

INTERIOR BOARD OF LAND APPEALS

Harvey E. Yates Co., et al.

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HARVEY E. YATES CO., ET AL.

IBLA 99-161

Decided December 19, 2001

Appeal from a decision of the Acting Deputy State Director, New Mexico State Office, Bureau of Land Management, denying application for retroactive suspension of operations and production for expired Federal oil and gas lease NMNM-66213.

Affirmed.

1. Oil and Gas Leases: Expiration—Oil and Gas Leases: Suspensions

An oil and gas lease expires upon the running of its primary term unless eligible for an extension as provided by 43 CFR Subpart 3107. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease.

2. Oil and Gas Leases: Expiration—Oil and Gas Leases: Suspensions

BLM delay in conducting review of an application for permit to drill does not constitute a de facto suspension order under section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1994), or excuse a lessee from submitting an application for a retroactive lease suspension on a date before the lease has expired.

3. Oil and Gas Leases: Expiration—Oil and Gas Leases: Suspensions

Where the lessee fails to file an application for permit to drill, a request that a lease be included in a unit held by production, or a timely application for lease extension, the lease expires and may not be retroactively suspended.

APPEARANCES: Gregory J. Nibert, Esq., Roswell, New Mexico, for appellants; Grant L. Vaughn, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Harvey E. Yates Company, Yates Energy Corporation, Spiral, Inc., and Explorers Petroleum Corporation (collectively, HEYCO) have appealed a December 3, 1998, decision of the Acting Deputy State Director (ADSD), Resource Planning, Use and Protection, New Mexico State Office, Bureau of Land Management (BLM), denying an application for retroactive suspension of operations and production for expired Federal oil and gas lease NMNM-66213. We affirm.

BLM issued Federal oil and gas lease NMNM-66213 to Harvey E. Yates Company, effective June 1, 1986, with a primary term of 10 years. The lease included approximately 1,920 acres comprising secs. 15, 22, and 23, T. 26 S., R. 12 E., New Mexico Principal Meridian (NMPM), Otero County, New Mexico. By assignment approved effective September 1, 1986, the lessee transferred partial interests in the lease to Yates Energy Corporation, Spiral, Inc., and Explorers Petroleum Corporation. HEYCO timely paid rental for the lease throughout the primary term but did not commence drilling operations, or file an application for permit to drill (APD) a well, on the lease during that period.

By memorandum dated August 13, 1996, the Assistant District Manager, Minerals Support Team, Roswell District Office, BLM, advised the New Mexico State Director, BLM, that lease NMNM-66213 should not be recommended for extension pursuant to 43 CFR 3107.2 (continuation of lease by virtue of paying production) or 43 CFR 3103.4-4 (suspension of operations and/or production).^{1/} The case abstract contained in the case file indicates that the lease expired at midnight on May 31, 1996, and that the lease file was closed on August 19, 1996.

The next document in the record is a letter dated September 2, 1997, in which HEYCO requested that BLM put the lands formerly included within lease NMNM-66213, *i.e.*, all of secs. 15, 22, and 23, T. 26 S., R. 12 E., NMPM, up for bid at a January 22, 1998, competitive oil and gas lease sale. An unattributed note in the case file states that these lands were deleted from the January 1998 lease sale. It includes the following comments: "Potential habitat for Aplomado Falcon a special species study by NMSU [New Mexico State University], University of Chicago & USGS plan to be completed within the next 5 years[.] [HEYCO] has been notified by Russ Jentgen."

By letter dated September 25, 1998, HEYCO requested that lease NMNM-66213 be reinstated. HEYCO explained that it had known of the lease's expiration but had anticipated obtaining the lease again in a subsequent lease sale for inclusion in a "Bennett Ranch Unit" which would be held by production from a well on another lease.

^{1/} Although the memorandum cited 43 CFR 3103.4-2, the regulatory provision addressing suspensions of operations and/or production is now found at 43 CFR 3103.4-4. See 61 FR 4750 (Feb. 8, 1996) (redesignating 43 CFR 3103.4-2 as 43 CFR 3103.4-4). We use the current citation here.

