

MOBIL PRODUCING TEXAS AND NEW MEXICO, INC.

IBLA 85-921

Decided August 11, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, holding oil and gas lease NM-A 19773 (TX) to have expired at the end of its primary term.

Affirmed.

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

Extension of an oil and gas lease by reason of drilling over the expiration date of the lease requires that drilling operations be ongoing on the expiration date and be conducted in the manner in which someone seriously looking for oil or gas in that area could be expected to proceed. A decision holding a lease to have expired will be affirmed where the well on the lease was abandoned prior to the lease expiration date, notwithstanding the lessee's intent to drill an additional well.

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

The Secretary of the Interior has the discretionary authority to suspend an oil and gas lease in the interest of conservation where drilling under prevailing conditions would damage the lease environment. Although a suspension of operations may be granted retroactively after the lease expiration date, a prerequisite is an application filed prior to the expiration of the lease. In the absence of a timely filed application, there is no lease in existence which may be suspended.

APPEARANCES: Marc J. Magids, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Mobil Producing Texas and New Mexico, Inc., has appealed from a decision dated August 13, 1985, of the New Mexico State Office, Bureau of Land

Management (BLM), denying its request for extension of noncompetitive oil and gas lease NM-A 19773 (TX), and holding the lease to have expired upon the running of its primary term at midnight, December 31, 1984.

Lease NM-A 19773 (TX), embracing 2560 acres of land within the Davy Crockett National Forest, Houston County, Texas, was issued pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1982). The lease was issued effective January 1, 1975, to Mobil Oil Corporation for a 10-year primary term. In an assignment approved effective April 1, 1980, Mobil Oil Corporation assigned 100 percent of record title in the lease to Mobil Producing Texas and New Mexico, Inc. (Mobil).

It appears from the record a drilling permit was issued for the Crockett National Forest No. 4, well to P.A.M. Petroleum, Inc. (PAM), a designated operator, on October 17, 1984. The well was subsequently spudded on the lease on December 12, 1984, reached total depth of 1,676 feet on December 23, 1984, and was plugged without approval on December 24, 1984.

Operations were voluntarily abandoned on this well because it proved to be a dry hole which could not justify further drilling. No further drilling was conducted on the lease prior to the December 31, 1984, expiration date.

On January 11, 1985, appellant filed with BLM a request for a "one year extension" of the lease accompanied by a rental payment for the 11th lease year. ^{1/} In support of the request, appellant stated that the operator "was unable to commence drilling on this lease prior to December 31, 1984, because of adverse weather conditions but intends to commence operations on this lease shortly."

BLM denied extension of the lease in its August 13, 1985, decision stating:

Diligent drilling operations pursuant to 43 CFR Subpart 3107.1 were not being conducted within the leasehold at the end of the primary term, nor was a request for suspension filed pursuant to 43 CFR Subpart 3103.4-2. The District Manager, Tulsa concluded that any request for a retroactive suspension and extension, although recommended for approval by the Forest Service, would be untimely.

Appellant asserts in its statement of reasons for appeal that its operator, PAM, determined by December 23, 1984, when well No. 4 reached a total depth of 1,676 feet, that it was "not economically feasible to

^{1/} In the event the lease was properly subject to extension, the failure to tender the rental on or before the lease anniversary date would cause the lease to terminate automatically by operation of law, 30 U.S.C. § 188(b) (1982), thus requiring further action by the lessee to reinstate the lease. See 30 U.S.C. § 188(d) and (e) (1982).

continue drilling this well based upon the log data." However, appellant asserts "the log data and other relevant information did reveal that there was a strong possibility of oil production within the Wilcox formation adjacent to the No. 4 well within this same leasehold interest." Appellant asserts the operator attempted unsuccessfully to contact BLM to obtain permission to plug and abandon the No. 4 well and obtain a permit to drill an adjacent well on the same lease. 2/

Appellant further asserts that:

Pam's failure to drill another well prior to the expiration of the primary term of the subject lease was absolutely due to reasons and circumstances beyond its control. The severe damage and soil erosion which resulted from the drilling operations of the No. 4 Well as well as the inclement weather did not make the drilling of Pam's next well feasible in the eyes of the U.S. Forest Service until early spring, 1985. Pam had already staked a new location and was preparing its rig for drilling operations.

Appellant contends that:

Pam Petroleum, Inc. and Mobil should be allowed an extension of said lease due to the fact that this lease would still be in full force and effect today if it were not for the statements made by the U.S. Forest Service, Pam's "good faith" due diligence, and Pam's equal concern for conservation and preservation of the environment within federally owned forest lands. [3/]

[1] Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982) provides that a noncompetitive oil and gas lease has a primary term of 10 years and shall continue so long as oil or gas is produced in paying quantities. The Act further provides that any lease issued under this section for land on which 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. 30 U.S.C. § 226(e) (1982); 43 CFR 3107.2-3; Christian F. Murer, 78 IBLA 172 (1983). In order to qualify for an extension by reason of drilling over the lease expiration date, such drilling operations must be ongoing on the lease expiration date and must be "conducted in the manner in which someone seriously looking for oil or gas could be expected to proceed in that particular area, given existing knowledge or geologic and other pertinent facts." 43 CFR 3107.1; see Christian F. Murer, supra. Appellant acknowledges that no drilling

2/ There is nothing in the record to indicate an application for permit to drill was filed for this intended well.

3/ The record contains a letter from the Forest Service to BLM dated Jan. 9, 1985, recommending that the lease be extended and acknowledging that the Forest Service requested the operator to delay drilling the second well on the leasehold due to heavy rain and fragile soil conditions.

operations were being conducted over the expiration date of the lease (December 31, 1984). Hence, the lease clearly did not qualify for an extension by reason of drilling. Accordingly, the decision of BLM must be affirmed unless there was error in the failure to approve a suspension of operations.

[2] The Mineral Leasing Act of 1920 authorizes the Secretary of the Interior to suspend oil and gas leases in the interest of conservation. 30 U.S.C. § 209 (1982). An approved suspension of operations has the effect of extending the term of a lease by adding thereto any period of suspension, during which time rental payments shall be suspended. 43 CFR 3103.4-2. It has been recognized that the Department may suspend a lease in the interest of conservation where action cannot be taken on an application because of the time needed to comply with the requirements of the National Environmental Policy Act. Jones-O'Brien, Inc., 85 I.D. 89, 91 (1978); see Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981); Union Oil Co. v. Morton, 512 F.2d 743 (9th Cir. 1975). A suspension of operations may also be granted in the interest of conservation where drilling under prevailing conditions would have damaged the lease environment. See Copper Valley Machine Works, Inc. v. Andrus, *supra*. However, even assuming appellant's request for "extension" could be treated as a request for suspension, it is well settled that in order to allow approval of a suspension, an application therefor must be filed prior to expiration of the lease.

In Fuel Resources Development Co., 69 IBLA 39 (1982), the Board discussed the requirement of filing an application for suspension of operations prior to the expiration date of an oil and gas lease:

It is well settled that in the absence of a written application for suspension properly filed prior to the expiration date of the lease, the lease terminates. Teton Energy Co., 61 IBLA 47 (1981); Coseka Resources (U.S.A.) Ltd., 56 IBLA 19 (1981); Coronado Oil Co., 52 IBLA 308 (1981). However, an oil and gas lease may be retroactively suspended where the expiration date has passed if a suspension application is properly filed before the lease terminates. Jones-O'Brien, Inc., *supra*. The distinction has been explained as follows: "An application filed before the lease expires, can be viewed as preserving the right of the Department to act on the application. If a suspension application is not filed prior to the lease expiration, the lease ends totally and there is nothing in existence for the Department to suspend." Jones-O'Brien, Inc., *supra* at 94-95 (citation omitted).

69 IBLA at 41.

Since it is clear from the record in this case no request for suspension of operations was filed prior to the expiration of the lease, there is simply no basis for approving a suspension of appellant's lease. Hence, the lease was properly held to have expired at the end of its term.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge