

HARPEL DRILLING CO.

IBLA 82-1191

Decided July 19, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding that lease W-34095 expired at the end of its primary term.

Affirmed.

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

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

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

No suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where MMS [now BLM] directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a).

APPEARANCES: John P. Harpel, Jr., president, Harpel Drilling Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Harpel Drilling Company (Harpel) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 12, 1982. That decision, in part, states the following:

We have been advised by the U.S. Geological Survey that no drilling operations were in progress on the lease over the end of

its primary term. Therefore, lease W-34095 is held to have expired effective April 30, 1982, since it is not eligible for extension under regulation 43 CFR 3107.2-3, or any other regulation of which we are aware.

The original lease was issued to M. J. Wallway for a primary term of 10 years effective May 1, 1972. Harpel, designated operator of the lease, filed applications for permit to drill with Geological Survey 1/ on January 18, 1982, for T. 35 N., R. 84 W., sec. 18, SW 1/4 SE 1/4, sixth Principal meridian and April 26, 1982, for the NW 1/4 SE 1/4 of the section. The applications were approved by the Casper District Office of MMS on February 26 and April 23, 1982, respectively.

Harpel, in its reasons for appeal, state that: (1) conductor pipe was set on the lease site April 29, 1982, and a 60-day extension granted, and (2) drilling operations resumed on June 29, 1982, thus, appellant asserts a (2-year) extension of the lease should have been granted.

[1] The applicable statute provides that a noncompetitive oil and gas lease has a primary term of 10 years and shall continue so long after its primary term as oil and gas is produced in paying quantities. 30 U.S.C. § 226(e) (1976). The statute further provides that any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted at that time shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities. See Energy Trading, Inc., 50 IBLA 9 (1980).

Harpel contends that moving the conductor pipe to the lease site constitutes compliance with the statute; however, it has long been held that a lessee should actually be drilling in the ground at the end of his lease term in order to be entitled to a 2-year extension. Michigan Oil Co., 71 I.D. 263, 265 (1964). In the instant case, a copy of a work order filed with appellant's reasons for appeal indicates that a drilling rig was not moved to the lease site until June 29, 1982. The well was not spudded until August 29, 1982. Clearly, actual drilling had not commenced during the primary term of the lease.

[2] Harpel implies that MMS had granted them a 60-day extension, however, the case record contains no evidence of such an extension or request for extension by appellant. Further, no suspension of an oil and gas lease

1/ The records show the filing to have been made with the Geological Survey. By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the Minerals Management Service (MMS) to, inter alia, take over the functions of the Conservation Division, Geological Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was amended, the amendment is not relevant to this discussion.

will be granted in the absence of a well capable of production, "except where MMS directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a). The requirements for such an extension by BLM were not met by appellant. See Fuel Resources Development Co., 69 IBLA 39 (1982).

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.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge