

AQUARIUS RESOURCES CORP.

IBLA 81-162

Decided May 24, 1982

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease W 24722 to have expired.

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

APPEARANCES: Donald F. Cardinal, Vice President, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Aquarius Resources Corporation has appealed from the October 30, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), holding that oil and gas lease W 24722 expired at the end of its term. ^{1/} Appellant's noncompetitive oil and gas lease was issued with an effective date of August 1, 1970, for a period of 10 years. Thus, its expiration date was July 31, 1980. On January 1, 1980, the lease was committed to the Little Buck Creek, Southeast Unit. BLM found that the lease was still subject to the unit agreement on its expiration date and

^{1/} Aquarius filed a notice of appeal on its own behalf and on behalf of Masek Oil Company, Burlington Northern Incorporated, Robert Klabzuba, and Frank Schultz.

that no drilling operations were in progress on the lease or within the unit on the expiration date, so the lease did not earn the 2-year extension for actual drilling operations provided by 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3. The decision further held that as the unit agreement did not terminate until September 26, 1980, 2/ so the lease did not earn a 2-year extension by virtue of the provisions of 30 U.S.C. § 226(j) (1976).

Appellant does not dispute that a noncompetitive oil and gas lease committed to a unit agreement expires at the end of its primary term when there is no well capable of producing oil or gas in paying quantities on the lease or in the unit and when there are no actual drilling operations in progress on the lease or within the unit over the expiration date. See *Burton Hancock*, 40 IBLA 1 (1979); *Manhattan Resources*, 34 IBLA 346 (1978). Instead, it contends that the termination of the unit should have been made effective prior to the expiration of the lease on July 31, 1980, so that its lease would be extended by 30 U.S.C. § 226(j) (1976), which provides in pertinent part: "[A]ny lease which shall be in effect at the termination of any such approved or prescribed [unit] plan * * * shall continue in effect for the original term thereof, but for not less than 2 years, and so long thereafter as oil or gas is produced in paying quantities."

Appellant's statement of reasons on appeal presents the following arguments:

By instruments dated 21 and 25 July 1980, 75 per centum of the working interest owners of leases committed to the Little Buck Creek, Southeast Unit, agreed to voluntarily terminate the Unit. By letter dated and posted July 31, 1980, these request-for-termination instruments were forwarded to the Supervisor, with the request that the Unit be terminated effective 29 July 1980.

* * * The Supervisor refused to allow the Little Buck Creek, Southeast Unit to be terminated prior to July 31, 1980, predicating his decision on a policy not to allow termination of a Unit prior to his receipt of the termination instruments. The Supervisor's exercise of this unpublished policy arbitrarily failed to give full force and effect to the agreement reached by an overwhelming majority of the working interests of leases committed to the Unit,

2/ BLM was informed of the termination of the unit when it received a copy of a letter dated Oct. 7, 1980, by which the Acting Deputy Conservation Manager notified Burlington Northern that the unit automatically terminated Sept. 26, pursuant to section 9 of the unit agreement:

"Upon failure to commence any well provided for in this section within the time allowed, including any extension of time granted by the Supervisor, this agreement will automatically terminate; upon failure to continue drilling diligently any well commenced hereunder, the Supervisor may, after 15-days notice to the Unit Operator, declare this unit agreement terminated."

the intent of such agreement being that which the Supervisor's arbitrary exercise of this policy prevented -- extension of W-24722 in accordance with 43 CFR 3107.5. By not allowing the Unit to terminate prior to July 31, 1980, the Supervisor failed to recognize that a Unit Agreement is essentially a contract between private parties, and his approval of Unit termination merely serves as official sanction of that which has already transpired. By his arbitrary exercise of a policy not to allow the Little Buck Creek, Southeast Unit to terminate prior to his receipt of the agreement of the parties to terminate it, the Supervisor has abridged Petitioner's contract rights and divested him of a valuable property.

(Statement of Reasons at 2 and 3).

[1] Whether or not the unit agreement was terminated prior to the expiration of lease W 24722 is answered by section 20 of the agreement itself: "This agreement may be terminated at any time by not less than 75 per centum, on an acreage basis, of the working interest owners signatory hereto, with the approval of the Supervisor; notice of any such approval to be given by the Unit Operator to all parties hereto." (Emphasis added.) Appellant concedes that it mailed its request for termination on the very day of lease expiration, July 31, 1980. Assuming that this request was delivered to the Supervisor on August 1, 1980, or shortly thereafter, it is clear that as of July 31, 1980, no approval had or could have been given to appellant's request for termination. Lease W 24722, therefore, expired during the life of the unit agreement. By the clear terms of 30 U.S.C. § 226(j) (1976), lease W 24722 was not entitled to the 2-year extension for leases in effect at the termination of an approved unit plan. See F. M. Tully, 37 IBLA 62 (1978).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

