Opinion No. 53-5708

March 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. E. S. Walker Commissioner of Public Lands Santa Fe, New Mexico

*{*100}* In your letter dated March 17, 1953, you request an opinion relative to two questions concerning the perpetuation and extension of New Mexico Oil and Gas leases as follows:

1. "A" holds a State of New Mexico Oil and Gas Lease covering four (4) separate tracts of land containing forty (40) acres each. One tract covered by the lease is committed to a unit area in accordance with the provisions of Chapter Eighty-eight (88) of the Session Laws of 1943, as amended. There is production in the unit area. What, if any, effect does this have upon this lease with respect to the three (3) tracts contained in it but which are not committed to the unit? There has been no production obtained in any of the tracts covered by "A's" lease. Stating the problem in other words the question is, are all tracts contained in a State of New Mexico Oil and Gas Lease perpetuated when only one (1) tract covered by the lease is committed to a unit area in which production has been obtained?

2. "A" holds a New Mexico Oil and Gas Lease covering four (4) separate tracts of land consisting of forty (40) acres each. This lease has run for a 10-year period. However, prior to the expiration of the lease "A" committed one of the four (4) tracts to a unit area. Production has not been obtained in the unit area although drilling there is contemplated or is under way in accordance with the Provisions of Chapter Eighty-eight (88) of the Session Laws of 1943, as amended. Under these circumstances, what effect does the inclusion of one tract covered by "A's" lease within the unit area have with respect to extending the lease beyond its termination date on the three (3) tracts covered by the lease but not included in the unit area.

Section 8-1138, 1941 Comp., p.s., being Section 1, Ch. 88, Laws of 1943, authorizes the Commissioner of Public Lands to approve unitization *{*101}* agreements made by lessees of State lands, with lessees of Federal lands or with others, and this section authorizes such agreements to provide among other things: "for considering for all purposes the drilling or operation of a well on any part of the area included in such an agreement, as being drilled or operated on each tract included in such agreement; * * * *."

If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area. Under the form of oil and gas lease contained in Section 8-1103, 1941 Comp., p.s., all of the tracts contained in a lease are perpetuated for as long after the term of the lease as oil or gas in paying quantities is produced from said land by the lessee. It is thus apparent that as to the lease in question if production

has been obtained upon any one of the four tracts of 40-acres contained in the lease, such production would perpetuate all of the tracts therein. If under the unit agreement the above quoted provision is included, then production in the unit area but outside of the 40-acre tract contained in the unit area, would inure to the benefit of said 40-acre tract the same as if production has been obtained from said tract. Since that is true, production in the unit area outside of the 40-acre tract is sufficient to perpetuate all of the land included in the lease of which only a part is included in the unit area.

In answer to Question No. 2, if Clause 16 is contained in the lease as provided under Section 8-1103, 1941 Comp., p.s., the secondary term of the lease would be extended, provided drilling or re-working operations on the lease were begun before the expiration of the secondary term.

The portion of the unit agreement above quoted, in considering Question No. 1, provides that the drilling or operation of a well on any part of the area included in such an agreement shall be considered as the drilling or operation on each tract included therein. In view of this language the commencement of drilling on any part of a unit area prior to the expiration of the secondary term would extend the secondary term on all tracts included in the unit area and would be considered the same as though a well had been commenced on each tract in such unit area. It follows from such a result that since drilling operations were commenced pursuant to Clause 16 of the lease prior to the termination of the secondary term on one 40-acre tract included in the lease and within the unit area, although such drilling may not actually have been on said 40-acre tract, the same is sufficient to perpetuate the entire lease of the tracts therein outside of the unit area for as long as the tract within the unit area is extended.

The perpetuation or extension of the other tracts in the lease under either Question No. 1 or No. 2, of course, is subject to the ever present implied covenant of the lessee to develop all tracts in a lease within a reasonable time in accordance with the decision in State ex rel Shell Petroleum Corp. v. Worden, 44 N.M. 400, 103 P 2d 124.

I am unable to find any authorities contrary to this conclusion and cite herewith a few in support thereof. Jackson v. Hunt Oil Co., decided in 1945 in 23 So. 2d 31, 208 La. 156; Hunter Co. v. Shell Oil Co., decided in 1947 in 31 So. 2d 10, 211 La. 893; LeBlanc v. Danciger Oil & Refining Co., decided in 1950 in 49 So. 2d 855, 218 La. 463; Gray v. Cameron, decided in 1950 in 234 SW 2d 769, 218 Ark. 142. The foregoing cases were found in Vol. 2, Summers Oil *{*102}* and Gas, under Section 302, 1 of the 1952 pocket parts.

By: C. C. McCulloh

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