

PENNZOIL CO.

IBLA 85-16

Decided October 20, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding lease W-48641 to have expired at the conclusion of a 2-year period following its elimination from a unit.

Affirmed.

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

Where unit termination coincides with the conclusion of the primary term of a producing lease committed to said unit, the lease is extended by 30 U.S.C. § 226(j) (1982) for a fixed term of 2 years and is not regarded as held by production during this 2-year period.

APPEARANCES: Carleton L. Ekberg, Esq., Laura L. Payne, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Regional Solicitor's Office, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Pennzoil Company (Pennzoil) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 27, 1984, declaring oil and gas lease W-48641 to have expired on June 22, 1984, at the end of its extended term. The decision amended an earlier BLM decision of August 16, 1984, holding that this lease would continue through June 22, 1985, and so long thereafter as oil or gas is produced in paying quantities. The rationale for BLM's decision of the 16th was set forth in a third decision, also dated August 16, 1984, explaining that lease W-48641 should not be regarded as held by the production occurring on the lease of its unitized parent, lease W-0224263(A).

The instant appeal arises in a complex factual setting beginning with the issuance of oil and gas lease W-0224263 effective November 1, 1962. A partial assignment of this lease 1 month later caused BLM to designate the 1,920 acres so assigned as W-0224263(A). ^{1/} During the 10-year primary

^{1/} This partial assignment by the original leaseholder, C. B. Woodman, Jr., to Mule Creek Oil Company, Inc., was followed in March 1968 by a further

term, lease W-0224263(A) was committed to the Creston Unit, and a well was completed 2/ on lands within the lease itself. This well caused BLM to transfer administration of lease account W-0224263(A) to the Geological Survey. By letter dated November 14, 1972, BLM informed appellant that the Creston Unit had terminated on October 31, 1972, and that this lease was continued for 2 years to October 31, 1974, and so long thereafter as oil or gas was produced in paying quantities. Although Marathon Oil Company, a 50-percent owner of this lease with appellant, questioned BLM's conclusion, no appeal was taken. This fixed term extension provision is at the heart of this appeal.

The record next reveals that lease W-0224263(A) was partially committed to the Creston II unit on October 31, 1974. This partial commitment caused a segregation of this lease. Those lands (1,280 acres) committed to the unit retained lease serial number W-0224263(A) and included the aforementioned well. Those lands (640 acres) not committed were given serial number W-48641. Citing regulation 43 CFR 3107.4-3 (now 43 CFR 3107.3-2), BLM concluded that lease W-48641 was continued until October 31, 1976, and so long thereafter as oil or gas was produced in paying quantities. This information was conveyed to appellant by letter of December 6, 1974, and again no appeal was taken.

Before expiration of this 2-year extension, BLM corrected its December 6, 1974, letter and informed appellant by letter of August 3, 1976, that lease W-0224263(A) was held by production when partially committed to the Creston II unit because of the completion of the well on September 21, 1972, within the original 10-year term. As such, BLM concluded, lease W-48641 should be continued for so long as oil or gas was produced in paying quantities under its unitized parent, lease W-0224263(A).

Appellant's pleadings reveal that in July 1976 the Creston II unit agreement was contracted or terminated, and lease W-0224263(A) was eliminated in its entirety. Two months later, this lease and lease W-48941 were committed to the producing Creston III unit where they remained until this unit was contracted and lease W-48641 wholly eliminated. Believing contraction to have occurred on June 22, 1983, BLM held by letter dated August 16, 1984, that the term of lease W-48641 was to be for 2 years, *i.e.*, until June 22, 1985, and so long thereafter as oil or gas was produced in paying quantities.

In a companion decision also dated August 16, 1984, BLM vacated its letter of August 3, 1976, which held that the term of lease W-48641 was for so long as oil or gas was produced under its unitized parent, W-0224263(A).

fn. 1 (continued)

further assignment to William C. Armor, Jr. Armor then assigned his interest in lease W-0224263(A) to Marathon Oil Company, effective June 1, 1968, and Marathon assigned 50 percent of its interest to appellant Pennzoil, effective Oct. 1, 1969.

2/ By memorandum of Sept. 29, 1972, the District Engineer, Rock Springs, Wyoming, described this well, located in the NE 1/4 NE 1/4 sec. 12, T. 18 N., R. 92 W., Sixth principal meridian, as a "[n]ot paying unit well, but paying on lease basis." See Yates Petroleum Corp., 67 IBLA 246 (1982).

