, alter, suspend, change, or revoke the drilling, production, rental, minimum royalty and royalty requirements of the Federal leases committed hereto and the regulations in respect thereto, to conform said requirements to the provisions of this Agreement, and, without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

A. Drilling and producing operations performed hereunder upon any tract of Unitized Land will be accepted and deemed to be performed upon and for the benefit of each and every tract of Unitized Land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the tracts therein embraced.

B. Suspension of drilling or producing operations on all Unitized Lands pursuant to direction or consent of the Secretary, or his duly authorized representative, shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unitized Land; however, a suspension of drilling and/or producing operations on specified lands shall be applicable only to such lands.

C. Subject to the relinquishment provisions hereof, any lease committed hereto shall, as to the Unitized Lands, continue in force beyond the term so provided therein, or as extended by law, for the life of this Agreement; provided, actual sustained production is had under this Agreement or actual on site or off site construction of the initial facilities necessary for drilling and producing operations is commenced prior to the expiration of the term of such lease. This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contraction thereof. Upon termination of this Agreement, the leases covered hereby may be maintained and continued in full force and effect in accordance with the terms, provisions, and conditions of the lease or leases and amendments thereto.

SECTION 13: EFFECTIVE DATE AND TERM

This agreement shall become effective upon approval by the Secretary or his duly authorized representative and

shall terminate five (5) years from said effective date unless,

(a) Such date of expiration is extended by the Director, or

(b) Unitized substances are produced from wells drilled hereunder, in which even this agreement shall remain in effect so long as Unitized Substances are or can be produced and, should production cease, so long thereafter as diligent operations are in progress for the restoration of production or discovery of new production and should production be restored or a new discovery made, so long thereafter as unitized substances are or can be produced, or

(c) Operations are delayed due to the causes set forth in Section 16 hereof, in which event the term of this agreement shall be extended for a period of time equal to the period of creditable "Unavoidable Delay" time, or

(d) It is terminated as heretofore provided in this agreement.

This agreement may be terminated at any time by the owners of a majority of the working interests, on an acreage basis, with the approval of the Supervisor. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

SECTION 16: UNAVOIDABLE DELAY

The term of this Agreement and all obligations imposed by this agreement on each party, except for the payment of money, shall be suspended while compliance by the party, despite the exercise of due diligence, is prevented in whole or in part by labor dispute, fire, war, civil disturbance, act of God; by federal, state, or municipal laws; by any rule, regulations, or order of or delay or failure to act by a federal, state, municipal or other governmental agency; by inability to secure required federal, state, municipal or other governmental permits, easements or ordinances; by any judicial acts or restraints; by inability to secure materials; by unavoidable accidents; or by any other cause or causes beyond reasonable control of the party, whether or not similar to any cause above enumerated. No party shall be required against its will to adjust or settle any labor dispute. No obligation which is suspended under this section shall become due less than

thirty (30) days after it has been determined that the suspension is no longer applicable. Determination of creditable "Unavoidable Delay" time shall be made by the Unit Operator subject to approval of the Director. Notwithstanding any other provisions of this agreement, the Director, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation under this agreement to commence or continue drilling or to operate on or produce Unitized Substances from lands covered by this agreement when in his judgment circumstances warrant such action.

Although drilling obligations under the Santa Ynez Unit Agreement may not have been impeded by the onshore environmental constraints and problems set out by Exxon, supra, it is obvious from the record before us that these environmental controversies, both onshore and offshore, have impeded development of the unit area by preventing production from any of the unit leases.

The Santa Ynez Unit Agreement originally included 18 leases, OCS-P 180 through OCS-P 197, inclusive, but lease OCS-P 186 was relinquished as of October 2, 1972. Several of the wells drilled under the unit agreement have been certified as producible but no production has occurred because of continuing controversy with the State of California over environmental conditions. The Department has heretofore recognized that the ongoing operations of Exxon have served to maintain the unit agreement, pursuant to 30 CFR 250.35, and have indicated that these operations 1/ will continue to maintain the tenure of the unit agreement so long as there is no cessation of more than 90 days between drilling of additional wells prior to the commencement of actual production.

It would thus appear that granting the requested extension is not essential at this time. Nonetheless, we see no reason not to honor the request of Exxon in light of section 16 of the Santa Ynez Unit Agreement, even though there may be no present apparent need for such extension to protect the unit agreement or any of the leases still committed thereto. It would seem that Exxon has the option to request the extension under section 16 of the agreement, and having chosen to exercise it, the request should have been granted, although we are not prepared to say that denial of the request was an abuse of discretion in light of Survey's interpretation that the Santa Ynez Unit Area has producible wells within its limits.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

1/ Judge Goss would point out that Exxon states expenditures in the Santa Ynez Unit through 1977 are estimated at \$358,735,000.

decision of the Director, Geological Survey, is set aside, and the requested extension for reason of unavoidable delay is granted, extending the term of the Santa Ynez Unit Agreement 4 years and 2 months until January 12, 1980.

Douglas L. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

