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# WINTER-ONLY DRILLING RESTRICTION IS NOT SUSPENSION OF OPERATIONS

## OIL AND GAS—MINERAL LEASING ACT OF 1920

A winter-only drilling restriction is not a suspension of operations and production within 30 U.S.C. §209. *Copper Valley Machine Works, Inc. v. Andrus*, 474 F. Supp. 189 (D.D.C. 1979), *appeal docketed*, No. 79-1994 (D.C. Cir. Oct. 2, 1979).

Plaintiff, Copper Valley Machine Works, Inc., sought a writ of mandamus against the Secretary of the Interior ordering him to extend by one year the term of a non-competitive oil and gas lease pursuant to 30 U.S.C. § 209.<sup>1</sup> The action was based on a restriction in Copper Valley's drilling permit<sup>2</sup> that prohibited operations between April 15 and November 15. Plaintiff argued that the "winter-only" restriction was a "suspension of operations and production" within 30 U.S.C. § 209, which entitled it to a mandatory extension of the lease term equivalent to the period of suspension.<sup>3</sup> The government, however, maintained that Copper Valley's requested extension was actually a request for a suspension of operations and production<sup>4</sup> and was thus properly denied by the secretary under 43 C.F.R. § 3103.3-8.<sup>5</sup>

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1. 474 F. Supp. 189 (D.D.C. 1979), *appeal docketed*, No. 79-1994 (D.C. Cir. Oct. 2, 1979). The lease was originally issued February 1, 1966, under 30 U.S.C. § 226(e) (1976), of the Mineral Leasing Act of 1920, 30 U.S.C. § § 181-263 (1976).

2. The drilling permit was issued January 31, 1976, the last day of the primary term. On the same day, Copper Valley was granted a two-year extension on the lease under 30 U.S.C. § 226(e) (1976) and 43 C.F.R. § 3107.2-3 (1979).

3. The statute reads, in pertinent part:

In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto.

30 U.S.C. § 209 (1976). Because the drilling permit was effective during the entire two-year extension of the lease, the restriction limited the period of actual operation to one year.

4. 30 U.S.C. § 209 (1976) permits the lessee to request a suspension order as well as allowing the Secretary to issue such an order of his own accord.

5. The regulation sets forth in part:

As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of

On cross-motions for summary judgment, the District Court held for the secretary, finding that the winter-only restriction in Copper Valley's drilling permit was not a "suspension of operations and production" within 30 U.S.C. § 209.<sup>6</sup> The court also implied that Copper Valley's suit was barred in any event by the 90-day limitation of the Mineral Leasing Act found in 30 U.S.C. § 226-2.<sup>7</sup>

Copper Valley argued that as the winter-only restriction was not in the lease as originally signed, it was entitled to full enjoyment of its lease rights during the two-year extension granted it at the end of the original 10-year term. The provisions of the drilling permit did not allow for two full years of use and thus effected a suspension of operations under § 209. Citing the lack of plaintiff's authority to the contrary, the court ruled that the conditions of the drilling permit had been incorporated into the original lease.<sup>8</sup>

The court gave three reasons for its holding. First, the restriction was a proper exercise of the secretary's environmental protection authority.<sup>9</sup> Second, Copper Valley agreed to the condition through its failure to object when the condition was imposed in the drilling permit<sup>10</sup> and through its payment of rental without protest during the summer season.<sup>11</sup> Third, the court found that the plaintiff's lease gave the secretary the authority to impose the restriction.<sup>12</sup>

Before disposing of this issue, the district court considered one further point. Citing legislative history,<sup>13</sup> the court held that § 209 applies primarily to extraordinary situations where the secretary

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conservation. Complete information must be furnished showing the necessity of such relief.

43 C.F.R. § 3103.3-8(a) (1979). Copper Valley requested the extension on January 20, 1978. By letter of February 28, 1978, the United States Geological Survey (USGS), which is responsible for the administration of oil and gas leases on federal land, informed Copper Valley that because oil and gas in paying quantities had not been found prior to the termination of the two-year extension on January 31, 1978, the lease had expired. Therefore, the USGS treated Copper Valley's January 20 letter as a request for suspension of operations and production. 474 F. Supp. at 191 n.1.

6. *Id.* at 191-92.

7. *Id.* at 192.

8. *Id.* at 191. See note 2 *supra*.

9. 474 F. Supp. at 191 (citing *California Co. v. Udall*, 296 F.2d 384 (D.C. Cir. 1961)).

10. 474 F. Supp. at 190.

11. *Id.* at 191. Under 30 U.S.C. § 209 (1976), the lessee is not required to pay rent during a suspension of operations.

12. 474 F. Supp. at 192. Section 4 of Copper Valley's lease reads: "It is agreed that the rate of prospecting and developing and the quality and rate of production from the lands covered by this lease shall be subject to control in the public interest by the Secretary of the Interior." *Id.* at 192 n.4.

13. The citation reads as follows in the reporter: "H.R. Rep. No. 1317, 79th Cong., 1st Sess. (June 30, 1932) p. 3 and 76 Cong. Rec. and 705 (Dec. 19, 1932)." The correct citation is: "H.R. REP. NO. 1737, 72d Cong., 1st Sess. 3 (1932) and 76 CONG. REC. 704, 705 (1932).

orders a suspension to conserve oil and gas, or where the lessee requests the action.<sup>14</sup> Section 209 previously had been applied to such unexpected occurrences in the Santa Barbara oil spill cases<sup>15</sup> relied upon by Copper Valley. However, since the present case did not involve a surprise situation, the court found the authority inapposite.<sup>16</sup> Therefore, the winter-only drilling restriction was not a "suspension of operations and production" under 30 U.S.C. § 209, but was rather a condition imposed on the lease which allowed the secretary to refuse Copper Valley's request for a suspension because it had not established a producing well prior to the termination of its lease.

The court then turned its attention to the 90-day limitation of action imposed by 30 U.S.C. § 226-2 and its applicability to the plaintiff's case. The court noted that Copper Valley had never sought administrative review<sup>17</sup> of the condition set forth in the drilling permit issued January 31, 1976. Such a review culminates in a decision of the secretary<sup>18</sup> referred to in § 226-2.<sup>19</sup> The running of the statute begins with "a [final] decision of the Secretary involving an oil and gas lease."<sup>20</sup> The court found that the winter-only restriction constituted such a decision.<sup>21</sup> Referring to the fact that the statute had been strictly interpreted in the past,<sup>22</sup> the court implied, but did not expressly hold, that Copper Valley's action would have been untimely regardless of the decision on the previous issue.<sup>23</sup>

The district court's decision is important for two reasons: 1) it is the first time § 209 has been construed outside the realm of offshore leases, and 2) restrictions such as the one involved in this case are commonly found in federal oil and gas leases.<sup>24</sup> Thus, the appellate decision, which could be in Copper Valley's favor, bears watching. The legal basis of the district court's decision is weak in places, especially its holding that the application of 30 U.S.C. § 209 should

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14. 474 F. Supp. at 192.

15. *Gulf Oil Corp. v. Morton*, 493 F.2d 141 (9th Cir. 1973); *Union Oil Co. of Cal. v. Morton*, 512 F.2d 743 (9th Cir. 1975).

16. 474 F. Supp. at 192.

17. The procedure is set forth in 30 C.F.R. § 290 (1977).

18. The authority of the Secretary to impose conditions on oil and gas leases is delegated to the Area Oil and Gas Supervisor, USGS under 30 C.F.R. § 221.21 (1977); thus, the need for the review procedure.

19. 474 F. Supp. at 192.

20. 30 U.S.C. § 226-2 (1976).

21. 474 F. Supp. at 192.

22. See *King v. Udall*, 266 F. Supp. 747 (D.D.C. 1967).

23. 474 F. Supp. at 192.

24. Brief for Appellees at 16, *Copper Valley Machine Works, Inc. v. Andrus*, No. 79-1994 (D.C. Cir., filed Oct. 2, 1979). The history cited by the district court was concerned primarily with the question of charging rental during a suspension period.

be limited primarily to surprise situations. In fact, the secretary has abandoned his argument from legislative history on this point.<sup>25</sup> On appeal, the government now emphasizes Copper Valley's apparent lack of diligence in pursuing drilling operations during the two-year extension of the leasehold.<sup>26</sup> However, the issue of diligence seems to raise a question of fact, which would undermine the basis for summary judgment, because summary judgment can decide only legal and not factual questions.<sup>27</sup> A decision on this basis would first require a trial on the question of diligence. Of course, the burden of convincing the appellate court that a reversal is mandated is on the appellant, therefore affirmance is always more than a bare possibility. For the present then, and possibly in the future, the District Court of the District of Columbia will not consider winter-only drilling restrictions as suspensions of operations and production within 30 U.S.C. § 209, and will not grant lessees any extension on that basis.

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25. *Id.* at 16-21.

26. Brief for Appellant at 31-33, *Copper Valley Machine Works, Inc. v. Andrus*, No. 79-1994 (D.C. Cir., filed Oct. 2, 1979).

27. *Id.* at 9-15. The leases in the Santa Barbara oil spill cases, note 15 *supra*, were extended under 43 C.F.R. § 3319.9(a) (1979). This regulation is promulgated under the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1343 (1976), and has the same effect as 30 U.S.C. § 209 (1976).