In so doing, it reaffirmed its letter dated December 6, 1974, limiting the term of lease W-48641 to 2 years and so long thereafter as oil or gas was produced in paying quantities.

The last of the decisions in this case was issued on August 27, 1984. That decision informed appellant that BLM had been mistaken in believing that the Creston III unit had contracted on June 22, 1983, when, in fact, June 22, 1982, was the actual date. The 2-year extension granted to lease W-48641 by reason of its total elimination from this unit should, therefore, have commenced on June 22, 1982, and concluded on June 22, 1984, BLM stated. There being no production on lease W-48641, BLM held that this lease had expired some 2 months earlier on June 22, 1984. This decision of August 27, 1984, provoked the instant appeal.

As noted above, the events occurring on October 31, 1972, are at the heart of this appeal. Appellant contends that lease W-0224263(A) became a lease in an indefinite term as a result of the production that was occurring on the leasehold at midnight. Appellant maintains that, as a lease held by production in its extended term, the partial commitment of this lease on October 31, 1974, to the Creston II unit caused lease segregation and extended lease W-48641 for so long as its unitized parent produced. The subsequent termination of this unit, the commitment of both leases to the Creston III unit, and the elimination of lease W-48641 therefrom did not change the term of lease W-48641; that term, in appellant's view, remained for so long as its producing parent, W-0224263(A), was held by production in paying quantities. ^{3/} Appellant contends, therefore, that BLM erred in holding that lease W-48641 was limited to a fixed 2-year term upon its elimination from the Creston III unit.

The Mineral Leasing Act, 30 U.S.C. § 181 (1982), is the starting point to understand what happens when a unit terminates. At 30 U.S.C. § 226(j) (1982), Congress provided:

Any lease which shall be eliminated from any such approved or prescribed [unit] plan * * * and any lease which shall be in effect at the termination of any such approved or prescribed plan * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities. [Emphasis supplied.]

If the "original term" of a lease may be equated with its "primary term," the statute on its face suggests that the term of lease W-0224263(A) as of midnight, October 31, 1972, should be a fixed 2-year period commencing upon unit termination at midnight. Where, as here, however, the lease has within its boundaries a producing well, the issue is more complicated because the production from such lease extends indefinitely the term of the lease beyond

^{3/} Appellant states in a pleading filed Nov. 30, 1984, that production has continued from one or more wells located upon lands covered by lease W-0224263(A) and that the lease retains its producing status at this time (Statement of Reasons at 7).

midnight, October 31, 1972, i.e., for so long as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1982).

The purpose of a lease extension upon termination of a unit is set forth succinctly in S. Rep. No. 1392, 79th Cong., 2d Sess. 7-8 (1946):

The proposed extensions of the initial term of a lease not subject to renewal upon which drilling is in progress and of a lease eliminated from a unit plan are desirable * * *. The latter gives the lessee who surrenders his exclusive right to drill in the interest of conserving the oil and gas deposit an opportunity to drill his lease before it expires where, for any reason, it is excluded from the unit area.

Case law provides a similar rationale:

Under the standard type of unit agreement * * *, the holders of leases which are committed to a unit agreement give up, in favor of the unit operator, their exclusive rights to drill upon their leased lands and to produce oil or gas from such lands. The unit operator determines where wells are to be drilled in the unit area and otherwise controls all operations and production in the unit area. When a unit agreement terminates, there are likely to be leased areas on which no drilling at all has been done and on which the holders of the leases, under the terms of the unit agreement, could not have drilled wells even if they had desired to do so. Where the fixed terms of such leases have expired during the life of the unit agreement, then, if the leases were extended only for the life of the agreement, as provided in the first two sentences quoted from section 17(b), the leases would immediately terminate upon the expiration of the unit agreement, without the lessees' having had a chance to drill upon the leased lands in order to obtain production and thus extend the life of their leases. The third sentence quoted from section 17(b) was designed to give the holders of such leases a reasonable opportunity to develop and to establish production on their leased lands. [Emphasis supplied.]

L. E. McLaughlin, A-25957 (Jan. 23, 1951).

Where, as here, production has been established during the life of the unit within the boundaries of lease W-0224263(A), the need for a 2-year extension upon unit termination is not immediately obvious. The above quotations make plain, however, that the holder of a lease committed to a unit may not be free to explore or develop his lands as he wishes during the life of the unit. The availability of a 2-year period to undertake such exploration and development serves to remedy this limitation. Thus, to conclude, as BLM did, that lease W-0224263(A) entered a fixed 2-year term commencing at midnight, October 31, 1972, is not unreasonable given the constraints imposed by the Creston unitization.

Moreover, BLM's conclusion is consistent with the terms of 30 U.S.C. § 226(j) (1982). As noted above, the statute provides that upon unit termination a lease formerly committed shall continue in effect for its original term, but for not less than 2 years, and so long thereafter as oil or gas is produced in paying quantities. Thus, the statute itself contemplates that a lease will enter its indefinite term ("so long as oil or gas is produced in paying quantities"), if at all, after completion of a 2-year period commencing at unit termination.

Appellant, on the other hand, contends that lease W-0224263(A) entered its indefinite term upon unit termination. Reversing the sequence of the fixed and indefinite terms, appellant states that should lease W-0224263(A) lose production within the 2-year period following unit termination, the lease would continue for at least the remainder of that 2-year period. Thus, in appellant's view, the fixed term would follow the indefinite term. No statute or case law is cited in support of this position.

The discussion thus far has focused upon the events occurring on or about October 31, 1972. If, as BLM has held, lease W-0224263(A) entered a fixed 2-year term upon unit termination, that term ended at midnight October 31, 1974. When partial commitment of this lease to the Creston II unit occurred on October 31, 1974, ^{4/} those lands not unitized, i.e., those lands in lease W-48641, were extended by yet another provision of 30 U.S.C. § 226(j) (1982):

Any lease heretofore or hereafter committed to any such [unit] plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. [Emphasis supplied.]

Lease W-0224263(A) being in a fixed term on October 31, 1974, by reason of the termination of the Creston unit, lease W-48641 was continued for the "term" remaining in its parent lease, W-0224263(A) at the time of segregation. See Conoco, Inc., 80 IBLA 161 (1984). There being no remaining term, lease W-48641 was extended for a fixed 2-year term, i.e., until October 31, 1976, and so long thereafter as oil or gas is produced in paying quantities. See United States Smelting Refining & Mining Co., 8 IBLA 354 (1972).

Continuing upon the assumption that lease W-0224263(A) was first extended by reason of unit termination for a fixed term, lease W-48641 was approaching the end of its first fixed 2-year term when it was wholly committed to the producing Creston III unit on September 17, 1976. There being

^{4/} For our purposes, we assume partial commitment occurred at midnight on Oct. 31, 1974.

production under the unit, lease W-48641 continued in force and effect so long as it remained subject to the plan. 20 U.S.C. § 226(j) (1982). When on June 22, 1982, contraction of the Creston III Unit caused the elimination of lease W-48641 from the unit, lease W-48641 was continued under 30 U.S.C. § 226(j) (1982) for its original term (now fully exhausted) but not for less than 2 years and so long thereafter as oil or gas was produced in paying quantities. No production occurring on lease W-48641, BLM concluded that it had expired on June 22, 1984, and belatedly informed appellant by decision of August 27, 1984.

Pennzoil contends that to affirm BLM's decision of August 27, 1984, is to discourage unitization of leases extended beyond their primary term by production. In contrast, the consistent policy of the Department and Congress since the enactment of unit legislation in 1931 has been to encourage unitization, appellant maintains. Solicitor's Opinion, M-36518 (July 29, 1958), is cited for this proposition and for the further view that "extremely favorable treatment" has been accorded to the nonunitized lease created by the partial commitment of its parent lease during the extended term.

[1] To hold as appellant urges that lease W-0224263(A) entered an indefinite term at midnight on October 31, 1972, to be followed by a fixed term in the event production failed within 2 years is to fashion a remedy inconsistent with any statutory pattern. As noted above, a lease that is producing at the conclusion of its primary term is continued so long as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1982). If production shall thereafter fail, no fixed term is then provided; rather, a lessee is granted 60 days to begin reworking or drilling operations. 30 U.S.C. § 226(e) (1982). Similarly, when unit termination occurs, the lessee is entitled to the remainder of his original term, if there be any, but not less than a fixed 2-year term, and so long thereafter as oil or gas is produced in paying quantities. No fixed term follows any indefinite term obtained by such lessee.

The essential fallacy of appellant's argument lies in its initial conclusion that, for "an instant of time," lease W-0224263(A) was in an indefinite extended term, held by production, before the fixed extended term of 2 years and so long thereafter as oil or gas was produced in paying quantities attached. This is not the case.

Appellant recognizes that production during the primary term of a lease does not change the lease from one of a fixed term to an indefinite term until production is maintained beyond the lease expiration date. See United States Smelting Refining & Mining Co., 8 IBLA at 364; Solicitor's Opinion, M-36543 (Jan. 23, 1959). Appellant also implicitly agrees that, had the Creston Unit terminated on October 15, 1972, the lease would have had a fixed term (2 years from the date of unit termination and so long thereafter as oil or gas was produced) as of the running of the primary term. Appellant argues, however, that because the Creston Unit was terminated on October 31, 1972, the last day of the primary term of lease W-0224263(A), there was "an instant of time" between the running of the primary term and the start of the 2-year extension afforded by 30 U.S.C. § 226(j) (1982), during which time the lease was held by production and, thus, was of indefinite term. The problem

is that if there was any "instant of time" between unit termination and extension under 30 U.S.C. § 226(j) (1982), it necessarily occurred prior to the running of the primary term of the lease.

Appellant correctly notes that the primary lease term included October 31, 1972, and that "every part of that day [must] be considered, in contemplation of law, to be one day before the first moment of the next day, although the elapsed time is infinitesimal." Franco Western Oil Co., 65 I.D. 316, 320, as supplemented 65 I.D. 427 (1958). What is critical, however, is that unit termination occurred on October 31, 1972. Since every moment of that day was part of the primary lease term, the Creston Unit necessarily terminated prior to the expiration of the primary term, even though the term, itself, may have expired "an instant" later. The extension afforded by 30 U.S.C. § 226(j) (1982) attached to the lease eo instante upon the termination of the Creston Unit. Thus, when the lease fully ran its primary term, the extended fixed term had already attached, even though the lease did not enter into the extended term until the completion of its primary term.

Lease W-0224263(A) was therefore a lease with a fixed term of years at all times prior to partial commitment of the lease to the Creston II Unit on October 31, 1974. Since the lease was of fixed rather than indefinite duration when partial commitment occurred and the nonunitized portion was segregated into another lease (W-48641), the nonunitized portion was correctly extended for 2 years and so long thereafter as oil or gas was produced in paying quantities. The subsequent BLM decision issued on August 3, 1976, which held that the segregated lease was of indefinite duration, was clearly erroneous as the segregated lease was properly limited to the term of its parent (though not less than 2 years) as of the time of partial commitment. Since the parent lease was not then held by production, the segregated lease could not have an indefinite term based on the continuation of production of the parent lease.

This, indeed, is the essential difference between the instant case and our recent decisions in Wexpro Co., 90 IBLA 394 (1986), and Conoco, Inc., 90 IBLA 388 (1986), which were overruled by Celsius Energy Co., 99 IBLA 53, 94 I.D. ___ (1987). Since our decision in Celsius is to be given prospective effect only, it is necessary to consider whether to apply the reasoning of Conoco and Wexpro, even though those opinions are no longer good authority for future Departmental decisionmaking. In both of those decisions, the leases were in an extended, indefinite term at the time of unit termination and simultaneous partial recommitment. ^{5/} Accordingly, we held that the

^{5/} In the interest of clarity, we should point out a potential source of confusion in the Conoco decision. In Conoco, production commenced during the primary term of a lease (which ended at midnight on Aug. 31, 1983), that was committed to the Spearhead Ranch Unit. The Spearhead Ranch Unit terminated effective Sept. 1, 1983. In order for the Spearhead Ranch Unit to terminate one day beyond the running of its primary term, the lease had to have been in its extended term, as it was by reason of production within the unit. See

leases were extended so long as production continued on the unitized portion, but, in any event no less than 2 years from the date of partial commitment and so long thereafter as oil or gas was produced in paying quantities. In the instant case, however, since lease W-0224263(A) had never been held by production, there is no theoretical basis for granting lease W-48641 an indefinite term.

Appellant suggests that clearly the extension did not take place until November 1, 1972, since the lease was extended through October 31, 1974. If the extension granted by 30 U.S.C. § 226(j) (1982) was effective on October 31, 1972, continuation of the lease until midnight of October 31, 1974, actually represents an extension of 2 years and 1 day. Counsel for BLM correctly points out, however, that the statute merely provides that such a lease be extended "for not less than two years." The applicable regulation, which controls the computation of this period of time, expressly provides:

[A]ny lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for 2 years after its elimination from the plan or agreement or after the termination of the plan or agreement, whichever is longer, and for so long thereafter as oil or gas is produced in paying quantities. [Emphasis supplied.]

43 CFR 3107.4. Clearly, under the regulation, while the right to the extension attaches upon termination of the unit the extended term does not commence until "after" unit termination. Thus, BLM has consistently granted such extensions so that the first day of the 2-year grant commences the day after unit termination. Nothing in this practice undermines our above analysis. Accordingly, we hold that the decision of August 3, 1976, was in error and that BLM correctly interpreted the law, insofar as it relates to extensions of leases, in its August 16, 1984, decision vacating its 1976 interpretation.

Appellant argues in the alternative that assuming lease W-0224263(A) was extended past October 31, 1972, by reason of the 2-year extension obtained

fn.5 (continued)

Seaboard Oil Co., 64 I.D. 405, 411 (1957). Since the lease was thus held by production the term thereof was indefinite and, upon the subsequent unit termination and partial recommitment of the lease to another unit, the non-unitized portion was properly seen as having an indefinite term coterminous with maintenance of production on the unitized portion, but for no less than 2 years. The decision in Conoco, however, by speaking in terms of a hypothetical situation, could be interpreted as a case in which the parent lease was not in its extended term as of the time of partial commitment. Conoco, Inc., supra at 392. This is not so: as the companion decision, Wexpro Co., supra, noted, the lease in Conoco was in an extended indefinite term as of partial lease recommitment. Wexpro Co., supra at 396. We wish to clarify this point as it is of major significance in differentiating the instant appeal from these other decisions.

See also Anadarko Production Co., 92 IBLA 212, 93 I.D. 246 (1986).

by unit termination, BLM should be estopped to vacate its letter decision of August 3, 1976. As set forth above, that letter held that lease W-48641 is extended for so long as oil or gas is produced in paying quantities under lease W-0224263(A). Relying on this letter, Pennzoil states that it did not avail itself of opportunities to extend lease W-48641 further by the conduct of operations. When eventually informed of BLM's change of position by decision of August 16, 1984, lease W-48641 had already expired. Appellant contends that the letter decision of August 3, 1976, was affirmative misconduct by BLM, reasonably relied upon by Pennzoil and causing serious injustice to it; such injustice may be corrected, in appellant's view, without undue damage to the public interest.

Recent decisions of the U.S. Supreme Court have declined to hold that estoppel may not in any circumstances run against the Government. Heckler v. Community Health Services of Crawford, 104 S. Ct. 2218, 2224 (1984); Schweiker v. Hansen, 450 U.S. 785, 788, reh'g denied, 451 U.S. 1032 (1981). These same cases, however, have refused to find that the traditional elements of estoppel have been met by the party asserting its protection. These cases, we believe, refute any impression of hospitality toward claims of estoppel against the Government that earlier cases may have created, specifically, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975); United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973); and Brandt v. Hicikel, 427 F.2d 53 (9th Cir. 1970). ^{6/}

In Enfield v. Kleppe, 566 F.2d 1139 (10th Cir. 1977), a Departmental regulation misinterpreting 30 U.S.C. § 226(e) (1982) was held to not give rise to estoppel where the party seeking to estop the Government apparently relied upon the regulation and, as here, refrained from actions that might have succeeded in extending his oil and gas leases. ^{7/} Key to the court's conclusion was its holding that an administrative provision contrary to statute must be overturned no matter how well settled and how longstanding. 566 F.2d at 1142.

Regulation 43 CFR 1810.3 is consistent with the holding in Enfield that administrative action may not be permitted to vary the terms of a statute. That regulation states:

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost

^{6/} A discussion of these three cases may be found in Edward L. Ellis, 42 IBLA 66, 69-70 (1979).

^{7/} Enfield appears to have relied upon a regulation that would allow an unlimited number of 2-year extensions to a lease if actual drilling operations were being diligently prosecuted at the end of the lease's primary term. This effect was accomplished by defining the "primary term" of a lease to include all periods in the life of a lease prior to its extension by reason of production of oil and gas in paying quantities.

by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law. [Emphasis supplied.]

In contending that BLM is estopped to vacate its letter decision of August 3, 1976, appellant asks that the term of lease W-48641 be extended for the life of lease W-0224263(A). Such a request, we have held above, runs contrary to 30 U.S.C. § 226(j) (1982). To estop the Government in this case, therefore, is to allow the errant action of BLM, *i.e.* its decision of August 3, 1976, to contradict the policies enunciated by Congress dealing with lease extensions following unit termination.

