



INTERIOR BOARD OF INDIAN APPEALS

Thomas J. Sweeney v. Acting Anadarko Area Director, Bureau of Indian Affairs

19 IBIA 101 (11/29/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

THOMAS J. SWEENEY

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-92-A

Decided November 29, 1990

Appeal from a determination that two oil and gas leases had expired as they relate to nonproducing formations.

Affirmed.

1. Administrative Procedure: Burden of Proof--Indians: Mineral Resources: Oil and Gas: Generally

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency action complained of is erroneous or not supported by substantial evidence.

2. Contracts: Generally--Indians: Mineral Resources: Oil and Gas: Generally

Disagreement with the terms of a signed contract does not negate those terms.

APPEARANCES: Thomas J. Sweeney, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Thomas J. Sweeney seeks review of a November 19, 1987, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (BIA; Area Director), determining that Oil and Gas Lease Contracts Nos. 14-20-206-60693 (Lease 60693) and 14-20-206-60694 (Lease 60694) had expired as they relate to the nonproducing formations underlying the allotment of Nohoco, Comanche #2049. Lease 60693 covers the NE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 2, T. 5 N., R. 10 W., Caddo County, Oklahoma, containing 40 acres, more or less; Lease 60694 covers an undivided 1/2 mineral interest in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 2, T. 5 N., R. 10 W., Caddo County, Oklahoma, containing 40 acres, more or less. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Area Director's decision.

Background

The leases at issue in this appeal were entered into on October 10, 1979, between Horace Noyobad and Thomas Wahness lessors, and Rayco Oil

and Gas Company, Inc. (Rayco), lessee. The leases were for an initial term of 3 years and as long thereafter as oil and/or gas was produced in paying quantities. Both leases were made subject to the following provision set forth in paragraph 5A of each lease:

It is expressly agreed that notwithstanding anything to the contrary in this lease, all acreage not included in a unit and not producing or upon which drilling operations have not commenced, shall be released upon the expiration of the primary term of this lease and it is further agreed that this lease shall terminate as to all nonproducing formations at the expiration of the primary term of this lease.

The leases were approved by the Superintendent, Anadarko Agency, BIA (Superintendent), on November 14, 1979.

In February 1980, Rayco completed a shallow well, the No-Ho-Co #1-2, into the Fortuna sands formation in the E $\frac{1}{2}$ SE $\frac{1}{4}$, sec. 2. This well produced until October 1981, when it was shut in. The record indicates that this well remains shut in.

Interests in the leases were assigned to appellant and a group of investors he represented (working interest group). 1/ Rayco retained the remaining interest and was the designated operator of the well. According to appellant, on April 13, 1981, this working interest group farmed out to Buttonwood Petroleum Corporation its rights from the base of the Medrano Formation, which was apparently estimated at 6,400 feet, to 100 feet below the Springer Formation, in order to test the Springer Formation. 2/

On April 22, 1982, GHK Exploration Company completed the Snively #1-2 deep gas well into the Springer formation on the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 2. The record indicates that all mineral rights as to natural gas and associated liquid hydrocarbons producible from the Marchand, Culp, Melton, Upper Kistler (Glover), Lower Kistler (Charleston), Pooler Sands, Mona Sands, Upper Dornick Hills, Lower Dornick Hills, and Springer formations underlying all of sec. 2 were either force-pooled by order of the Oklahoma Corporation Commission or joined through a communitization agreement. Upon recommendation of the Minerals Management Service, Leases 60693 and 60694 were made part of communitization agreement SCRI-143, effective November 3, 1982, before the expiration of the primary terms of the leases.

A new operator for the No-Ho-Co #1-2 well took over in April 1982, after Rayco was asked to resign as operator by the working interest group. This change apparently occurred because of Rayco's failure to continue operation of the well.

1/ It is not clear when the assignment was approved.

2/ No copy of the farm-out agreement appears in the record.

Rayco filed for bankruptcy in April 1982. Rayco's interests in the subject leases were sold at auction on authority of the District Court for the Western District of Oklahoma. It appears that Rayco's interests in the No-Ho-Co #1-2 well were purchased by the new operator. Another individual apparently purchased overrides as well as some working interest properties. 3/ It further appears that no additional work was done on the leases.

In 1984, counsel for lessor Wahnee contacted the Superintendent concerning the status of the leases. After an initial investigatory period, by letter dated March 20, 1985, the Superintendent informed appellant and other parties holding an interest in the leases that the

leases have expired of their respective primary terms as set forth by the provisions of paragraph 5A of the basic lease contracts.

The basis of opinion rests solely on the performance of the Nohoco #1-2 oil well, which held the leases in effect limited to the zones above the Medrano Formation. Since said well has ceased to produce from the aforementioned zones, your leaseholds are hereby terminated as of the expiration of the primary terms of the respective leases. This cancellation notice will be effective upon the date you receive this notice. [4/]

Appellant filed an appeal from this decision with the Area Director. The basis of appellant's appeal was that both leases were held in their entirety by production from the Snavelly well. Appellant stated: "On an oil and gas lease there should be no distinction what producing zone holds a lease by production or drilling operations. Our participating group should not be denied our operating development rights on the shallower zones." (Emphasis omitted.)

By letter dated November 19, 1987, the Area Director affirmed the Superintendent's decision, holding that paragraph 5A of each lease must be given effect. Appellant notified the Area Director that he was filing an appeal by letter dated December 14, 1987. That letter states: "Within thirty (30) days I will follow with a filing of this notice to the Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development)." A January 7, 1988, letter to the Deputy to the Assistant Secretary states: "This letter gives notice of an appeal in accordance

3/ This individual, Tex Anderson, was later informed by BIA that he had not acquired any interest in Leases 60693 and 60694 because of his failure to obtain BIA approval.

4/ The Board has previously held that a finding that a lease has expired by its own terms does not constitute a cancellation of the lease. Mobil Oil Corp. v. Albuquerque Area Director, 18 IBIA 315, 323, 97 I.D. 215, 219 (1990), and cases cited therein. The use of the term "cancellation" is harmless error under the circumstances of this case.

with the findings of the Anadarko Area Office's letter of November 19, 1987 on the captioned Bureau of Indian Affairs leases. The Anadarko Area office was given notice of my second official appeal on December 14, 1987.”

The appeal and administrative record were transferred to the Board on June 1, 1990, in accordance with new appeal regulations for BIA and the Board which took effect on March 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989). The Board docketed the appeal on June 4, 1990, giving all parties an opportunity to file additional briefs. No briefs were filed.

The Board began consideration of the appeal in October 1990. A review of the record at that time suggested that appellant might have included additional arguments in support of the appeal with his January 7, 1988, notice of appeal. Therefore, on October 18, 1990, the Board issued an order in which it stated:

The Board is uncertain whether or not appellant filed any additional statements in support of his appeal with the January 7, 1988, letter. Appellant is hereby given until October 31, 1990, in which to inform the Board whether the quoted letter constituted his entire January 7, 1988, filing. If appellant filed any additional arguments, he should provide a copy of the filing to the Board.

On November 2, 1990, the Board received a filing on behalf of appellant. This filing was clearly prepared in response to the Board's October 1990 order, and had not been filed with the January 7, 1988, letter. Accordingly, this document will not be considered. Appellant was given an opportunity to file an opening brief and declined to do so. The November 1990 filing was not responsive to the Board's order.

Discussion and Conclusions

[1, 2] In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence. See Kays v. Acting Muskogee Area Director, 18 IBIA 431 (1990), and cases cited therein. In this case, the notice of appeal does not set forth any grounds for the appeal, and appellant has not filed a brief indicating those grounds.

The extent of appellant's arguments that can be ascertained from the record is that he disagrees with the inclusion of paragraph 5A in the leases, but does not disagree with the facts as set forth leading to the invoking of those paragraphs, or with the Area Director's construction of them. The terms of the leases were not altered in the document assigning a partial interest to appellant and his working interest group. Therefore, appellant took his interest subject to paragraphs 5A. He knew, or should have known, that the leases were subject to expiration for any formation not producing at the end of the leases' primary terms. The provisions of the contract are not negated by appellant's belated disagreement with them, when they were accepted by his predecessor-in-interest and assigned to him

without change. Cf. Merrill v. Portland Area Director, 19 IBIA 81, 85 n.4 (1990). Appellant has not sustained his burden of showing error in the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 19, 1987, decision of the Acting Anadarko Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge