



Key Issues Confronting Industry in Federal Oil and Gas Leasing and Permitting – A Series

Topic 6: Leases Extended by Diligent Drilling

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This sixth installment in our series on key issues in federal oil and gas leasing and development addresses extending expiring federal oil and gas leases by active and diligent drilling.

Under the Mineral Lease Act (MLA), the primary term of a federal oil and gas lease is 10 years or as long “as oil and gas is produced in paying quantities.” 30 U.S.C. § 226(e). Previous articles have discussed exceptions to this rule found in 30 U.S.C. § 226(i), including extending leases that previously had a well capable of production.

Under BLM regulations, a lease may also be extended for two years, where “actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term” 43 C.F.R. § 3107.1. This includes any federal lease within a federal unit that is set to expire on that date. *Id.* For example, if three leases in a federal unit are set to expire on November 30, and an operator is conducting actual drilling on a unit well on that date, and the operator diligently drills that well to the intended geologic formation, all three leases will be given the 2-year diligent drilling extension.

Several IBLA cases have provided instruction on the terms “actual drilling” and “diligently prosecuted” as they are used in BLM’s regulations. For example, there must be some level of active drilling on the last day of the lease; mere preparatory work for drilling operations will not suffice. *Estelle M. Wolf*, 37 IBLA 195, 197 (1978) (site preparation and attempts to move equipment onto lease which were frustrated by a blizzard held not qualifying for the 2-year diligent drilling extension); *Michigan Oil Co.*, 71 I.D. 263 (1964) (site preparation and grading held not qualifying).

In addition, the IBLA will look to the actions beyond the last day of the lease to ensure that “diligent operations” continued towards reaching oil and gas bearing formations. To qualify for the 2-year diligent drilling extension, “the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement

on the last day of the lease term with a bona fide intent to complete a producing well.” *Energy Trading, Inc.*, 50 IBLA 9, 13 (1980). Actual drilling operations include not only the physical drilling of a well, but other testing, completing or equipping of the well. 43 C.F.R. § 3100.0-5(g). It is simply not enough to begin drilling the well with no serious intentions to reach the target depth and complete a well capable of production in paying quantities.

Most telling are the *Christian Murer*, 68 IBLA 356 (1982), and *Classic Mining Corp.*, 37 IBLA 338 (1978) cases. In *Classic Mining Corp.*, the operator used what can be referred to as a spudder rig and cased a well 200 feet. At that point, the USGS (BLM predecessor) authorized a delay of 60 days for the continuation of the well. In this case, the generalized rule of 60 days was established in that if drilling ceases for more than 60 days without reaching the target depth or producing formations, BLM will conclude that “diligent drilling” is no longer occurring and the 2-year extension will not be given. In this situation, the lease will terminate. *Id.* at 341.

In sum, if the operator is actively drilling on the last day of the lease and continues with due diligence to reach the oil and gas bearing formations, the lease will be given a two-year extension. Under BLM regulations, there is no formal process for requesting the extension and it should occur as a matter of law, upon a signed statement from the operator in lieu of a well site inspection from BLM.

For more information regarding federal oil and gas lease issues, please contact [Bill Sparks](#).

Previous and upcoming articles in this series include:

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- Navigating Lease Protests and Oppositions to Leasing Decisions [\[view\]](#) February 2015
- Modifying Lease Terms and Cancelling Existing Leases [\[view\]](#) March 2015
- Suspension of Operations and Production [\[view\]](#) June 2015
- Leases in Extended Term With and Without a Well Capable of Production [\[view\]](#) July 2015
- Class I and Class II Reinstatements
- Federal Exploratory Units and Communitization Agreements—A Brief Overview

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