

PACIFIC TRANSMISSION SUPPLY CO.
AND RAYMOND CHORNEY

IBLA 80-947

Decided March 18, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, holding that lease U-7358 expired at the end of the primary term.

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) have not operated to extend the lease.

APPEARANCES: Alan A. Enke, Esq., Ray, Quinney & Nebeker, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Pacific Transmission Supply Company and Raymond Chorney, hereinafter appellants, have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated August 14, 1980, which rescinded a decision dated April 3, 1980, wherein BLM extended oil and gas lease U-7358 indefinitely by reason of production. The decision of August 14, 1980, declared that the lease expired December 31, 1978, at the end of its term.

Lease U-7358 is a noncompetitive oil and gas lease embracing the SW 1/4 NE 1/4 sec. 29, T. 8 S., R. 17 E., Salt Lake meridian, Duchesne County, Utah. Appellants, Pacific Transmission Supply Company and Raymond Chorney, had, by various assignments, obtained a 75 and 25 percent undivided leasehold interest respectively. Lease U-7358 was

issued effective January 1, 1969, for a term of 10 years. Shortly prior to the completion of the 10-year term the lease was committed to the Castle Unit, which was approved by the Oil and Gas Supervisor, Northern Rocky Mountain Area, Geological Survey (Survey), on January 30, 1979.

By letter dated November 29, 1979, the Chief, Minerals Section, BLM, informed appellants that Survey had notified BLM that the lease was not eligible for any extension and therefore the 11-year rental submitted by appellants would be refunded. By decision of April 3, 1980, the Chief, Minerals Section, BLM, rescinded the aforementioned decision, informing appellants that Survey had notified them that oil and gas lease U-7358 was extended indefinitely by production. The BLM decision, from which appellants appeal, dated August 14, 1980, vacated the April 3, 1980, decision and stated in part:

The lease was issued effective January 1, 1969, for a period of ten years. In order to qualify for an extension beyond the initial term, there would need to have been either drilling operations in progress over December 31, 1978, or production. The drilling operations were completed on October 2, 1978, and the well did not produce.

There are no other avenues for extension available. The Castle unit agreement, to which the lease was committed, terminated effective April 2, 1979, after the lease expiration date. Therefore, the provisions of 43 CFR 3107.5 cannot be invoked.

Appellants filed a timely notice of appeal from this decision and present a number of arguments in their statement of reasons. Appellants' chief argument is that lease U-7358 should have been extended as a result of the termination of a unit agreement on April 2, 1979. The effect of such termination is set forth in 30 U.S.C. § 226(j) (1976). 1/

Appellants contend that lease U-7358 is entitled to an extension despite the fact that the unit well was completed on October 2, 1978, and did not produce in paying quantities on or after the expiration date of its primary 10-year term. Appellants point to Jack L. McClellan, 34 IBLA 53 (1978), as supporting the proposition that there need not be production within a unit for a lease to qualify for a 2-year extension pursuant to 43 CFR 3107.5, so long as it was part of an approved or prescribed cooperative unit plan.

1/ The substance of 30 U.S.C. § 226(j) (1976) appears in the regulations at 43 CFR 3107.5.

[1] 30 U.S.C. § 226(e) (1970), provides that a noncompetitive oil and gas lease shall continue so long after its primary term of 10 years as oil or gas is produced in paying quantities. It further states that any lease issued under this section for land on which or for which 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 2 years. See Energy Trading Inc., 50 IBLA 9 (1980).

Appellants have not shown nor do they assert that there was production of oil or gas in paying quantities at the end of the lease's primary term. They assert instead that "[a]ny lease qualifies for this extension as long as it was a part of an 'approved or prescribed cooperative unit plan.'" Appellants are incorrect in their assertions.

The regulations governing lease extensions pursuant to 30 U.S.C. § 226(j) (1976) in 43 CFR 3107.5 provide:

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities. [Emphasis added.]

For appellant's lease to qualify for a 2-year extension under this proviso, the lease must have been committed to an approved cooperative or unit plan, and have been removed from the unit plan prior to the expiration of its primary lease term, in effect at the termination of the unit plan, or in the alternative, either in production or undergoing diligent drilling operations on the final day of the primary term of the lease.

In the case at bar appellants were issued a lease effective January 1, 1969, for a period of 10 years. Lease U-7358 was committed to the Castle Unit on January 30, 1978. The lease well, Federal No. 32-29, was drilled, plugged back, and completed on October 2, 1978. The Castle Unit was terminated, upon request, effective April 2, 1979. In order to qualify for an extension, lease U-7358 would have to have been removed from the Castle Unit prior to December 31, 1978, or in production "so long as production is had in paying quantities under the plan prior to the expiration date of the term of the lease." 30 U.S.C. § 226(j) (1976); see, e.g., Energy Trading, Inc., *supra*.

The controlling factors in this case are that there was no activity on the lease at the expiration of the primary term so it could not be extended under 30 U.S.C. § 226(e) (1976), nor was there any production from the lease or the unit. The cooperative or unit plan provisions of 30 U.S.C. § 226(j) (1976) cannot operate to extend appellants' lease because the lease expired prior to the termination of the Castle Unit. Therefore, the State Office properly held that the lease had expired.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

