

UNION OIL COMPANY OF CALIFORNIA

IBLA 83-928

Decided October 31, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring oil and gas lease NM 18050 (OK) terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements--Oil and Gas Leases: Termination

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to Federal oil and gas leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production of oil or gas in paying quantities on such Federal lease, the lease expires at the end of its primary term.

APPEARANCES: Charles Ming, Esq., Edmond, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Effective April 1, 1973, noncompetitive oil and gas lease NM 18050 (OK) was issued by the New Mexico State Office, Bureau of Land Management (BLM), to Union Oil Company of California (Union) for a tract of land in sec. 21, T. 14 N., R. 13 W., Indian meridian, Oklahoma, containing 3.17 acres of land described by metes and bounds. The tract is the remaining portion of lot 1, sec. 21, riparian to the Canadian River. Based on a completed producible well in the N 1/2 SW 1/4 sec. 17, T. 14 N., R. 13 W., effective October 10, 1978, all sec. 21, T. 14 N., R. 13 W., inter alia, was determined to be within an addition to an undefined known geologic structure (KGS) of the East Thomas, South Thomas, Squaw Creek, and West Squaw Creek fields. Pursuant to 43 CFR 3103.3-2(b)(1), Union was notified by decision of February 16, 1979, of the KGS determination and that the annual rental for lease NM 18050 (OK) would be \$2 per acre commencing with the lease year beginning April 1, 1979. Upon receipt of a rental payment for the eleventh lease year commencing April 1, 1983, BLM advised Union that the lease had terminated by operation of law March 31, 1983, at the end of its primary term.

In a letter to BLM dated May 19, 1983, Union asserted that the lease was held by production from the Davis Oil Company (Davis) No. 1 Baker well. Davis had advised the Geological Survey in June 1980 that it was preparing a communitization agreement for sec. 21, T. 14 N., R. 13 W., in accordance with an Oklahoma Corporation Commission spacing order.

By decision of July 19, 1983, BLM declared oil and gas lease NM 18050 (OK) had expired by operation of law, that "the lease is not entitled to a petition for reinstatement pursuant to the provisions of P.L. 97-951 (96 Stat. 2447) dated January 12, 1983, because the producing well completed on April 17, 1980 in Sec. 21, [No. 1 Baker] is located on private land," and no communitization agreement had been filed for approval prior to the expiration of the lease.

Appeal was taken by Union, and by the Home Petroleum Corporation which asserted it was assignee of the lease in question. Appellants asserted the subject lease is included in a producing Oklahoma State unit and the lease has been under review for division order purposes. Because the lease is riparian in nature, it was necessary for a survey of the property to be conducted prior to a supplemental division order title opinion being written. The survey was completed March 19, 1983. The survey information was resubmitted to the lessee's attorneys for preparation of a supplemental division order title opinion and a communitization agreement based on the new survey. As this lease is riparian to the South Canadian River and because of severe accretion both in the past and during the term of the lease, numerous ownership boundaries have been changed dramatically, thus requiring a major effort in recalculation of the tract interest schedule for the communitization agreement as well as division order and supplemental division requirements. Because of the magnitude of problems created by riparian matters along the South Canadian River, the resurvey was completed as set out above, and the fact that this lease is included in a producing Oklahoma State unit, appellants request that this lease be continued in full force and effect pending completion of a communitization agreement.

The Mineral Leasing Act of 1920 provides that a noncompetitive oil and gas lease shall be for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities. Any lease committed to an approved cooperative or unit agreement shall continue for so long as the lease remains committed to the agreement provided that production of oil or gas in paying quantities is had before the expiration of the lease. 30 U.S.C. 226(e), (j) (1976).

[1] There is no record of an approved communitization agreement including the land contained in lease NM 18050 (OK). As the Board held in Kirkpatrick Oil Co., 32 IBLA 329 (1977), aff'd, Kirkpatrick Oil & Gas Co. v. United States, 675 F.2d 1122 (10th Cir. 1982):

In the absence of an approved communitization agreement involving a federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to federal leases within the spacing unit, and where there is no drilling

operation, producing well or well capable of production on such lease, the lease expires at the end of its primary term.

See also Devon Corp., 57 IBLA 131 (1981).

Thus, it must be held that oil and gas lease NM 18050 (OK) terminated at the expiration of its primary term, March 31, 1983, because there was no well on the leasehold capable of producing oil or gas in paying quantities, and the lease was not committed to an approved communitization agreement under which oil or gas was being produced in paying quantities. <sup>1/</sup>

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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Douglas E. Henriques  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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R. W. Mullen  
Administrative Judge

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<sup>1/</sup> BLM's reference in its decision to a petition for reinstatement under the Federal Royalty Management Act of 1982, 96 Stat. 2447, which amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law, is misplaced. The lease in question did not terminate automatically by operation of law for failure to make timely payment of the rental. In fact, Union tendered the 11th year rental of \$8 on Feb. 10, 1983. Thus, there was no failure to make timely payment of rental, and reinstatement provisions of the law were inapplicable. Lease NM 18050 (OK) expired by operation of law at the end of its term because there were actual drilling operations being diligently prosecuted on the lease at the end of the primary term and the lease was not under an approved cooperative plan of development. See 30 U.S.C. § 226(e) (1976); 43 CFR 3107.2-3. See also Getty Oil Co., 72 IBLA 39 (1983), for an explanation of the difference between "expiration" and "termination."

The confusion may have arisen because on May 26, 1983, Home Petroleum Corporation submitted a check to BLM in the amount of "\$508 as rental and late rental penalty for the March 31, 1983 rental payment that was not timely made." A \$500 reinstatement fee is required by the Federal Royalty Management Act. Apparently the corporation was unaware that Union had previously submitted the rental.

