

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 82C-00622
UTE-CAL LAND DEVELOPMENT CORPORATION,)	
Debtor.)	Civil Proceeding No. 82PC-1219
UTE-CAL LAND DEVELOPMENT CORPORATION,)	
Plaintiff.)	
-vs-)	
KENAI OIL AND GAS, INC., a corporation, and WESTERN CRUDE OIL, INC., a corporation,)	
Defendants.)	MEMORANDUM OPINION

Debtor originally petitioned the Court on October 19, 1982 to order an accounting and payment of mineral royalties due and to terminate the underlying lease because of the defendants' failure to make royalty payments.

On December 27, 1982, this Court approved a stipulation between the debtor and defendant Western Crude Oil, the purchaser of crude oil from defendant Kenai Oil and Gas. At the same time, this Court dismissed the action against Western Crude Oil with prejudice, and placed Western under a continuing obligation to remit future royalty payments to debtor as they became due.

On January 17, 1983, debtor filed a motion for summary judgment on the remaining issue, the lease termination. On February 4, 1983, defendant filed a cross-motion for summary judgment. Arguments were presented on February 24, 1983; this Court took the question of lease termination under advisement.

The exercise of bankruptcy jurisdiction operates within the constraints of federalism. The power to adjudicate an issue does not necessarily carry with it a correlative obligation to exercise that power in all cases. As the United States Supreme Court has noted, "withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts On the contrary, it is but a recognition . . . that a federal court of equity . . . should stay its hand in the public interest when it reasonably appears that private interests will not suffer"

"It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic power of the states." Alabama Comm'n v. Southern R. Co., 341 U.S. 341, 350-351 (1951) (quoting, Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 297-298 (1943)) (deletions provided by the Alabama Comm'n Court).

This is such a case. Although this Court's power to act is unquestioned, "private interests will not suffer," Id. at 351, by

this Court's abstention at this state of the proceeding. This Court finds the declaratory relief requested by the debtor to be inappropriate here.

It is axiomatic that even in bankruptcy proceedings a state is empowered to define "property" within its boundaries. Utah Code Ann., Title 40, Chapter 6 (1981) contains a comprehensive regulatory scheme for the mineral assets at issue in this proceeding. It provides for agency enforcement in furtherance of an articulated public need for uniform application of state policy respecting oil and gas development. § 40-6-1. The administrative body has been given exclusive jurisdiction by the legislature, § 40-6-3.3(1), and its decisions can be appealed either to state or federal courts, § 40-6-3.3(2).

In addition to this comprehensive scheme of regulation, Utah has established a specific regulatory framework for drilling units such as the one involved in this proceeding. Section 40-6-6(c) empowers the state to restrict drilling activity to one well per unit. The restriction is binding on all lands underlying the surface, § 40-6-6(d); additional drilling is prohibited, § 40-6-6(e). In the event an owner of affected land declines to consent, the state has the power to order participation, § 40-6-6(f), but it appears that in such a case the provisions of § 40-6-6(h) would replace debtor's contractual one-fifth share with a statutory one-eighth share until development and production costs have been absorbed.

This Court does not have power over any other property contained in the mandatory drilling unit except insofar as disputes involving non-estate property relate to the debtor's bankruptcy case. A termination of debtor's lease would have no effect on defendant's ongoing drilling operations. Moreover, there is no way to isolate or capture debtor's underground assets. They are uncontrollably mobile and will continue their migration regardless of a court's decision.

Debtor also contends that the language of § 40-6-18(1) is merely optional: "The owner of a royalty . . . may file a petition with the board of oil, gas and mining to conduct a hearing to determine why these proceeds have not been paid." (Emphasis added). This interpretation is not persuasive. The Utah Supreme Court refused to establish a per se meaning for the word "may" in Purcell v. Wilkins, 195 P. 547 (1921). Instead, the Utah Court noted that "may" can take on a mandatory sense "in order to effectuate or carry out the obvious intention of the Legislature." Id. at 549. The Utah Legislature's unqualified conferral of jurisdiction on the Board in § 40-6-3.3(1) is such an obvious intention. The clear purpose of the word "may" in § 40-6-18(1) is that an aggrieved royalty owner may either take his grievance to the Board or may suffer in silence. Thus, state law does not give the debtor a choice of forums in this proceeding. Although 28 U.S.C. § 1471(b) embraces the dispute in this proceeding and thus supersedes state law or exclusivity of

jurisdiction, the exercise of that jurisdiction, for the reasons explained above, is not appropriate. If the State Board finds that defendant has been dilatory in its payments, the Board is uniquely situated to fashion an immediate and effective remedy for all royalty owners, including the debtor.

Because this matter is not yet ripe for this Court's involvement, defendant's cross-motion for summary judgment is granted, based upon debtor's failure to exhaust its state administrative remedies. In all other respects, defendant's cross-motion is denied, as is debtor's motion to terminate the lease. This does not preclude debtor from a later motion to reject the lease on the ground that it is burdensome.

DATED this 23 day of May, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE