

COSEKA RESOURCES (U.S.A.), LTD.

IBLA 81-80

Decided June 30, 1981

Appeal from decision of the Colorado State Office, Bureau of Land Management, holding oil and gas lease to have expired at the end of its primary term. C-10485.

Affirmed.

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

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration.

APPEARANCES: George W. Mueller, Jr., Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Coseka Resources (U.S.A.), Ltd., appeals from a decision dated September 29, 1980, by the Colorado State Office, Bureau of Land Management (BLM), declaring the above oil and gas lease to have expired at the end of its primary term, on February 29, 1980.

Lease C-10485, embracing all the lands in secs. 30 and 31, T. 1 N., R. 102 W., sixth principal meridian, was issued effective March 1, 1970, for a term of 10 years. Prior to the end of its primary term, the lease was committed to the Baseline Unit Agreement No. 14-08-0001-18093. The Baseline Unit Agreement was designated as a logical unit area on August 24, 1979, and approved effective September 26, 1979. Appellant is the unit operator.

The decision appealed states in pertinent part as follows:

[T]here was no activity in the Baseline Unit over the expiration date of February 29, 1980. While grounds for extension of lease C-10485 may have existed (under 43 CFR 3103.3-8) no application for suspension was received by the Geological Survey until after the lease expired. Accordingly, the lease expired February 29, 1980.

On September 24, 1979, appellant had applied to Geological Survey, herein called "Survey" for a suspension of leases C-10586, C-10919, C-10485, C-10554, and C-10556, among others. Leases C-10586, C-10554, and C-10556 had expiration dates of March 31, 1980, and C-10919 was scheduled to expire on May 31, 1980.

By letter of October 12, 1979, Survey's district engineer denied suspension of the above five leases stating only that there was at the time "no basis" for suspension. Appellant appealed other particulars of the engineer's decision of October 12, 1979, to the Director, Geological Survey. In its appeal, appellant stated:

'[A]t this time there is no basis for suspension of Leases C-10485, C-10554, C-10556, C-10586 and C-10919'. Coseka individually, and as Unit Operator therefore reserves the right to again request suspension of operations and production for these Leases, (which have not yet reached their expiration dates), at such future time as Coseka may deem appropriate. [1]

On March 12, 1980, BLM requested Survey to suspend temporarily all new drilling activity in the White River Resource Area, encompassing the Baseline Unit Area, because of environmental concerns. Accordingly, by letter of March 19, 1980, Survey advised appellant to suspend new drilling starts but allowed ongoing drilling operations to continue. On March 27, appellant again filed a request for suspension of the above five leases. Survey approved the request for four of the leases but denied it in the case of C-10485, on the ground that that lease had expired (on February 29, 1980) before the request was filed. As to the other four leases, which had not expired before the request was filed, Survey determined that BLM's suspension of new activity would place these leases in jeopardy of expiration through no fault of the lessee and therefore approved suspension. Only C-10485 is involved in the instant appeal.

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1/ In its statement of reasons to this Board, filed Oct. 27, 1980, appellant states that the appeal to the Director, Geological Survey, of the Oct. 12, 1979, decision is currently pending. That appeal, however, does not contest the ruling that the request for suspension for lease C-10485 and four other leases was denied.

Appellant contends in its instant appeal that its March 1980 request for a suspension of C-10485 was in effect a resubmittal of its September 1979 request. Thus, appellant argues, it was error not to suspend C-10485 for the same reasons that the other four leases were suspended.

[1] In effect, appellant's argument is that the filing of its September 1979 application for suspension prevented lease C-10485 from expiring at the end of its primary term on February 29, 1980. This argument is without merit for the following reasons. Appellant's September 1979 application did not remain in a pending status but was adversely acted upon and conclusively disposed of by the district engineer. Appellant's understanding of this circumstance is clearly reflected in its appeal of the engineer's decision, wherein appellant announced its intention to apply again for suspension of the five leases at an appropriate future date. Because the application as to C-10485 was filed on March 27, 1980, appellant had no suspension application pending at the time of expiration. Thus, the rule in Jones-O'Brien, 85 I.D. 89 (1979), is dispositive of the case before us. That rule states that a nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration. Jones-O'Brien discusses and overrules several contrary precedents. It cites the following policy reasons for its holding:

The right to file a suspension application long (or shortly) after a lease has expired creates the possibility for fraud and other abuses. A subsequent lessee could properly consider a late-filed suspension application to be a significant cloud on a subsequently issued lease for that land and would probably defer expenditures until the question was resolved. As the Department said in U.S. Oil and Development Corp., [A-26269 (Oct. 30, 1951)], reviving leases retroactively would adversely affect the stability of the administration of the Mineral Leasing Act. For all of these reasons, Robert E. Mead, 62 I.D. 111 (1955) is overruled.

85 I.D. at 96.

We find that the suspension application filed September 24, 1979, was finally rejected, in the absence of an appeal, on October 12, 1979, and that the March 27, 1980, application is a new and independent application. We also find that appellant's reservation of the right to request suspension in the future of lease C-10485 in its appeal of other facets of the October 12, 1979, decision cannot affect the finding herein that no suspension application was pending prior to the time that lease terminated on February 29, 1980.

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Gail M. Frazier  
Administrative Judge