Application of the substance of 43 CFR 1810.3 is evident in Edward L. Ellis, supra, even though the regulation is not specifically mentioned. Ellis involved mining claims located on lands withdrawn from appropriation under the mining laws. Appellants contended, however, they had been assured by the Forest Service that their claims were outside the withdrawn lands, and in reliance thereon had invested considerable sums of money and actually found gold. Ellis surveyed a number of cases in which estoppel had been granted and contrasted those decisions with Ellis' attempt to have the Government recognize mining claims on land withdrawn from mining. Therein at page 71, we said:

As in the Wharton case, the effect of the estoppel against the Government was to permit the exercise of a right which was available to the general public, *i.e.*, the right to lease public land open for oil and gas exploration. Appellants here, however, assert a right to locate a claim on withdrawn land, a right which is wholly unavailable to the general public. Brandt gives no support to appellants' argument.

In Burton/Hawks, Inc. v. United States, 553 F. Supp. 86 (D. Utah C.D. 1982), the court observed, at page 92:

Section 1810.3 establishes the principle that plaintiff's reliance on the erroneous statements of the district engineer could not estop the IBLA from denying a two-year extension of the lease where the lease did not qualify for the extension under the terms of the agreement or the MLIA. The proposition that the erroneous statements of its employees do not bind the United States is well accepted in the case law. *E.g.*, Federal Crop Ins. v. Merrill,

322 U.S. 380, 384, 68 S.Ct. 1, 3, 92 L.Ed. 10 (1947); Clair R. Caldwell, et al., 42 IBLA 139, 141 (1979); Paul S. Coupey, 35 IBLA 112, 116 (1978). Thus, despite plaintiff's reliance on assurances made by the USGS district engineer, the IBLA was free to reach an independent decision on whether or not the lease expired by operation of law.

To grant to lease W-48641 a term coextensive with lease W-0224263(A) is to grant to Pennzoil an extension unavailable to the general public and unauthorized by statute. Assuming, arguendo, that estoppel can ever be appropriately applied against the Government, Heckler, 104 S. Ct. at 2227, we believe that application of this principle now would conflict with decisions of the Supreme Court, the U.S. Court of Appeals for the Tenth Circuit, this Board, and Departmental regulations. Accordingly, we decline to estop BLM to vacate its letter decision of August 3, 1976.

Appellant's final argument on appeal is its contention that BLM's decision of August 27, 1984, represents a departure from prior Departmental policy and should be applied prospectively only. Invoking the five standards for determining whether a decision should be limited to prospective application as set forth in Stewart Capital Corp. v. Andrus, 701 F.2d 848 (10th Cir. 1983), 8/ appellant maintains that the primary issue here, i.e., the term of lease W-0224263(A) as of midnight October 31, 1972, is not one of first impression and that BLM's decision of August 27, 1984, is a radical departure from earlier decisions and opinions that appellant relied upon. Pennzoil states that it will suffer the ultimate penalty, termination of its lease, if prospective application is denied and further that no sufficient statutory interest exists to require retroactive application of BLM's "new rule."

We find appellant's final argument unconvincing. Although Pennzoil claims that the primary issue here is not one of first impression, it has failed to furnish a citation to any case even scarcely resembling the present facts. Instead, it has cited to decisions and opinions whose relevancy depends on the validity of questionable assumptions made by appellant. There being no well established precedent in this case, appellant's statement it relied on a former rule or practice is unpersuasive. And while it is correct that appellant will suffer lease termination if BLM's decision of August 27, 1984, is applicable to lease W-48641, the record is silent as to any actual

8/ These standards are:

- "1. Whether the particular case is one of first impression;
- "2. Whether a new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of the law;
- "3. The extent to which a party, against whom the new rule is applied, relied on the former rule;
- "4. The degree of burden which a retroactive order imposes on a party; and
- "5. The statutory interest in applying a new rule despite reliance of a party on an old standard."

production on lease W-48641, even though this acreage had been under lease for 22 years at the time of BLM's decision. Finally, the statutory interest in applying BLM's decision necessarily outweighs Pennzoil's reliance on a former rule because, as noted above, there was no former rule. Upon consideration of the standards set forth in Stewart Capital Corp., *supra*, it is clear that BLM's decision need not be limited to prospective application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of August 27, 1984, is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge

