

SUPERIOR OIL CO.

IBLA 80-967

Decided September 14, 1981

Appeal from a decision of the Office of the Director, Geological Survey, affirming an order denying a request for suspension of production. OCS-G-3043.

Vacated and remanded.

1. Administrative Authority: Generally -- Appeals -- Rules of Practice:
Appeals: Generally -- Secretary of the Interior

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

2. Oil and Gas Leases: Suspensions

An oil and gas lessee's request for suspension of production of an oil and gas lease may properly be granted in circumstances where the lessee submits a schedule of work that, in this instance, can be considered as expeditious as possible and that will lead to initiation or restoration of production sufficient for compliance with 30 CFR 250.12(b), as amended.

APPEARANCES: Pat F. Timmons, Esq., for appellant. John H. Kelly, Esq., Office of the Associate Solicitor, Division of Energy and Resources, United States Department of the Interior, for the Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated August 1, 1980, by the Chief of the Conservation Division, Geological Survey (Survey) which affirmed an order by the oil and gas supervisor, Resources and Diligence, Gulf of Mexico Area, denying a request for a 2-1/2 year suspension of production on lease OCS-G-3043, Mustang Island, Block 831.

The lease was issued on April 1, 1975, and the primary term expired on March 31, 1980. During the primary term of the lease, two exploratory wells were drilled. On September 25, 1975, well #1 was tested and determined to be capable of producing gas in paying quantities.

By letters dated January 2, 1980, and February 1, 1980, appellant filed its request for a suspension of production with Survey, stating that it needed time to negotiate a gas sales agreement and pipeline installation and submitted a proposed development schedule.

On March 14, 1980, the Oil and Gas Supervisor denied appellant's request stating:

It is our position that the work necessary to place this lease on production, which includes designing, fabricating, and installing a platform, and completing well No. 1, should be done concurrently with contract negotiations. Therefore, I hereby deny your request for the suspension of production for lease OCS-G-3043.

This decision was appealed to the Director of Survey pursuant to 30 CFR 290. The chief, Conservation Division, found the denial appropriate. In his decision, the chief cited 30 CFR 250.12(b), as amended, 44 FR 61885 (Oct. 26, 1979) which provides:

(b)(1) Upon the request of a lessee, the Director may suspend or temporarily prohibit production or any other operation or activity pursuant to a lease when the Director determines that the suspension or temporary prohibition is in the national interest and will (i) facilitate proper development of a lease, (ii) allow for the construction of, or for the negotiation for the use of, transportation facilities, or (iii) facilitate the installation of equipment the Director determines is necessary for safety or environmental reasons.

(2) The lessee must submit, with a request for a suspension, the reasons for requesting the suspension, a schedule of work leading to the expeditious initiation or restoration of production or any other operation or activity, and any other information the Director may require.

(3) In determining whether a suspension of production or any other operation or activity is in the national

interest, the Director shall consider: (i) All known significant national benefits and national costs; (ii) Whether environmental problems or other unforeseen conditions necessitate a significant halt in production or any other operation or activity; and (iii) Whether, during the primary term, the lessee has been prompt and efficient in the exploration of the lease.

(4) A suspension of production or any other operation or activity may be granted under this subsection for periods of time each of which must not exceed 5 years.

The decision also quotes the following excerpt from a Departmental policy statement concerning "Expeditious Exploration and Development in Outer Continental Shelf Oil and Gas Lease and Unit Operations":

Leases which are about to exceed their primary term and are not yet producing will be considered for a suspension of production only if sufficient exploration to delineate the areas of production has been completed and development has commenced. The commencement of development must be evidenced at a minimum, by submission of a definite and expeditious schedule which will lead to the commencement of production.

The decision concluded that appellant had failed to submit a definite schedule to which it could assure adherence, since all events involving fabrication and installation of production facilities were dependent on the outcome of its contract negotiations for the sale of gas.

Appellant asserts, *inter alia*, that it has complied "literally" with 30 CFR 250.12(b), and the Departmental policy statement cited by Survey in the decision is an abuse of agency discretion.

[1] First, the validity or legality of regulations, orders, or policies formulated by the Secretary are not issues within the appellate jurisdiction of this Board. The Board may, however, review decisions of Survey to determine whether a policy has been properly implemented. Bass Enterprises Production Co., 48 IBLA 11, 13 (1980), and cases cited therein. Having made our review we find that appellant's argument concerning abuse of discretion is without merit.

[2] However, from that review we have concluded that the circumstances of this case call for a more liberal construction of that policy to enable further development of this lease. We find that appellant has substantially complied with 30 CFR 250.12(b) by submitting its schedule of proposed activity. Appellant has submitted a workable schedule which would result in meeting Survey's requirement and projects sales of natural gas by December 1, 1982.

As Survey has correctly indicated, the regulation does require a schedule of work leading to the expeditious initiation of production. Although appellant's work schedule appears contingent upon the outcome

of its negotiations for the sale of gas, we find it has acted as diligently and expeditiously as possible, in view of the unusual circumstances of this case, to place the lease in production. It has already invested a great deal in drilling two exploratory wells and indicated its willingness to make further efforts to pursue further marketing of the natural gas.

The Oil and Gas Supervisor for the Gulf of Mexico Area specifically noted appellant's problem in a memorandum of April 16, 1980, stating:

We think it is relevant to point out, however, that we recognize and appreciate Superior's difficulties in negotiating a gas sales contract in this area and can understand their reluctance to spend additional money developing the lease without further assurance of a market for their economically marginal reserves. There has been no larger discovery that in itself would attract a purchaser and pipeline into the area. Neither has the smaller (marginal) discoveries in cumulative total provided such attraction. Most operators and ourselves are hopeful and optimistic that with time additional discoveries will be made and a pipeline and purchaser will be economically attracted to the area.

Given the marginal supply of gas discovered, it is unlikely, should the lease terminate, that anyone else will ever produce the gas. Accordingly, we find that suspension of production on this lease, for a period of at least a few years, is allowable consistent with the spirit of the regulation. Further, development of this modest gas deposit can certainly be considered in the national interest in that appellant has clearly acted promptly and efficiently to explore this lease during the primary term.

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 reversed and the case remanded to Survey for appropriate action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