Based on several years of experience with federal leases, HEYCO was under the assumption that it was a relatively simple process to nominate federal tracts for leasing, a process which HEYCO has followed quite often. When the subject lease expired, HEYCO began the process to nominate the lands under the Subject Lease * * * for leasing. On June 18, 1996, HEYCO submitted a nomination to the BLM, requesting that the Tract be placed on the federal land sale. Again, on August 27, 1996 and December 17, 1996 nominations were submitted but the Tract did not appear on any subsequent BLM sale.

(HEYCO Reinstatement Letter, Sept. 25, 1998, at 2.) ^{2/} Heyco asserted that its intentions had been to produce from the entire Bennett Ranch Unit, and that it "certainly was not HEYCO's desire to drill a well in a wildcat area with unleased acreage in the Bennett Ranch Unit." Id. HEYCO alleged that it had requested a year's extension of time until May 1998 for, presumably, drilling a well on nearby Federal land until it could reacquire the lease, ^{3/} but that it was not able to do so because BLM was undertaking a "consultation" process with the Fish and Wildlife Service. Accordingly to HEYCO, it feared that "all the affected leases might all fall hostage to the Consultation Process," id., and therefore the relevant parties proceeded to drill the unit well on May 21, 1997. Id.

By decision dated October 27, 1998, BLM denied the reinstatement request. BLM noted that lease NMNM-66213 had expired by operation of law on May 31, 1996, because it had not earned an extension pursuant to 43 CFR 3107.1, which authorizes a 2-year extension for

[a]ny lease on which actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved communitization agreement or cooperative or unit plan of development or operation upon which such drilling takes place.

See Oct. 27, 1998, Decision at 1. BLM explained that, as a statutory matter, lease reinstatement is available only for leases that had terminated for failure to pay timely annual rental, and that no provision permits reinstatement of a lease that had expired by operation of law at the end of its primary term. See 30 U.S.C. § 188(c) and (d)(1994). BLM also advised HEYCO of a moratorium on oil and gas leasing in Otero County.

On November 18, 1998, HEYCO filed an application for retroactive suspension of operations and production on lease NMNM-66213. HEYCO stated that the lease had been included within "the logical outline for

^{2/} HEYCO also contends that it nominated the lands for competitive leasing on June 20, 1997, as well as on Sept. 2, 1997. Id. at 2.

^{3/} HEYCO'S letter ambiguously states that it requested "an extension of time on the APD for the Initial Well." Id. at 2. This extension request does not appear in the record.

the Bennett Ranch Unit Agreement, approved on October 3, 1995," and that the unit agreement had ultimately been approved by BLM on March 10, 1997, with an effective date of March 7, 1997. HEYCO explained that, as the designated operator of the proposed unit, it had submitted an APD for the Bennett Unit Ranch Unit #1 Well, sited in the NW¹/₄NE¹/₄ sec. 14, T. 25 S., R. 12 E., NMPM, on January 8, 1996, but that BLM had approved the APD on May 24, 1996, 7 days before the expiration of lease NMNM-66213. HEYCO's complaint was that, because the unit was situated in a remote area far from oil and gas services, it was unable to commence drilling the initial unit well before lease NMNM-66213 expired, and that BLM knew this. HEYCO asserted its own diligence in filing the APD for what it assumed would become a unit well 5 months before expiration of the subject lease, but claimed that BLM engaged in "extraordinary delay" in approval of the APD. According to HEYCO, had BLM approved the APD within 60 to 90 days (which HEYCO asserts it anticipated) then HEYCO would have secured approval of the Bennett Ranch Unit Agreement and commenced drilling the initial unit well prior to June 1, 1996. According to HEYCO, under the unit agreement, drilling the unit well would have constituted drilling operations on lease NMNM-66213 and permitted lease extension beyond the expiration date of its primary term. See 43 CFR 3107.1.

HEYCO argued that, given these facts, it was entitled to a retroactive suspension of operations and production on the lease in accordance with 30 U.S.C. §§ 209 and 226(i) (1994), and 43 CFR 3165.1 and 3103.4-4. HEYCO pointed out that BLM had imposed a moratorium on the leasing of Federal tracts in Otero County and had issued a letter on July 13, 1998, offering Federal oil and gas lessees in the county the opportunity to suspend their leases without first filing an APD, pending BLM's preparation and approval of an oil and gas amendment to the existing White Sands Resource Management Plan (RMP) for Otero and Sierra Counties. (Statement of Reasons (SOR) Exhibit A.) HEYCO averred that the considerations precipitating this 1998 offer of suspension to existing lessees were foreseeable at the time HEYCO submitted, and BLM approved, its APD. HEYCO insisted that, based on equitable considerations existing at the time the APD was filed and approved and on BLM's refusal to lease the lands encompassed by the former lease NMNM-66213 despite numerous requests to do so, BLM should retroactively suspend operations and production on lease NMNM-66213. This action, according to HEYCO, would not adversely affect any third party.

The ADSD denied HEYCO's application on December 3, 1998. The ADSD noted that lease NMNM-66213 was never within the Bennett Ranch Unit because the unit agreement did not become effective until March 7, 1997, over nine months after the lease had expired. The ADSD added that an approved unit well APD was not a prerequisite for final approval of a unit agreement so that there was no legal or logical connection between any alleged delay in obtaining approval of the APD and the absence of an approved unit agreement during the life of lease NMNM-66213. Since the proposed drill site was not on lease NMNM-66213, the ADSD observed that, even if the well had been permitted and drilled and had become productive before May 31, 1996, the lease would still have expired because no unit agreement was in effect at that time. The ADSD stated that HEYCO had failed to explain why it had not sought a suspension prior to lease expiration given the delay in processing

the APD, pointing out that HEYCO still had 7 days after approval of the APD to request a suspension before the lease expired.

The ADSD acknowledged that certain environmental concerns leading to the July 13, 1998, BLM offer of voluntary suspension were present at the time of lease expiration and had played a part in the extended time needed to approve the APD. But he indicated that the decision to suspend all leasing activity pending preparation of the RMP amendment and environmental impact statement (EIS) was made just prior to issuance of the July 13, 1998, offer and affected only leases in effect at that time. The ADSD further rejected as unsupported HEYCO's claim that retroactive lease suspension would not adversely affect third parties, given the intense interest in oil and gas leasing in Otero County. Finally, he concluded that BLM had no authority to retroactively suspend operations and production on the lease because 43 CFR 3165.1(b) required suspension applications to be filed prior to lease expiration. Accordingly, he denied HEYCO's suspension application.

HEYCO appealed the December 3, 1998, decision denying its application for retroactive suspension. ^{4/} In its SOR, HEYCO amplifies in 26 enumerated paragraphs the facts raised in its suspension application and recites the events it alleges would have happened had BLM quickly approved the APD on the nearby Federal lease. HEYCO asserts that it was unaware of anything that would cause BLM to need more than 30 days to approve the APD but that BLM was aware that the untimely approval of the APD would make it impossible for the operator to secure final approval of the unit and drill the initial test well on or before June 1, 1996. HEYCO thus argues that the burden of suspending the lease shifted to BLM.

According to HEYCO, BLM's delay in approving the APD impacted the lessees' ability to maintain the lease in force and effect, and deprived the lessees of the full use and enjoyment of the lease which constituted a de facto suspension of operations and production. HEYCO argues that BLM should acknowledge a de facto suspension of operations and production on the lease by extending the primary term of the lease until the lease was committed to the unit and drilling and/or production from the unit served to hold the lease.

[1] Oil and gas leases are issued for a specified primary term, in this case 10 years, and continue as long after that term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1994). Section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994), authorizes the Secretary to suspend operations and production under a mineral lease "in the interest of conservation," thereby extending the term of the lease for the length of the suspension period. See also 43 CFR 3103.4-4. Section 39 provides that the Secretary may "direct or assent to" a suspension "and the term of such lease shall be extended by adding any such suspension period thereto." 30 U.S.C. § 209 (1994). The statutory corollary for section 39 is that suspensions of operations or production ordered or consented to by the Secretary prohibit a lease from expiring for failure

^{4/} HEYCO did not appeal the decision denying reinstatement of the lease.

of production. See 30 U.S.C. § 226(i)(1994). Where the Secretary (or its delegate, BLM) directs a suspension of operations, an extension in the primary term of the lease is mandatory. Copper Valley Machine Works Inc. v. Andrus, 653 F.2d 595, 600, 604-05 (D.C. Cir. 1981). The Secretary also has discretionary authority to suspend a lease upon application by a lessee. Id. at 604; River Gas Corporation, 149 IBLA at 448.

