

H-3105-1 - COOPERATIVE CONSERVATION PROVISIONS

IBLA Order 86-1267 on Extensions Due Segregated Leases

(June 27, 1988)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF LAND APPEALS  
4015 Wilson Boulevard  
ARLINGTON, VIRGINIA 22203  
JUNE 27, 1988

IBLA 86-1267 : W-89848, et al.  
: :  
HPC, INC., et al. : Oil and Gas  
BARLOW & HAUN, INC., et al. : :  
: Reversed

ORDER

On April 23, 1986, the Wyoming State Office, Bureau of Land Management (BLM), issued a decision amending previous decisions dated October 19, 1984, concerning leases segregated from leases committed to the Culp Draw (Shannon "B" Sand) unit. The October 19, 1984, decisions had ruled that the segregated leases would not continue in effect for so long as oil or gas was produced on the unitized base lease. BLM's April 23 decision found that the term of eight of the nonunitized segregated oil and gas leases would continue so long as oil or gas is produced in paying quantities from the associated unitized base lease lands. 1/

On May 27, 1986, HPC, Inc., et al., 2/ filed a notice of appeal of BLM's decision of April 23, 1986, because when reconsidering the effect of segregation, BLM had failed to find that six nonunitized segregated leases would also be held by production. 3/

On April 29, 1986, Barlow & Haun, Inc. (B&H), owners of overriding royalty interests in the same six nonunitized leases not addressed in BLM's April 23 decision wrote to BLM to protest its failure to rule that these leases were also being held by production. In response, on May 8, 1986, BLM issued a decision specifically ruling that these six leases were not being held by production associated with other leases. B&H and others appealed from this decision, 4/ and by order dated July 16, 1986, the appeals were consolidated.

1/ The eight segregated leases addressed by the Apr. 23, 1986, amendment are as follows: W-89850, W-89851, W-89852, W-89853, W-89854, W-89856, W-89859, and W-89862.

2/ Davis Oil Company, Sun Exploration and Production Company, and Convest Production Company are parties included in HPC's appeal.

3/ These leases are: W-89848, W-89849, W-89858, W-89863, W-89864, and W-89865.

4/ B&H's notice of appeal includes as other appellants: HPC, Davis Oil Company, Sun Exploration and Production Company, Convest Production Company, Phillips Petroleum Company, and Petro-Search Nominee Partnership Company.

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Although this appeal concerns the terms of only six leases, these leases arose out of a series of events involving the formation, contraction, and termination of several unit areas. The partial commitment of leases to the various unit areas resulted in the segregation of those leases several times during their history, so that consideration of this appeal involves the history of a number of leases in addition to the six at issue here. These leases developed from a common pattern, however, and each lease falls within a distinct group. Thus, the issues in this appeal can be most easily understood by restating the history of these leases in a generic manner.

Prior to 1981, lease No. 1 was committed to Unit A and was extended beyond its primary term by unit production. Effective July 1, 1981, Unit A contracted, and a portion of lease No. 1 was eliminated from the unit area. <sup>5/</sup> As appellants point out, this partial elimination had no effect on the tenure of the lease, nor did it effect any segregation of the lease. See Solicitor's Opinion, M-36592 (Jan. 21, 1960); accord, Marathon Oil Co., 78 IBLA 102 (1983).

On May 26, 1983, a portion of lease No. 1 not within the participating area of Unit A was committed to a new unit, Unit B. <sup>6/</sup> Pursuant to 30 U.S.C. § 226(j) (1982), lease No. 1 was segregated into two leases. The portion committed to Unit B retained the designation as lease No. 1, and the portion that remained in Unit A was designated lease No. 2. <sup>7/</sup> The term for lease No. 1 was for the life of production on lease No. 2, but not less than 2 years. See Anne Guyer Lewis, 68 I.D. 180 (1961).

Unit B terminated on July 1, 1983, without production or drilling. At this time, lease No. 2 was still committed to Unit A, but lease No. 1 was committed to no unit and contained no producing wells. The effect of this event on the term of lease No. 1 is discussed later.

Effective August 1, 1984, Unit A terminated. On the same date, Unit C was formed and leases No. 1 and No. 2 were committed in part to Unit C. <sup>8/</sup> When a portion of lease No. 1 was committed to Unit C, it was segregated into two leases. See 30 U.S.C. § 226(j) (1982). The part within Unit C retained its designation as lease No. 1, and the nonunitized portion was designated as lease No. 3. <sup>9/</sup> Similarly, lease No. 2 was segregated upon partial commitment to Unit C. The part within Unit C retained its designation as lease No. 2, and the nonunitized portion was designated lease No. 4. <sup>10/</sup> BLM held that leases No. 3 and No. 4 could not be extended by production from the unitized leases; BLM held that these leases were only

<sup>5/</sup> Lease No. 1 corresponds to leases W-0266641, W-0266642, and W-40634. Unit A corresponds to the Culp Draw II Unit for leases W-0266641 and W-0266642, and the Heldt Draw Unit for lease W-40634.

<sup>6/</sup> Unit B corresponds to the Brahman Unit.

<sup>7/</sup> Lease No. 2 corresponds to leases W-85359, W-85360, and W-85361.

<sup>8/</sup> Unit C corresponds to the Culp Draw (Shannon "B" Sand) Unit.

<sup>9/</sup> Lease No. 3 corresponds to leases W-89848, W-89849, and W-84850.

<sup>10/</sup> Lease No. 4 corresponds to leases W-89863, W-89864, and W-89865.

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extended until August 1, 1986, and so long thereafter as they produce on their own.

The leases corresponding to lease No. 4 are governed by our decisions in Conoco, Inc., 90 IBLA 388 (1986), and Wexpro Co., 90 IBLA 394 (1986). In these decisions, we held that if a producing unit terminates after the conclusion of the primary term of the parent lease and a portion of the lands in the parent lease are simultaneously committed to a second producing unit, the term of the nonunitized lease without production shall be for so long as oil or gas is produced in paying quantities on the unitized lease, but not less than 2 years, and so long thereafter as oil or gas is produced in paying quantities on the nonunitized lease. In this case, because of the termination of Unit A after the primary term of lease No. 2 and simultaneous commitment of a portion of land within lease No. 2 to Unit C, lease No. 4 would have a term coextensive with lease No. 2 under Conoco and Wexpro, but no less than 2 years, and so long thereafter as oil or gas is produced on lease No. 4. Although Conoco and Wexpro were overruled in Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987), the Board made its action prospective only. Thus, this appeal continues to be governed by Conoco and Wexpro, so BLM's decision must be reversed with respect to those leases corresponding to lease No. 4: W-89863, W-89864, and W-89865.

The circumstances are different with respect to the leases corresponding to lease No. 3. Unlike circumstances in Conoco and Wexpro, there was no simultaneous elimination of the base lease (lease No. 1) and its recommitment to a new unit. Lease No. 1 was eliminated from Unit B more than 1 year before it was partially committed to Unit C. Appellants recognize that the prior termination of Unit B appears to be the critical fact concerning the disposition of these leases. Appellants state that BLM's "[d]ecision seems to be based on the BLM's view that the segregated leases did not retain indefinite terms from the leases [from] which they were segregated because the parent leases had \* \* \* somehow lost their indefinite term status when the Brahman unit [Unit B] terminated" (Statement of Reasons (SOR) at 8).

Appellants, contend that upon termination of Unit B, lease No. 1 retained the indefinite term it had when it was made a part of Unit B (SOR at 11). In support of this proposition, appellants cite Bass Enterprises Production Co., 47 IBLA 53 (1980), in which the Board expressly endorsed the notion that the phrase "original term" could refer to an indefinite period. In Conoco, 90 IBLA at 392, the Board specifically cited Bass in support of the proposition that the segregation of the lease does not necessarily cause the resultant two leases to have independent terms. The practical effect of this holding was that a nonunitized lease could be extended by production from a unitized lease, even though all of the land within the nonunitized lease had been completely eliminated from a unit.

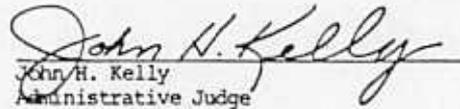
In Celsius, *supra*, the Board reexamined this issue and concluded that such a result was inconsistent with legislative intent in the enactment of the provisions which set forth the lease terms upon termination of units, elimination of leases from units, and segregation of leases upon partial commitment to units. We expressly focused upon the erroneous conclusions

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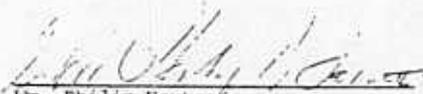
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that followed from reliance upon the Bass opinion. Thus, in order to overrule Conoco and Wexpro, it was also necessary to modify the Bass opinion. Nevertheless, we again note that the Board's decision to overrule Conoco and Wexpro was made prospective only. Because the facts of this appeal arose before the issuance of the Celsius opinion, we conclude that upon termination of Unit B, lease No. 1 retained an indefinite term. Accordingly, BLM's decision must also be reversed with respect to the leases corresponding to lease No. 3: W-89848, W-89849, and W-89858.

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 reversed and the case remanded for further action consistent with this order.

  
John H. Kelly  
Administrative Judge

I concur:

  
Wm. Philip Horton  
Chief Administrative Judge

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I recognize that, when interpreting a statute or regulation it is best to use the language of the statute or regulation to the fullest extent possible. However, in the attempt to cast the facts using the terms found in the statute or regulation, one runs the risk of creating confusion, rather than making a clear understandable statement. 1/

In order that my concern may be understood, I will set forth my understanding of the Bureau of Land Management's (BLM's) "application" of the law when a portion of an oil and gas lease is placed in a unit area. That portion placed in the unit retains the original lease number, and the portion not unitized is assigned a new number. This in most accurately characterized as "segregating the nonunitized portion from the base lease." If BLM, the Solicitor's Office, and this Board were to cast the transaction in this light, a great deal of confusion could be avoided. A few examples will illustrate my point.

This order states: "The practical effect of this holding was that a nonunitized lease could be extended by production from a unitized lease, even though all of the land within the nonunitized lease had been completely eliminated from the unit." It could have been written "[t]he practical effect of this holding was that a segregated lease could be extended by production from a unit, even though it was not a part of the unit."

At page 62 of Celsius Energy Co., 99 IBLA 53, 94 I.D. 399 (1987), the decision cited in the order, the author carefully followed the language in the statute and prior decisions, with the following result:

In accordance with the construction set forth in Solicitor's Opinion, 63 I.D. 246 (1956), the Department has ruled that production on one segregated lease can extend the term of the other segregated lease, but only if the segregation occurs when the base is in an extended term because of production and not in a fixed term of years. Anne Guyer Lewis, 68 I.D. 180 (1961); see also Solicitor's Opinion, M-36758 (Oct. 25, 1968); cf. Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984) (because segregation occurred during fixed term, production on the base lease did not extend the nonproducing nonunitized segregated lease.)

While a correct statement, if cast as I propose, we would find that production from segregated lease can extend the term of a unitized lease only if

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it was segregated during an extended term of the base lease. In the Conoco case the segregation occurred during a fixed term, and unit production did not extend the term of the segregated lease.

Why do I express this concern? These cases are confusing enough without this additional factor. <sup>2/</sup> Therefore, I deem the opportunity to encourage the use of less confusing language worth the time it has taken to draft this special concurrence, even though the majority has chosen to dispose of this case by order, rather than issuing a decision. "The nonunitized portion is extended for the term of the unitized parent lease as that term exists on the date of segregation" could become "the segregated lease is extended by the unitized lease if the base lease is in its extended term at the date of unitization." "The nonunitized segregated portion of the lease" would become "the segregated lease." "Unitized segregated portion of the lease" would become "unitized lease." "Segregated, nonunitized leases" would be "segregated leases."

If, by encouraging the use of less confusing language, I have avoided one appeal from a decision involving the term of a segregated lease, it will be well worth the time.



R. W. Mullen  
Administrative Judge

<sup>2/</sup> In fact this confusion may well have caused some of the prior appeals considered by this Board.