

**Editor's note: Reconsideration granted, decision sustained as modified -- see 100 IBLA 371, 95 I.D. 1 (Jan. 15, 1988)**

HIKO BELL MINING & OIL CO., ET AL.

IBLA 85-102; IBLA 85-103; IBLA 85-104; IBLA 85-105 Decided July 30, 1986

Appeals from decisions of the Utah State Office, Bureau of Land Management, declaring oil and gas leases terminated. U-14233 et al.

Affirmed.

1. Oil and Gas Leases: Discovery -- Oil and Gas Leases: Expiration -- Oil and Gas Leases: Extensions -- Oil and Gas Leases: Production -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements

Although the statutory language in sec. 17(e) and 17(j) of the Mineral Leasing Act, 30 U.S.C. § 226 (1982), regarding the extension of leases by reason of production is not identical, a single standard applies. Mere discovery of oil or gas in paying quantities is insufficient to extend a lease subject to a unit agreement.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Hiko Bell Mining and Oil Company, Natural Gas Corporation of California, Sheridan McGarry, and Enserch Exploration, Inc., have appealed from identical decisions of the Utah State Office, Bureau of Land Management (BLM), dated October 15, 1984, declaring certain oil and gas leases 1/ to have terminated effective August 16, 1984, for lack of production. Each of the leases at issue was within the Dirty Devil unit at the time of lease expiration. All leases had a common expiration date because each had received the same 2-year extension upon elimination from a prior unit effective August 16, 1982.

1/ These leases are:

<u>IBLA Docket No.</u>	<u>Appellant</u>	<u>Lease No.</u>	85-102	Hiko Bell Mining
& Oil Co. U-14233				
85-103	Natural Gas Corporation	U-9215 and U-13370		of California
85-104	Sheridan McGarry	U-23265		
85-105	Natural Gas Corporation	U-0148651, U-0148653-A		of California
and U-1206, U-2557, U-3443		Enserch Exploration, Inc.	U-14656, U-23156,	
	U-23283, and U-38433			

Appellants contend that BLM erred in its decision and point to the initial Dirty Devil unit obligation well, the Dirty Devil 22-27, in support thereof. This well was commenced on August 5, 1984, and reached a total depth of 4,377 feet on August 8. On that same day, the well had a "substantial gas kick," appellants state, and seven stands of drill pipe were removed from the hole. Well reports show that the well flowed gas through its safety manifold at the rate of 2.475 MMCFGPD (Exh. 2 to appellants' statement of reasons). Appellants observe that on subsequent days the gas flow continued and the operator attempted to "kill" the well so that casing could be run. Casing was eventually run on August 15 and 16, and electric logs were also run. Finally on August 17, 1984, at 0230 hours, four intervals of the Wasatch formation were perforated and the rig was released at 9 a.m. that day.

Appellants acknowledge that the Dirty Devil 22-27 was not physically capable of producing at midnight on August 16, 1984, but contend, nevertheless, that the well had discovered gas in paying quantities under the Dirty Devil unit plan prior to lease expiration. Gas production was achieved on August 8, appellants state, and this production continued until the well was killed. Drilling reports reflect that gas was flared on August 13 and 15. In the opinion of Robert E. Covington, an officer of and geologist for Hiko Bell Mining and Oil Company, the recovery of natural gas during drilling, the evaluation of electric logs, and other data prior to August 17, 1984, clearly reflected that subsequent sustained production would confirm that the well was capable of producing gas in paying quantities under the unit agreement. Appellants argue, therefore, that their leases were entitled to an extension under 30 U.S.C. § 226(j) (1982), regulation 43 CFR 3107.3, and article 18(e) of the unit agreement.

The gist of appellants' argument on appeal is that the Mineral Leasing Act of February 25, 1920, provides two distinct standards for the extension of a lease at the end of its fixed term: one standard deals with individual leases; the other deals with leases subject to a unit agreement. Appellants contend that an individual lease may be extended by a well capable of production at the end of a lease term where casing has been run and the well perforated and completed for production. Relying upon the Dirty Devil unit agreement, which in appellants' view equates the time of discovery of oil and gas with the time at which production is had under the unit plan, 2/ appellants contend that a lease subject to a unit may be extended by discovery of oil or gas. Completion of a well subject to a unit plan is not required, appellants maintain, to extend a lease subject to a unit.

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2/ One example of this correspondence occurs at page 1, lines 42-46, of the unit agreement:

"WHEREAS, part of the lands within the unit area are now subject to the Devil's Playground including the parties to said Devil's Playground Unit Agreement, that in the event of a discovery of unitized substances in paying quantities under this agreement, the Devil's Playground Unit Agreement shall be terminated and the lands subject thereto shall be merged into this unit agreement \* \* \*."  
(Emphasis supplied.)

In support of their argument, appellants contrast the extension provisions of 30 U.S.C. § 226(e) (1982) and 30 U.S.C. § 226(j) (1982). Individual leases are governed by 30 U.S.C. § 226(e) (1982):

Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. [Emphasis supplied.]

Leases subject to a unit plan are governed by 30 U.S.C. § 226(j) (1982):

Any other lease [other than one for a term of 20 years] issued under any section of this chapter which has heretofore or may hereafter be committed to any such [unit] plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. [Emphasis supplied.]

Referring to the underscored language above, appellants contend that had Congress intended a single standard to apply to both individual leases and leases subject to a unit, it would have used the same phrase or term of art in section 226(e) and 226(j). <sup>3/</sup>

[1] In Yates Petroleum Corp., 67 IBLA 246, 89 I.D. 480 (1982), this Board rejected appellants' argument that a different standard exists for the extension of an individual lease and one subject to a unit plan. In that opinion, at page 253, the Board noted that the reference in section 17(j), 30 U.S.C. § 226(j) (1982), to production in paying quantities "replicates" the provision found in section 17(e), 30 U.S.C. § 226(e) (1982). For purposes of an extension under section 17(j), a well subject to a unit agreement must be capable of producing sufficient hydrocarbons to recover the costs of operating and marketing, but need not recoup the cost of drilling. Id. at 258, 89 I.D. at 487. An identical standard applies to an extension of an individual lease at the end of its primary term. Id. at 252-54, 89 I.D. at 484-86. Stressing the similarity of the language in section 17(e) and 17(j), the Board stated that it is difficult to ascertain why the same phrase, used in the same context (for the purpose of extending a lease) should have a dissimilar meaning within section 17. This conclusion was reached even though the Board acknowledged that a less demanding standard for extension, as sought by appellants herein, was more easily defended than a stricter standard.

Our decision affirming BLM is based upon our interpretation of the relevant statute, section 17(j). While we acknowledge that the model unit agreement employed by appellants makes repeated references to the discovery

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<sup>3/</sup> Appellants also point out that regulations in 43 CFR Subpart 3107 (1983) and Article 18(e) of the unit agreement preserve the distinction between the language in section 17(e) and 17(j).

of oil and gas, <sup>4/</sup> the statutory language regarding a lease extension is preserved intact in section 18 of the agreement. No need exists, therefore, to look beyond the statute.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Utah State Office are affirmed.

Will A. Irwin  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge.

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<sup>4/</sup> Appellants' citation to Joseph I. O'Neill, Jr., 1 IBLA 57 (1970), in support of the distinction between the discovery of oil and gas and the completion of a well capable of producing the same does not change our view. That case did not involve the extension of a lease subject to a unit plan and, accordingly, did not involve the construction of section 17(j), 30 U.S.C. § 226(j) (1982). In O'Neill, the term "discovery" was part of a statute, 30 U.S.C. § 187a (1982), that determined whether a lease segregated by partial assignment was extended. In the present case, that term forms no part of section 17(j), but appears rather in a unit agreement that acknowledges the supremacy of section 17(j) in determining whether a lease is extended