The Board has construed section 39 as providing for suspension of Federal oil and gas leases either:

(1) where some act, omission, or delay by a Federal agency has precluded beneficial use of the lease, such as delays imposed upon the lessee due to administrative actions addressing environmental concerns which have the effect of denying the lessee "timely access" to the property; or (2) in the interest of conservation, that is, to prevent damage to the environment or loss of mineral resources.

Robert D. St. John, 141 IBLA 147, 151-52 (1997), citing Alfred G. Hoyle, 123 IBLA 169, 190-91, 99 I.D. 87, 98-99 (1992), reaffirmed as modified, 123 IBLA 194(A), 100 I.D. 34 (1993), aff'd, 927 F. Supp. 1411 (D. Colo. 1996), aff'd, 129 F.3d 1377 (10th Cir. 1997); Prima Oil and Gas Co., 148 IBLA 45, 49 (1999); Bronco Oil & Gas Co., 105 IBLA 84, 87 (1988); NevDak Oil & Exploration, Inc., 104 IBLA 133, 137-38 (1988) (applying Sierra Club (On Judicial Remand), 80 IBLA 251 (1984), aff'd sub nom., Getty Oil Co. v. Clark, 614 F. Supp. 904 (D. Wyo. 1985), aff'd sub nom., Texaco Producing, Inc. v. Hodel, 840 F.2d 776 (10th Cir. 1988); and Copper Valley Machine Works Inc. v. Andrus, 653 F.2d at 600, 604-05. The burden of showing entitlement to a suspension rests with the lessee. Robert D. St. John, 141 IBLA at 152; TNT Oil Co., 134 IBLA 201, 203 (1995).

This case involves no suspension directed by the Secretary or BLM. Accordingly, the question presented is whether BLM must "assent to" a suspension on HEYCO's application. Relevant regulations provide, among other things, that "[t]he application for suspension shall be filed with the authorized officer prior to the expiration date of the lease." 43 CFR 3165.1(b). Absent a written application for suspension properly filed before the expiration of the lease, the lease expires. See Mobil Producing Texas & New Mexico, Inc., 99 IBLA 5, 8 (1987); Fuel Resources Development Co., 69 IBLA 39, 41 (1982). Once the lease expires, there is nothing in existence for the Department to suspend. See Union Pacific Resources Co., 149 IBLA 294, 303 (1999); Mobil Producing Texas & New Mexico, Inc., 99 IBLA at 8; Fuel Resources Development Co., 69 IBLA at 41. While the Department has the authority to retroactively approve a suspension of a lease after the expiration date has passed, it can do so only if a suspension application was properly filed before the lease expired. See Union Pacific Resources Co., 149 IBLA at 303; River Gas Corporation, 149 IBLA at 449; Mobil Producing Texas & New Mexico, Inc., 99 IBLA at 8; William C. Kirkwood, 81 IBLA 204, 207 (1984); Jones-O'Brien, 85 I.D. 89, 94 (1978).

Although an abnormal BLM delay in processing an APD because of the time necessary to comply with environmental laws may warrant suspension of production and operations on an oil and gas lease in the interest of conservation, see Mobil Producing Texas & New Mexico, Inc., 99 IBLA at 8; Fuel Resources Development Co., 69 IBLA at 41; Jones-O'Brien, Inc., 85 I.D. at 91, this principle does not alter the fact that a lessee must apply for the suspension during the primary term of the lease, as described in 43 CFR 3165.1(b). HEYCO did not do so. The same problem plagues HEYCO's attempt to prove that "some act, omission, or delay by a Federal agency has precluded beneficial use of the lease [NMNM-66213], * * * which have the effect of denying the lessee 'timely access' to the property." Robert D. St. John, 141 IBLA at 151-52. The lease expired at the end of its primary term. There was no lease for BLM to suspend when HEYCO submitted its suspension application almost 2½ years after the lease expired.

Any request for suspension filed subsequent to the expiration of a lease is simply a request for lease reinstatement, a remedy which appellant specifically sought and was denied. HEYCO waived its right to appeal the October 27, 1998, lease reinstatement denial. Further, lease reinstatement is controlled by 30 U.S.C. § 188 (1994), and is permitted only where leases terminate automatically by law for failure to pay rental. HEYCO's lease did not terminate; it expired. It was not subject to reinstatement.

[2] HEYCO's appeal, however, requests an exception to the above-stated rule governing the filing of an application, if a lessee can show that BLM's actions constitute a de facto suspension of the lease during its primary term. According to HEYCO, the very timing of BLM's consideration of its APD for a well which might in the future hold production for a potential unit agreement constitutes a "de facto suspension" equivalent to a suspension order directed by the Secretary. On HEYCO's theory, the Board would rule that BLM's actions in a case can, after the fact, be seen to be so dilatory as to "direct" suspension and excuse a lessee from timely applying for one.

We disagree. A lessee is expected to understand its obligations under a lease and the applicable rules. If a lessee believes BLM's actions are compromising its ability to develop its lease, it must protect itself by seeking a lease extension. If a lessee's internal and anticipated deadlines are passing, its diligent and timely pursuit of a suspension under 43 CFR 3165.1(b) protects both BLM and the lessee from confusion as to when reasonably anticipated delay may cross the line and become grounds for suspension. Thus, while BLM delay in conducting requisite review in approving an APD might provide grounds for issuance of a retroactive suspension order on the facts of a particular case, we squarely reject the notion that it can constitute a direct suspension order justifying a lessee's failure to apply for a retroactive suspension within the primary term of a lease. 5/

5/ BLM's actions reflected in the record are consistent with this holding. When it became clear that environmental studies for an RMP could affect drilling permits in Otero County, BLM explicitly offered existing lessees the opportunity "to apply" for suspension. (July 13, 1998, BLM letter, SOR Exhibit A.) The existence of the environmental studies did not constitute a de facto suspension. The lessees were free to let the leases expire.

HEYCO's reliance on Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d at 595, for its proposed de facto suspension theory is misplaced. That decision addressed a provision of a BLM-approved permit to drill, which directed a "summer shutdown" in drilling. The court interpreted this provision as constituting a suspension of lease operations directed by the Secretary under MLA section 39. 653 F.2d at 604. The operator had filed an application within the primary term of the lease to extend it to account for the time when drilling was precluded by the "summer shutdown" provision. 653 F.2d at 598. BLM construed the application as one for relief from the permit and denied it. Id. at 604, 606. The District of Columbia Circuit found that BLM's construction of the application was error and that the operator had no obligation to object to the permit's provision to obtain a lease extension. Id. at 606. Citing MLA section 39's requirement that the term of any lease "shall be extended" by the length of a suspension ordered or consented to by the Secretary, the court found that the Secretary had a mandatory duty to extend the lease term by the length of the summer shutdowns directed by the permit. Id.

Copper Valley addresses that part of section 39 that requires, by law, that BLM extend a lease for the time during which a BLM-directed suspension takes place. It has no bearing on HEYCO's argument that this Board should construe BLM's review of an APD as a de facto suspension order. Rather, the court distinguished the authority to "invoke a retroactive suspension" on a lessee's request from a case where a suspension had been "ordered by the Secretary." Id. at 604 (emphasis in original). HEYCO's reading of the case sidesteps this distinction.

Past Board precedent is consistent with this holding. In William C. Kirkwood, 81 IBLA 207, appellant filed a request for lease extension three days after the lease expired and six days after BLM denied an APD. Stating that "in the proper circumstances, failure of [BLM] to timely approve an APD might be treated as an effective suspension of a lease," Kirkwood cited Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d at 595. The Board concluded that "the only possible way that this lease could be extended would be if the actions of the Department constituted, in effect, an order of suspension." 81 IBLA at 207.

The Board found that BLM's actions in approving an APD in that case did not constitute such an order. Rather, Kirkwood found that appellant had waited "9 years and 11 months knowing that, in the absence of production or diligent drilling operations, the lease would expire." 81 IBLA at 207. Rejecting the notion that the appellant was not aware of the appropriate time frame for filing APDs, Kirkwood held:

[T]he responsibility of complying with these requirements rests with the lessee and his agents and he cannot shift this burden to the Government by pleading ignorance. * * * While it may be unfortunate that MMS was unable to approve an APD prior to the expiration of lease W-35142, the onus for this failure clearly resides with appellant, who failed to exercise due care to protect his own interests.

81 IBLA at 208 (emphasis added; citation omitted). Kirkwood demonstrates that a BLM delay in approving an APD does not equate to an order suspending drilling or production.

In NevDak Oil and Exploration, Inc., we rejected the notion that BLM bore responsibility for a lessee's failure to protect its lease interests.

In the present case, it is clear that beneficial enjoyment of lease W-72441 was not precluded by any act, omission, or delay by a Federal agency. An APD could have been filed at any time during the 5-year primary term of the lease. However, an APD was not filed until November 8, 1985, 22 days before the lease expiration date. BLM is not to blame for the late filing. In these circumstances, the processing of the APD cannot be characterized by any delay on the part of BLM. Thus, the fact that the APD was not approved until November 29, 1985, one day before the lease expiration date, is not attributable to any act, omission, or delay by BLM, but rather simply the fact that the process was "begun too late." Sierra Club (On Judicial Remand), *supra* at 263; see also Lario Oil & Gas Co., 92 IBLA 46, 51 (1986); William C. Kirkwood, 81 IBLA 204, 207-08 (1984); Jones-O'Brien, Inc., 85 I.D. 89, 96-97 (1978).

104 IBLA at 137 (footnote omitted).

In Stephen G. Moore, 111 IBLA 326, 329-30 (1989), the Board rejected an argument that BLM was responsible for guiding a lessee through lease suspension requirements of the Department.

If we were to accept Moore's arguments, BLM would be obligated to explicitly advise a lessee that he should apply for a suspension, give a detailed explanation of the procedures for filing, and counsel a lessee as to all possible consequences and benefits that might result from requesting suspension. Moore contends that the effective date for suspension of his lease should be April 5, 1985, because BLM failed to properly advise him of these rights and procedures, despite the regulatory provision mandating the May 1, 1986, effective date.

Id. The decision went on to reject this argument as one of estoppel.

HEYCO thus errs in suggesting that this Board must find BLM's actions in reviewing and approving an APD as the de facto equivalent of an ordered suspension. In the case of a BLM-ordered well shutdown or lease suspension, BLM is statutorily required to extend the term of the lease. 6/

6/ To the extent that River Gas Corporation, 149 IBLA at 249, stated or suggested that a lessee must file a written application for a suspension after it has undisputedly been directed by the Secretary, such a precedent is overruled.

Where, on the other hand, a lessee requests suspension based on alleged BLM delay, such a request will only be considered to justify a retroactive suspension on timely application for one.

[3] Section 39 and 43 CFR 3165.1(b) properly allocate to the lessee the responsibility for seeking a lease suspension if its lease development is impaired by events short of a directed order of suspension. HEYCO cannot complain that such events, in the form of BLM action on the APD, denied HEYCO of its beneficial enjoyment of lease NMNM-66213, or absolved HEYCO of its lease responsibilities. To the contrary, this record shows that HEYCO's failure to develop the lease resulted from deliberate business decisions. HEYCO never filed an APD for a well on lease NMNM-66213. While HEYCO applied to drill a well elsewhere, the well site and lease NMNM-66213 were never included in an approved unit agreement. A unit agreement was approved 9 months after lease NMNM-66213 expired. HEYCO did not try to, or intend to, suspend its lease. Rather, as stated in its SOR and its September 28, 1998, letter, its plan was to seek a new lease covering the same territory in a subsequent lease sale.

HEYCO made these business decisions with full knowledge of the lease provisions and applicable regulations. They required HEYCO to seek the lease suspension if it wished to extend the lease. Even if HEYCO had some reason to anticipate unit approval prior to May 31, 1996, when it was not forthcoming, HEYCO was obligated to follow the regulation at 43 CFR 3165.1(b). ^{7/} Even after HEYCO received approval for its APD, it knew that it could not have drilled within 7 days, and should have sought to protect its interests. It did not do so. The lease has expired.

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.

Lisa Hemmer
Administrative Judge

I concur:

James L. Burski
Administrative Judge

^{7/} It is doubtful that HEYCO had any conceivable basis for anticipating unit approval prior to May 31, 1996. While the facts surrounding the unit formation are somewhat murky, we note that HEYCO itself admitted that the "Bennett Ranch Unit Agreement was ultimately approved by [BLM] on March 10, 1997 * * *, just five days after approval was requested by HEYCO." (Application for Suspension dated Nov. 17, 1998, ¶ 1(b).) HEYCO could scarcely have anticipated approval of the unit by May 31, 1996, when it had not even submitted a request.