

MONSANTO CO.

IBLA 83-699

Decided July 24, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding oil and gas lease W-15233 to have expired at the end of its term.

Set aside and remanded.

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

A finding that an oil and gas lease has expired for failure of one of several lessees of record to execute a joinder to a unit agreement for a producing unit will be set aside, in the absence of intervening rights in the leasehold, where a substantial allegation is made that an assignment of record was intended by the parties to convey all the interest of that lessee to an assignee who timely executed a joinder to the unit agreement.

APPEARANCES: David C. Knowlton, Esq., and James T. Ayers, Jr., Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Monsanto Company (Monsanto) appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 28, 1983, holding oil and gas lease W-15233 to have expired October 30, 1982, at the end of its extended term. The basis for the decision was that the lease had not been committed to the Cedar Gap (Deep) unit and, thus, was not eligible for further extension.

Effective March 1, 1969, BLM issued noncompetitive oil and gas lease W-15233 for a period of 10 years. On the same date the lease was committed to the Madden Deep unit. On October 30, 1980, the lease was deleted from the unit, resulting in a 2-year extension until October 30, 1982. See 43 CFR 3107.4. During the term of the lease, Sohio Alaska Petroleum Company (Sohio Alaska) obtained a 12-1/2 percent record title interest in the lease, as well as a certain percentage of operating rights at specified depths below the surface. The remainder of the record title interests and operating rights in the lease are held by several parties, including Monsanto. On April 22,

1981, BLM approved an assignment of Sohio Alaska's operating rights in lease W-15233 to Sohio Petroleum Company (Sohio Petroleum).

BLM based its determination that the lease had expired on information obtained from the office of the Acting Deputy Minerals Manager, BLM. Records of that office were reported in a memorandum dated March 22, 1983, to show that Sohio Alaska assigned various leases to Sohio Petroleum, but lease W-15233 was not included in the assignments. The memorandum explained that

in order for Federal lease W-15233 to be considered fully committed to the Cedar Gap (Deep) unit agreement [approved February 5, 1982], it was necessary for all lessees of record to execute a ratification and joinder to the unit agreement and all working interest owners to execute a ratification and joinder to the unit agreement and unit operating agreement. [Emphasis in original.]

The memorandum stated that at the time of final unit approval, the necessary ratifications and joinders were submitted for all parties holding an interest in the lease with the exception of Sohio Alaska.

Consequently, BLM found tract 58, Federal lease W-15233, to be uncommitted to the Cedar Gap (Deep) unit agreement. Therefore, BLM held lease W-15233 to have expired effective October 30, 1982, since it was not eligible for further extension by participation in the unit.

On appeal, Monsanto contends that in the course of assigning lease W-15233, Sohio Alaska inadvertently included the lease in an exhibit to a blanket assignment of operating rights instead of an assignment of record title; that consequently Sohio Alaska assigned only the operating rights to the lease and not its record title interest; that neither Sohio Alaska nor Sohio Petroleum discovered this error until the onset of these proceedings; and that both have always intended, believed, and understood that all of Sohio Alaska's interest in the lease had been transferred to Sohio Petroleum. ^{1/}

Concerning the unit agreement, Monsanto states that Sohio Petroleum signed a ratification and joinder of the unit agreement on December 4, 1981, which committed all of Sohio Petroleum's interests which it may be found to have in leases covering lands within the unit area. Monsanto contends that Sohio Petroleum believed and intended that the joinder committed all of the interests in lease W-15233 previously held by Sohio Alaska. According to Monsanto, the other owners had properly committed 87-1/2 percent of the record title interests and all of the remaining operating rights, and all parties believed that the lease was fully committed and would be extended due to production within the unit.

^{1/} The assignment from Sohio Alaska to Sohio Petroleum was apparently part of a corporate reorganization under which all of Sohio Alaska's interests in oil and gas leases in the lower 48 states were to be assigned to a "sister subsidiary."

Appellant contends that the lease should have been extended even though Sohio Alaska's 12-1/2 percent record title interest was not formally committed to the Cedar Gap (Deep) unit as of October 30, 1982, because the failure of Sohio Petroleum to commit this interest was due entirely to a mutual mistake by Sohio Alaska and Sohio Petroleum, in a collateral assignment which, in equity and administrative fairness, should not defeat the clear intent of all record title and operating rights owners to fully commit the lease.

Lessees of Federal oil and gas leases are authorized by statute to join in collectively operating under a unit plan of operation for an oil or gas pool or field where it is determined by the Secretary of the Interior that unitization is in the public interest. 30 U.S.C. § 226(j) (1982). Any lease committed to such a unit plan containing a general provision for allocation of oil and gas shall continue in effect as to the land committed so long as the lease remains subject to the unit, provided that production is obtained in paying quantities under the unit plan prior to the expiration date of the lease term. 30 U.S.C. § 226(j); 43 CFR 3107.3-1. Thus, the issue raised by this appeal is whether the lease can be considered to have been committed to the unit so as to qualify for an extension by reason of production within the unit.

Monsanto contends that the assignment from Sohio Alaska to Sohio Petroleum should be reformed to reflect and conform to the parties' true intentions that the record title interest be owned and committed to the unit by Sohio Petroleum, thereby qualifying the lease for extension. Appellant cites Woods Petroleum Corp., 23 IBLA 12 (1975), and Shannon Oil Co., 62 I.D. 252 (1955), in support of its contention.

In Shannon Oil Co., *supra*, the description of lands committed to the unit agreement inadvertently failed to include a tract intended to be committed by the lessee signing the agreement and considered by other parties to the agreement to be committed. The Department held that since the unit agreement is a legal contract between the parties and since a contract is subject to the equitable remedy of reformation where it is shown that the contract does not conform to the true intent of the parties, there was no objection to reformation of the contract by the parties thereto to conform to their intent that the tract be committed. *Id.* at 255. The decision held that, in light of the understanding of Departmental officials that the tract had been committed, and in the absence of any intervening rights in the tract, the tract would be considered to have been committed to the unit upon submission of a reformed contract stating that this was the actual intent of the parties. *Id.* at 256.

In Woods Petroleum Corp., *supra*, the leases were committed to the unit by a lessee who had assigned part of his interest to a third party prior to submitting the evidence of joinder in the unit agreement for approval. At the time of submission of evidence of joinder, the assignment had been filed with BLM but not approved. Subsequently, the assignment to the third-party lessee was approved by BLM and, thereafter, the joinder of the unit agreement was approved by Geological Survey. As of the expiration date of the term of the lease, no joinder had been executed by the third-party lessee. In reversing a decision holding the leases to have terminated on their expiration date for failure of the third-party lessee to have executed a joinder of the unit

agreement by that time, the Board held that where both the parties in interest and the Department assumed that the leases were committed to the unit the leases were properly held to be committed to the unit (and thus extended) in the absence of intervening rights in the leasehold.

[1] In the present case, as in Woods, a party holding record title interest to the lease at the expiration of its term failed to execute a joinder to the unit agreement. In Woods the joinder was not executed timely by an assignee of an interest purportedly committed by the assignor. In the present case, joinder was not executed timely by the purported assignor of record title interest in the lease but rather was timely executed by the purported assignee. Extension of the lease under appellant's theory requires reformation of an assignment of operating rights in lease W-15233 by Sohio Alaska to Sohio Petroleum to include assignment of Sohio Alaska's record title interest in the lease. Notably absent from the record is any statement of intent by the parties to that assignment. In the absence of any intervening rights in the leasehold, the decision holding the lease to have expired at the end of its term will be set aside to allow the parties to the assignment an opportunity to provide evidence of their intent in executing the assignment and to allow submission of a reformed instrument of assignment. Upon remand, BLM shall allow a reasonable time for such submission before readjudicating eligibility of the lease for extension by reason of commitment to the unit agreement.

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 set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge.

