

LARIO OIL AND GAS CO.

IBLA 84-870

Decided May 9, 1986

Appeal from a decision of the Casper, Wyoming, District Office, Bureau of Land Management, denying application for suspension of noncompetitive oil and gas lease W-35170, and holding that the lease was not extended under 43 CFR 3107.3-1.

Affirmed.

1. Oil and Gas Leases: Expiration -- Oil and Gas Leases: Suspensions

The granting of an application for suspension of an oil and gas lease rests in the discretion of the authorized officer. Where, however, the application for suspension does not contain the agreement of the lessee of record assenting to the request, the application does not comply with 43 CFR 3165, and may not be granted.

2. Oil and Gas Leases: Expiration -- Oil and Gas Leases: Extensions - Oil and Gas Leases: Unit and Cooperative Agreements

Unit agreements involving Federal oil and gas interests are effective as to those interests only upon the approval of the authorized officer. When a Federal lease in its extended term completes the term prior to approval of a unit agreement, that lease is not subject to extension under 43 CFR 3107.3-1 upon the subsequent approval of the unit agreement.

APPEARANCES: Neil J. Short, Esq., Casper, Wyoming, for appellant;
Lowell L. Madsen, Esq., Department Counsel, Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lario Oil and Gas Company (Lario) has appealed from a decision dated July 20, 1984, of the Casper, Wyoming, District Office, Bureau of Land Management (BLM), denying its application for suspension of noncompetitive oil and gas lease W-35170 and holding the lease to have expired upon the running of its extended term.

Lease W-35170, embracing the W 1/2 NE 1/4, E 1/2 NW 1/4 sec. 32, T. 50 N., R. 69 W., sixth principal meridian, Campbell County, Wyoming, was issued effective July 1, 1972, to Cardinal Petroleum Company. In an assignment approved effective June 1, 1974, Cardinal assigned 100 percent record title in the lease to Phillips Petroleum Company (Phillips). Based on a finding that actual drilling operations were in progress at the end of the primary term, BLM, on April 26, 1983, held that the lease was extended for 2 years to June 30, 1984.

By decision dated May 26, 1983, BLM approved an Assignment of Drilling and Operating Agreement from Phillips to Lario. Lario in turn assigned fractional interests in operating rights to each of five other operators. 1/ The decision specified that the assignments were limited to a depth of 8,473 feet below the surface and that operating rights below this depth, as well as record title to the lease, continued to be held 100 percent by Phillips.

By letter dated March 8, 1984, Lario submitted to the BLM District Office a preliminary application for designation of the Brennan (Minnelusa) Unit area as an area logically subject to development through secondary

1/ The details of the assignments are recited as follows in the decision: "By one conveyance, Phillips assigns to Lario 60 percent interest in operating rights in all lands of the above-numbered oil and gas lease from the surface of the ground to the stratigraphic equivalent of 8473 feet found in the Lario #1 Neta-Federal Well.

"By five conveyances, Lario assigns 30 percent interest in operating rights (7.5% each to Great Northern, Anderson, and Bradley; 3.75% each to Sawtooth and T Bar S) in all lands of the above-numbered oil and gas lease to the stratigraphic equivalent of 8473 feet.

"By one conveyance, Phillips assigns to Lario 40% interest in operating rights in all lands of the above-numbered oil and gas lease from the surface of the ground down to the stratigraphic equivalent of the base of the Minnelusa formation as found in the Lario #2 Neta-Federal well in the NW 1/4 NE 1/4, Sec. 32, T 50 N, R 69 W. This depth is being considered as more or less stratigraphically equivalent of 8473 feet.

"By five conveyances, Lario assigns 20% interest in operating rights (5% each to Great Northern, Anderson, and Bradley; 2.5% each to Sawtooth and T Bar S) in all lands of the above-numbered oil and gas lease to the base of the Minnelusa formation, stratigraphically equivalent to 8473 feet.

"Operating rights from the surface to 8473 feet in the #1 Neta-Federal Well or to the base of the Minnelusa formation in the #2 Neta-Federal Well are now held:

T. 50 N., R. 69 W., 6th Prin Mer, WY	Lario Oil & Gas Company	50.00%
Sec. 32: W 1/2 NE 1/4, E 1/2 NW 1/4.	Great Northern Drilling	
160.00 acres	Co., Inc.	12.50
(all lands in lease)	L. P. Anderson	12.50
	Bradley Producing Corp.	12.50
	Sawtooth Oil Company	6.25
	T Bar S Oil, Inc.	6.25"

recovery operations. Lario also requested approval of the proposed unit agreement. On June 22, 1984, the Wyoming Oil and Gas Conservation Commission entered an order approving unitized operations of the Minnelusa formation, effective May 26, 1984.

By letter dated May 15, 1984, but received by BLM on June 26, 1984, Lario, on behalf of itself and its five assignees, applied for a suspension of operations or production of lease W-35170. As reasons for its request, Lario cited certain specifics of its proposed recovery project and the efforts it was undertaking in attempting to form a unit. 2/

BLM denied the application in a letter dated July 20, 1984. In that letter, which is the subject of Lario's appeal herein, the District Manager stated in pertinent part as follows:

It has been determined that a suspension of operations is not justified.
Pursuant to section 3103.4-2 of the Code of

2/ Lario's letter stated:

"1. The waterflood secondary recovery project planned by Lessees is in the best interests of conservation, prevention of waste and ultimate recovery of oil reserves. It will result in substantial additional royalty income to the federal government beyond that which would be received if the secondary recovery project is not undertaken. Our organization of the proposed secondary recovery unit has proceeded under the assumption that a part of the lands subject to Lease W-35170 would be included in the unit.

"2. The working interest owners in the proposed secondary recovery unit area are in agreement as to the allocation of unit costs and production and as to the terms of the unit agreement. In order to obtain governmental approval of the unit, however, we must secure the agreement of royalty owners controlling eighty percent of the unit acreage. As of this time, certain fee owners who control royalties of more than twenty percent of the acreage have been unable to come to agreement as to the allocation of secondary production royalties to the various lease tracts comprising the unit.

"3. Even if, as Lessees hope, the problem with the royalty owners can be resolved in the near future, approval of the unit agreement by the Bureau of Land Management cannot be given until the Wyoming State Oil and Gas Conservation Commission has approved the unit. The Wyoming State Oil and Gas Commission cannot issue an order approving the unit until we have demonstrated that 80% or more of the royalty interest owners have voluntarily committed their interests to the unit.

"In view of the foregoing, Lessees request the following specific relief:

"A. That the suspension of Lease W-35170 be made effective May 1, 1984, and that the lease be held in suspension until such time as Lessees are able to acquire the consent of the royalty owners to the unit agreement and all necessary state and federal authorizations and approvals of said unit, or for a period of one year, whichever first occurs; and

"B. That the current record title owners of the lease be relieved of any and all obligations pertaining to the payment of lease rentals with respect to the lease for the period during which operations and production are in a state of suspense."

Federal Regulations "No suspension of operations and production will be granted for any oil and gas lease in the absence of a well capable of production on the leasehold, except where the Authorized Officer directs or assents to a suspension in the interest of conservation." Since the primary term of Lease W-35170 has expired, the lands of this lease will be reissued under a new lease with the requirement that it must be committed to the Brennan (Minnelusa) Unit. Therefore the lands of Lease W-35170 are considered as a Federal Tract which will be subject to the Secondary Unit in the interest of conservation.

When the Wyoming Oil and Gas Conservation Commission issues an order approving this unit under the Wyoming Statutory Unitization Provisions, final approval of the Secondary Unit Area will be given by this office. Please submit revised exhibits showing the lands of Lease W-35170 as an unleased Federal Tract. [3/]

In another letter, also dated July 20, 1984, the Chief, Branch of Fluid Minerals, advised Lario that the Brennan (Minnelusa) Unit agreement had been approved effective August 1, 1984.

Lario contends that lease W-35170 should either have been suspended or deemed extended under 43 CFR 3107.3-1 4/ because it was committed to the Brennan (Minnelusa) Unit. Lario argues that BLM "could have and should have" approved the unit so as to extend the lease under this regulation. Lario asserts that BLM should be estopped from denying the requested suspension because it acted in the erroneous belief that the Brennan (Minnelusa) Unit had not been approved by the Wyoming Oil and Gas Conservation Commission.

3/ On Aug. 17, 1984, the Acting Chief of BLM's oil and gas section issued a decision to Phillips, holding lease W-35170 to have expired. That decision stated in pertinent part:

"On June 26th and 29th, Minerals Management Service received rental for oil and gas lease W-35170 which issued with an effective date of July 1, 1972, for a term of ten years and was extended through June 30, 1984, by drilling.

"According to our records, there has been no action concerning this lease to extend it further. Therefore, unless you can provide evidence to the contrary, lease W-35170 is held to have expired on June 30, 1984.

* * * * *

"This decision becomes final 30 days after its receipt unless it is appealed, and rental in the amount of \$ 320.00 will be scheduled for refund."

The file before us contains no indication that Phillips appealed this decision.

4/ 43 CFR 3107.3-1 provides:

"Any lease or portion of a lease, except as described in § 3107.3-3 of this title, committed to a cooperative or unit plan that contains a general provision for allocation of oil or gas shall continue in effect so long as the lease or portion thereof remains subject to the plan; Provided, That there is production of oil or gas in paying quantities under the plan prior to the expiration date of such lease."

Lario points out that it incurred substantial expenditures in forming the unit. Lario asserts that a suspension is in order and should be granted, where the applicant has displayed diligence and incurred expenditures, conservation will be served, and legal authority exists for suspension. Lario cites Bruce Anderson, 30 IBLA 179 (1977), as support for its argument that the lease should have been extended because of its commitment to the unit. Lario has also requested a hearing.

BLM's answer asserts, without elaborating, that a suspension would not have conserved resources. Citing 43 CFR 3165.1(b), BLM also argues that the application for suspension was defective because it was not filed by the lessee of record, Phillips.

Initially, we note that a certain element of confusion is presented by this appeal because Lario has commingled two discrete questions. First, there is the question whether a suspension of operations pursuant to 43 CFR 3103.4-2 should have been granted. Second there is the independent issue whether the term of the lease should have been extended under section 3107.3-1 because of commitment of the lease to the Brennan (Minnelusa) Unit agreement. While there are similar problems with respect to either course of action, it is important to recognize that different considerations apply in determining whether a suspension should be granted or a lease properly extended.

[1] Thus, section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1982), empowers the Secretary with discretionary authority to suspend by order, in the interest of conservation, operation and production requirements for an oil and gas lease and thereby, in effect, extend the term of the lease. Under Departmental regulations a lessee must file in the proper office an application for such relief in triplicate before an order pursuant to the statutory provision will be considered. 43 CFR 3103.4-2. See Jones-O'Brien, 85 I.D. 89 (1978). This Department has long held that where a lessee makes application for a lease suspension the Secretary (or his delegate) is under no obligation to suspend; he may do so in his informed discretion after making the necessary finding that a suspension is in the interest of conservation. Jack Grynberg, 88 IBLA 330 (1985); Sierra Club (On Judicial Remand), 80 IBLA 251, 262 (1984); Jones-O'Brien, supra at 91. The word "conservation" is applicable not only to conservation of exploitable natural resources but also includes prevention of environmental harm. Copper Valley Machine Works v. Andrus, 653 F.2d 595 (D.C. Cir. 1981). In Copper Valley, the court discussed the purpose of section 209 and quoted the following from the legislative history.

"The very purpose of the bill is to give some equitable consideration to the many leases where the Department of the Interior, by its order, has prohibited production of oil from the leases." 76 Cong. Rec. 705 (1932) (remarks of Representative Eaton). It was further explained: "It seems unfair for the Government to order lessees to refrain from production and then collect rent for the non-production period." Id. at 1881 (1932) (remarks of Representative Eaton).

Id. at 603.

The instant lease had already been extended due to diligent drilling operations over the expiration date. While appellant alleges that it made substantial efforts in attempting to establish the Brennan (Minnelusa) Unit area and was, apparently, frustrated by the failure of significant royalty interest owners to assent to the agreement, the proposed unit agreement was not submitted to BLM until March 13, 1984, at the same time that Lario commenced contacting royalty and working interest owners to request their assent to commitment. The signed unit agreement was not submitted to BLM for approval until June 12, 1984. The initial plan of operations under the unit was not submitted until June 25, 1984. Thus, it was not until the final 2 weeks of the extended term that it was even possible for the authorized officer to act on the request. Appellant's delay and difficulties cannot be laid at BLM's door.

More critically, however, the request for suspension could not be granted because it was fatally defective as to form. As was noted above, Lario acquired 100 percent of the working interest in the lease to a depth of 8,473 feet below the surface. Lario then proceeded to assign fractional percentages of its working interests to other parties. When Lario applied for a suspension, it submitted a signed statement containing the signatures of all of the other holders of working interests which it had assigned. It failed, however, to submit a request for suspension by Phillips. Phillips was not only the lessee of record, it also held 100 percent of the working interests below the 8,473 foot level. The applicable regulation expressly requires that an application for suspension

must be filed with the authorized officer prior to the expiration date of the lease; must be executed by all lessees of record or, in the case of a Federal unit approved under Part 3180 of this title, by the unit operator on behalf of committed tracts or by all lessees of such tracts; and include a full statement of the circumstances that render such relief necessary. [Emphasis supplied.]

43 CFR 3165.1(b). The submitted application clearly did not comply with this mandatory requirement.
5/

The reason why the holder of record title must petition for a suspension is obvious. First of all, the record titleholder is responsible for all obligations under the lease. See 43 CFR 3106.7-2. Indeed, only the record titleholder can petition for reinstatement. Howard H. Vinson, 90 IBLA 280 (1986); see Grace Petroleum, 62 IBLA 180 (1982). Thus, it is only reasonable that the record titleholder or holders petition for a suspension of the lease terms.

5/ We note that in Monsanto Co., 82 IBLA 108 (1984), the Board allowed a reformation of an assignment of operating rights so that the assignment would be of record title, thereby permitting a nunc pro tunc approval of a joinder to a unit agreement. In that case, however, appellant and the assignor had both argued that they had intended to assign record title and had inadvertently utilized an assignment of operating rights form. The Board allowed the parties to conform the assignment to this stated intent. No intent to transfer record title, however, is alleged in the instant case.

The instant case highlights exactly the type of problem which could develop were the rule otherwise. Phillips is not only the record titleholder but owns the operating rights below the 8,473 foot level. If the Department suspended the lease under 30 U.S.C. § 209 (1982), all operations on the lease would be prohibited. See Oil & Gas Lease Suspension, M-36953, 92 I.D. 293 (1985). This would, in effect, unilaterally prohibit Phillips from exercising its retained operating rights. Moreover, a suspension would also affect Phillips' obligations as lessee of record. Because of these considerations, agreement by the lessee of record is required before the Department can grant a request for suspension. 6/ Appellant having failed to submit such a document evidencing the assent of Phillips prior to lease termination, the Department lacked the authority to grant the suspension. Cf. Jones-O'Brien, supra at 94.

[2] Appellant also suggests that the subject lease should have been extended under 43 CFR 3107.3-1 as it was committed to the Brennan (Minnelusa) Unit "which was fully formed and approved effective May 26, 1984." Assuming that production under the unit plan was had, 7/ commitment of the lands to the unit prior to the expiration date of the lease would have extended the term under 30 U.S.C. § 226(j) (1982). Appellant's argument, however, proceeds from an erroneous factual premise, viz., that the unit plan was effective on May 26, 1984.

The May 26 date is the date that the Wyoming Oil and Gas Conservation Commission issued a final order approving unitized operations of the Minnelusa Formation. But, this is not the date that the unit was approved. Contrary to appellant's implicit assumption, the Wyoming Oil and Gas Conservation Commission lacks the authority to unitize Federally owned lands or minerals, absent the approval of the Secretary of the Interior. See Kirkpatrick Oil & Gas v. United States, 675 F.2d 112 (10th Cir. 1982). Moreover, the unit agreement itself provides, in Article 20, that, "This Agreement shall * * * become effective as of 7:00 a.m. on the first day of the calendar month next following the approval of this Agreement by the Secretary of the Interior or his duly authorized delegate." Thus, under the express terms of the unit agreement, the agreement would be effective only after the authorized officer approved it. In the instant case, the authorized officer approved the unit agreement on July 20, 1984, thereby making the effective date August 1, 1984. Appellant's lease, however, had already expired upon the running of its extended term at midnight, June 30, 1984. See Getty Oil Co., 72 IBLA 39 (1983).

6/ Moreover, while the regulations do not require the prior assent of holders of operating rights, it would seem, as a pragmatic matter, that approval of a suspension application should not be granted unless the lessee of record joins with the holder of the operating rights in filing the application.

7/ Lario briefly touches upon this point in its brief at page 5: "The administrative files of the [Casper] District Manager * * * should indicate that the unit plan included an allocation of oil and gas and that there was production of oil in paying quantities under the plan prior to the expiration date W-35170."

Appellant's reliance on our decision in Bruce Anderson, supra, is misplaced. That decision involved joinder of an existing unit. In that case, Anderson sought to commit land he had under a federal lease to the Delaney Rim Unit Agreement. The joinder documents were submitted to the Area Oil and Gas Supervisor on April 22, 1976. They were returned, unapproved, to the unit operator 6 days later on the ground that the lease in question would expire at midnight of April 30, 1976, whereas the joinder would not be effective until May 1, 1976. In Bruce Anderson, supra, the Board reversed this decision, holding that the lease had been effectively committed to the unit upon the submission of the required joinder documents to the authorized officer.

The critical distinction between the instant case and the decision in Anderson, however, lies in the fact that in Anderson the unit agreement was already in esse. Thus, the Board held in Anderson that "commitment is accomplished when there has been compliance with all the requirements set forth in the unit plan" since, at that time, a binding commitment of the interest has occurred. *Id.* at 184. In contradistinction, no such binding commitment to a unit plan could occur in the instant case since, until it was approved by the authorized officer, no unit plan existed insofar as Federal oil or gas interests were concerned. This point was subsequently made in F. J. Tully, 37 IBLA 62 (1978), where Judge Thompson noted, "There could be no valid commitment of [a] lease until the unit agreement was approved." *Id.* at 66 (Thompson, A.J., concurring).

Under this analysis, even if we apply the Anderson theory to the formation of a unit agreement, the earliest possible date for commitment of the lease is July 20, a date still beyond the expiration date of the subject lease. Thus, BLM correctly held that the lease was not extended under 43 CFR 3107.3-1. In light of our disposition, appellant's request for oral argument is denied.

Appellant's suggestion that BLM is responsible for a delay in the approval of the unit agreement cannot be given any credence. The record discloses that BLM acted with expedition in processing appellant's filings. While it may be unfortunate that BLM was unable to approve the unit agreement prior to the expiration of lease W-35170, this failure is properly charged to appellant, as it failed to commence formation of the unit sufficiently in advance of the expiration date of the extended term of lease W-35170 to permit BLM to adequately consider the proposal before the lease expired.

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.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier Bruce R. Harris
Administrative Judge

Administrative Judge

