

IBLA 88-88          Decided September 19, 1989

Appeal from a decision of the Colorado State Office, Bureau of Land Management, cancelling oil and gas lease C-42945.

Affirmed.

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

The automatic termination provisions of 30 U.S.C. § 188 (1982) do not apply to an oil and gas lease which has been committed to a unit, where there is production from a unit well anywhere in the unit.

2.      Oil and Gas Leases: Cancellation

Where an oil and gas lease has inadvertently been issued for land that was the subject of an existing lease, the later lease is properly cancelled to the extent that it conflicts with the earlier lease.

APPEARANCES: James E. Bosik, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Walter S. Fees, Jr., has appealed from a decision dated October 9, 1987, by the Colorado State Office, Bureau of Land Management (BLM), cancelling oil and gas lease C-42945 because it had inadvertently been issued for land that was the subject of an existing lease, C-22806.

Lease C-22806, embracing the SW<sup>^</sup>SW<sup>^</sup>, sec. 26, and the NW<sup>^</sup>NW<sup>^</sup>, sec. 35, T. 6 N., R. 86 W., sixth principal meridian, Routt County, Colorado, was issued effective August 1, 1975, for a term of 10 years. Effective August 15, 1979, the lease was committed to the Tow Creek Unit Agreement, No. 14-08-0001-18091. Rental payments were timely made for all lease years through July 31, 1985. Because no rental was paid for the lease years beginning on and after August 1, 1985, BLM considered the lease to have expired as of July 31, 1985, and made the leased lands available through the simultaneous leasing system as parcel CO-186. Appellant was

subsequently selected as the successful applicant for this parcel and BLM issued lease C-42945 to him effective September 1, 1986. At the time of BLM's decision cancelling the lease, appellant owned a 3-percent overriding royalty interest in the lease. Record title to the lease was held by Fina Oil and Chemical Company (44.45 percent), Ultramar Oil and Gas Limited (31.25 percent), and Rio Colorado Oil & Gas, Inc. (24.30 percent). All three record title holders were served with a copy of BLM's decision. None has filed an appeal. <sup>1/</sup>

On October 9, 1987, BLM also issued a decision to Trinity Resources, Inc. (Trinity), the lessee of record for lease C-22806, advising that it had erroneously considered Trinity's lease to have expired and thereafter made the land available through the simultaneous oil and gas leasing system. BLM explained that production was established on the Tow Creek Unit effective December 1, 1983; that under the terms of the unit agreement, production was deemed to constitute production on each Federal lease committed to the agreement; that C-22806 therefore was considered to have been in a producing status since December 1, 1983; and that it did not expire. BLM advised Trinity, however, that since no actual production had been allocated to C-22806, original rental obligations were in effect. Accordingly, BLM required Trinity to submit past due rental of \$120 for the lease years August 1, 1985, through August 1, 1987. In its answer on appeal, BLM states that Trinity made the required payment.

Appellant contends that C-22806 was never committed to the Tow Creek Unit Agreement and that it, therefore, expired at the end of its primary term on July 31, 1985. Appellant notes that on April 24, 1979, when Trinity executed a Ratification and Joinder of the Unit Agreement, it owned only 50-percent record title interest in C-22806. By assignment approved effective June 1, 1979, Trinity obtained the remaining 50-percent record title interest from the assignor, Energy Reserves Group, Inc. Appellant asserts that neither Energy Reserves Group, Inc., nor Trinity ever committed the remaining 50-percent interest to the unit agreement, and therefore the entire lease was not committed.

BLM contends that the record clearly shows that C-22806 was committed to the Tow Creek Unit. BLM points out that Trinity held 100-percent record title to the lease at the time the unit agreement was approved by the Colorado State Board of Land Commissioners and Geological Survey (Survey).

A BLM serial register page entry for July 3, 1979, indicates Trinity as owner of 100-percent record title interest in lease C-22806. The Tow Creek Unit Agreement was approved by the Colorado State Board of Land Commissioners on August 15, 1979, and approved by Survey on September 18, 1979, effective August 15, 1979. By undated memorandum, the Acting Conservation Manager, Survey, notified the Colorado State Director, BLM, of the approval

---

<sup>1/</sup> For purposes of our decision, we assume, without deciding, that Fees has standing to appeal the BLM decision. See William L. Ahls, 85 IBLA 66 (1985).

and stated that the unit area included, among others, Federal lease C-22806 of which "[a]ll lands and interests are fully committed."

One of the unit agreement documents <sup>2/</sup> lists, inter alia, the tracts, serial numbers, lessees of record, working interests, and percentages subject to the unit agreement. On this document, which is Survey date-stamped August 9, 1979, Trinity's record title interest has been changed from 50 to 100 percent.

This Board has previously recognized BLM's policy regarding lease commitment to the effect that any tract in which a working interest has not been committed is considered as not committed and is not subject to the unit agreement. Nucorp Energy Inc., 88 IBLA 195, 199 (1985); Coors Energy Co., 82 IBLA 212, 214 (1984). In this case, however, the evidence shows that Trinity held 100-percent record title in C-22806 well before the unit agreement was approved, and there is no indication that any portion of that interest was intended by Trinity, or any other party, to be excluded from the unit agreement. The documents of record clearly demonstrate that the entire lease interest was included. Therefore, appellant's argument that C-22806 was not committed to the unit is without merit.

[1] Appellant next argues that even if C-22806 was committed to the unit, it terminated automatically under 30 U.S.C. § 188 (1982) because rentals were not timely paid. Appellant bases this argument on Solicitor's Opinion, M-36531 (Oct. 27, 1958), as supplemented July 20, 1959, which held that unitized leases outside a participating area were subject to automatic termination for failure to pay rentals, despite the fact that the unit area contained a well capable of producing oil or gas in paying quantities. As appellant acknowledges, M-36531 was overruled by Solicitor's Opinion, M-36629, 69 I.D. 110, 112 (1962), wherein the Solicitor wrote: "Existing departmental interpretation thus leads clearly to the conclusion that the automatic termination provision [of 30 U.S.C. § 188(b) (1982)] does not apply to a unitized lease where there is a producible well anywhere on the unit."

Appellant's contention is that the 1958 Solicitor's opinion is more persuasive than the 1962 one and that the Board should adopt the rationale of the earlier opinion. BLM responds that the 1962 opinion is proper and should be sustained by the Board. Further, BLM states that "[m]ore importantly, the Board, in its decision Bass Enterprises Production Co., 47 IBLA 53, 56-57 (1980), has expressed its approval of the Solicitor's Opinion M-36629." BLM is correct. In Bass, the Board relied on M-36629 to hold that "[d]uring its inclusion in the Red Hills Unit, the lands now described in NM 15092 were immune from automatic termination by reason of production elsewhere in the unit." Id. at 57. Likewise, in this case, C-22806 was immune from automatic termination by reason of production on the Tow Creek Unit.

---

<sup>2/</sup> This document is captioned: "Exhibit B Attached To And Made A Part Of That Certain Agreement Entitled Unit Agreement, Tow Creek Unit Area Routt County, Colorado Dated November 1, 1978."

Appellant contends that Trinity's failure to pay timely rentals evidenced an intention to relinquish lease C-22806. Under 30 U.S.C. § 187(b) (1982) and 43 CFR 3108.1, a relinquishment or surrender of a lease is accomplished by filing a written relinquishment in the proper BLM office. See James and Lillian Chudnow, 86 IBLA 315, 316-17 (1985). This procedure for relinquishment is also set forth in section 5 of lease C-22806. There is no evidence in the record that Trinity ever followed such a procedure. Thus, no relinquishment of lease C-22806 occurred.

Finally, appellant argues that the three record title holders of cancelled lease C-42945 were bona fide purchasers and that, therefore, cancellation was statutorily prohibited. First, appellant, who holds only an overriding royalty interest in C-42945, represents only himself, not the three record title holders for whom he claims bona fide purchaser status. Such status is available only to one who holds and acquired its interest as a bona fide purchaser. 30 U.S.C. § 184(i) (1982). None of the three record title holders filed an appeal; therefore, BLM's action is final as to their interests. Appellant has no standing to raise the bona fide purchaser defense on behalf of the record title holders. Second, the bona fide purchaser argument could not be considered on the merits in any event. The protection afforded by 30 U.S.C. § 184(h)(2) (1982) to a bona fide purchaser of an oil and gas lease applies only where the predecessors in interest were in violation of some provision of the Act, such as the acreage limitations. It does not apply where the lease was erroneously issued for lands not subject to leasing, causing the lease to be a nullity. Hanes M. Dawson, 101 IBLA 315, 319 (1988), and cases cited.

[2] The Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); L & B Land Lease Group 82-3, 88 IBLA 221 (1985). Lands included in an outstanding oil and gas lease are not available for oil and gas leasing and a lease issued for such lands is void. Appellant gained no rights under C-42945 so long as the prior lease was in existence. BLM properly cancelled appellant's lease.

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.

---

Bruce R. Harris  
Administrative Judge

I concur:

---

Gail M. Frazier  
Administrative Judge