

H-3107-1 - CONTINUATION, EXTENSION, OR RENEWAL OF LEASES

Solicitor's Opinion on Drilling Extension for Leases in
Primary Term Which Have Been Extended Under
Other Provisions (May 17, 1984)

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

May 17, 1984

BLM.ER.0318

Memorandum

To: Director, Bureau of Land Management

From: Associate Solicitor, Energy and Resources

Subject: Extension of Oil and Gas Leases

You have requested advice concerning the eligibility of certain oil and gas leases for extension by prosecution of diligent drilling operations at the end of the primary lease term under section 17(e) of the Mineral Leasing Act of 1920 (Act), 30 U.S.C. Sec. 226(e). This "drilling extension" question arose when a portion of a lease was committed to an unit agreement. The uncommitted portion was segregated into a new lease with less than two years remaining in its primary term. Under section 17(j) of the Act, the segregated (nonunitized) lease "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." 30 U.S.C. Sec. 226(j). The segregated lease received the additional time under section 17(j) (only 17 days in the particular case) but the lessee has inquired whether the lease might also receive a drilling extension. We conclude the primary term, but not the extended term, of the lease may be extended by drilling under section 17(e).

Your question involves two parts: (1) may the lease be extended by drilling at the end of the 2-year segregation extension; and (2) may the lease be extended by drilling at the end of the primary term even though the actual lease term has already been extended under section 17(j). Drilling extensions under section 17(e) are clearly limited to the end of the primary term and are not applicable at any other time. Enfield v. Kleppe, 566 F.2d 1139 (10th Cir. 1977). The Board of Land Appeals has specifically ruled that a lease may not be extended by drilling at the end of a 2-year extension under section 17(j) which resulted from segregation, from elimination of the lease from a unit, or from termination of the unit. Texaco, Inc., 34 IBLA 127 (1978); Yates Petroleum Corp., 34 IBLA 7 (1978).

The second part of the question has no readily available answer. The Board implied that such a lease would qualify for a drilling extension when it stated:

if the lessee is to obtain an extension by drilling over, he must be conducting actual drilling operations at the conclusion of the 10-year primary term [for noncompetitive leases], notwithstanding the fact that the actual lease term might otherwise have been extended beyond the end of the initial 10-year primary term.

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Texaco, Inc., supra at 130; Yates Petroleum Corp., supra at 11. Since this was not an issue in either case (neither lessee was drilling at the end of the primary term), this statement is not a conclusion of law by the Board. However, since the language of the Act provides no definitive guidance either way and since the Board's construction gives consistent meaning to both extension provisions, we see no reason why it may not be followed.

In conclusion, where a lease is subject to an extension under section 17(j) but is still within its primary term, it may receive a drilling extension under section 17(e) if the lessee is prosecuting diligent drilling operations at the end of the primary term. If such a lease is extended by drilling, the drilling extension operates in place of, and not in addition to, the section 17(j) extension. The drilling extension begins at the end of the primary term of the lease and supersedes the prior section 17(j) extension.

Lawrence J. Jensen
Associate Solicitor
Energy and Resources