

Opinion No. 49-5230

July 12, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Guy Shepard Commissioner of Public Lands State Land Office Santa Fe, New Mexico. Attention: George Graham Attorney

{*59} Receipt is acknowledged of your letter dated June 30, 1949, together with enclosed letter dated June 25, 1949, from the Tide Water Associated Oil Company.

A careful study of the two letters above mentioned, together with the complete files, discloses the following facts:

1. Under date of January 10, 1939, the State of New Mexico, acting through your office, entered into a certain oil and gas lease (No. B-7951 - Form 44) with the Tide Water Associated Oil Company of Tulsa, Oklahoma for a term of five years, subject to the terms contained therein. Said lease comprised several noncontiguous tracts of state land totaling 3,919.89 acres.
2. The above mentioned lease, Form 44, did not contain paragraph 16 of Chapter 111 of the {*60} Laws of 1945, State of New Mexico.
3. The original lease under the provisions of Section 15 was continued for a secondary term of 5 years, thereby extending its termination date to January 10, 1949.
4. Prior to said termination date, and on October 5, 1948, the lessee assigned to the Amerada Petroleum Corporation of Tulsa, Oklahoma 3,279.89 acres, more or less of the acreage contained in the original lease, which assignment was approved by the Commissioner of public lands of the State of New Mexico under date of November 26, 1948.
5. That under date of October 13, 1948 the Amerada Petroleum Corporation, assignee, executed and delivered to the New Mexico Oil Conservation Commission (Form C-101) its Notice of Intention to drill in the SE1/4, SE1/4 of Section 9, Township 10 South, Range 36 East, which location is within the leased premises assigned to said company by the original lessor and approved as aforesaid; that notice of intention to drill was approved by the New Mexico Oil Conservation Commission on October 14, 1948; that said assignee did thereafter actually drill and is now engaged in the bona fide drilling of said well.
6. That under date of January 3, 1949, seven days prior to termination date of the original lease, the Commissioner of Public Lands, State of New Mexico, and the Amerada Petroleum Corporation entered into a stipulation under authority of § 2,

Chapter III of the New Mexico Session Laws of 1945, making the terms and conditions of paragraph 16 of Chapter 111, Laws of 1945 a valid part of assignee's lease.

7. That assignee, Amerada Petroleum Company, has diligently drilled the oil well above mentioned in said location on said premises assigned and covered by said lease to a depth of 13,000 feet or more, and has filed all reports required by paragraph 16, Chapter 111 of the Laws of 1945 within the time specified, but said oil well has not yet produced oil and probably is a dry hole.

Upon the facts as above outlined you have now asked the opinion of this office on the following questions:

A. "It is desired to know whether Amerada, the present holder of most of the acreage in the original lease, is authorized to commence another well on some other part of the lease during the twenty day grace period."

B. "Your advice is further sought as to whether or not Amerada may assign the whole acreage back to Tidewater for the purpose of perpetuating the whole lease by the commencement of drilling of another part of the lease. Does the Amerada, at this time, hold an assignable lease or is its right to perpetuation a conditional one?"

In answer to your first question, let me quote paragraph 16 of Chapter 111 of the New Mexico Laws of 1945:

"If the lessee shall have maintained this lease in accordance with the provisions hereof and if at the expiration of the secondary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities or either of them is produced from said land; provided, however, {61} such operations extending beyond the secondary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term, and a report of the status of all of such operations shall be made by the lessee to the lessor every 30 days and a cessation of such operations for more than 20 consecutive days shall be considered as an abandonment of such operations and thereupon the provisions hereof shall be of no further force or effect.

"In Witness Whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

STATE OF NEW MEXICO

By ____

Commissioner of Public Lands, Lessor.

___ (SEAL) Lessee.

Distributed this the ___ day of ___, 19__."

It is provided in the first paragraph of paragraph 16 above that "If the lessee shall have maintained this lease in accordance with the provisions hereof and if at the expiration of the secondary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted * * * *; provided, however, **such operations extending beyond the secondary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term,**". It is our opinion that the last two words quoted, "said term", refer to the "secondary term" above.

In view of the fact that paragraph 16 of Chapter 111 of the Laws of 1945 was made a part of the lease in question by the executed stipulation of the lessor and assignee, it is not necessary to discuss the rights, benefits and privileges that assignee succeeded to by the assignment from assignor. However, these rights and obligations are clearly pointed out in the case of State v. Worden, 44 N.M. 400.

The question for determination here is what are the rights of the assignee after the termination of the secondary term of the lease, namely after January 10, 1949, as imposed by the stipulation adding paragraph 16 to the lease.

Paragraph 16 provides that the lease may be continued beyond its secondary term if the lessee, here being the assignee, is at the time of the expiration of the secondary term then engaged in bona fide drilling or reworking operations, **provided that such operations extending beyond the secondary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term.**

It is clear that the above makes provision for the extension of the lease but only on the condition that the drilling operations undertaken by the lessee or assignee shall have been submitted to and approved by the lessor prior to the termination of the secondary term of said lease, and further, that after the approval by the lessor, bona fide drilling shall have been commenced prior to or at the expiration of said secondary term. This proviso limiting and providing for the method of the extension of the lease is clear and concise and permits the extension of the lease beyond the secondary term to the time that it takes the lessee or assignee to ^{*62} conclude the bona fide drilling that he is actually engaged in at the expiration of the secondary term of the lease. If this drilling operation results in the production of oil then the lease is continued in full force and effect as long thereafter as oil and gas in paying quantities or either of them is produced from said land.

By the same token if the lessee fails to produce oil or gas from the drilling operation in which he was actively engaged at the time of the expiration of the secondary term of said lease and which he has diligently prosecuted and made his timely reports, then at the conclusion of this drilling operation without the discovery of oil or gas, his lease is terminated.

It is important to bear in mind that paragraph 16, which is a part of the lease, states that such operations extending beyond the secondary term shall be approved by the lessor upon **written application filed with the lessor on or before the expiration of said term.**

Lessee or assignee under date of October 13, 1948, prior to termination of the secondary term, filed proper notice of intention to drill one wildcat well with the New Mexico Oil Conservation Commission which was duly approved on October 14, 1948. This is the only operation that lessee submitted prior to the term expiration date of the secondary term, and which operation lessee has the right to continue with, under the terms and provisions of paragraph 16. Should lessee or assignee strike or discover oil or gas in paying quantities, the lease will be continued on in conformance with its terms and the law applicable. He has elected to take this chance on the drilling submitted and approved. If lessee fails to produce oil or gas in paying quantities by reason of the approved drilling, it is now too late for lessee or assignee to submit plans for new drilling and commence drilling on new locations on the lease premises, as such new locations were not submitted to the lessor for approval prior to the termination of the secondary term.

It is, therefore, the opinion of this office: A. That the Amerada Petroleum Corporation, assignee of the lease in question, cannot now commence drilling another well in a new location on other premises in the leased area.

B. That the Amerada Petroleum Corporation cannot re-assign the leased premises back to the original lessor, namely the Tide Water Associated Oil Company, for the purpose of attempting to accomplish that which it is unlawful for the Amerada Petroleum Corporation to accomplish. Assignee cannot assign a right that it does not have.

Further, that when the assignee of the lease in question has concluded its diligent prosecution of the approved location without the discovery of oil or gas in paying quantities, the lease in question, which it is now holding beyond its secondary term is terminated and cancelled and the acreage leased therein reverts back to the State of New Mexico.