

DUNCAN MILLER

IBLA 72-341

Decided February 20, 1973

Appeal from a determination by the New Mexico State Office, Bureau of Land Management, holding an oil and gas lease to have terminated and rejecting an extension which had been requested under a cooperative agreement. (NM 0199471)

Affirmed.

Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Where the lessee of an oil and gas lease seeks a two-year extension based upon a cooperative agreement under regulation 43 CFR 3107.2-3, the agreement must have been approved and drilling operations must have been commenced prior to the end of the primary term.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. STUEBING

Duncan Miller has appealed from a determination dated February 23, 1972, of the New Mexico State Office, Bureau of Land Management, that his oil and gas lease, NM 0199471, had expired by operation of law November 30, 1971, following which the land was listed for the simultaneous filing of lease offers. 1/

The lease was issued effective December 1, 1961, embracing 352.59 acres for a period of ten years. A letter from the New Mexico State Office of February 23, 1972, to Miller stated that the lease had expired on November 30, 1971.

Appellant asserts in his statement of reasons that his constitutional guarantees have been violated as a result of the State Office's refusal to allow him a two-year extension of his

1/ The successful drawee is referenced under serial no. NM 15444.

lease pursuant to 43 CFR 3107.2-3 based on an unapproved cooperative agreement he had formed with the Bell Petroleum Company on another leasehold. Miller grounds his claim upon the Bureau of Land Management's ignoring a letter which he wrote to them on October 24, 1971. In this letter he explained that he had entered into a cooperative agreement with the Bell Petroleum Company under which they were to drill on the SE 1/4 of the SE 1/4 of sec. 1, R. 29 E., T. 14 S., (a different property) which would, according to the appellant, be an offset to the subject lease and, in the event the geological horizons are favorably inclined, they would pursue the exploration efforts further. On the basis of that agreement, appellant states that he should have received a two-year extension pursuant to 30 U.S.C. § 226-1 (1970).

He also contends that his rights have been violated by the Bureau because the land was put up for simultaneous filing even after the appellant had notified the Bureau not to do so. Furthermore, this land was not deleted from the list upon his request. Deletion upon request of the lessee, according to the appellant, is a common practice.

43 CFR 3107.2-3, the section upon which the appellant relies for his extension, states:

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

The lease which appellant executed in 1961 was for a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities.

A memorandum dated December 16, 1971, from the United States Geological Survey, Leasing Branch, in Roswell, to the Bureau of Land Management in Santa Fe concerning the subject lease states:

According to the drilling memo from our Artesia district engineer, a copy of which was attached to the marked preliminary expiration list, there has been no drilling on this lease. There is no record, either at this office or the district office, of Mr. Duncan's (sic)

having submitted an executed communitization agreement, although there was correspondence with him about this in October 1971. * * *

As we showed on the marked copy of your preliminary expiration list for November 1971, lease NM 0199471 expired November 30, 1971.

We can see from this that appellant neither had a well of his own on the lease, nor had anyone begun to drill on the lease under the cooperative agreement, nor had the cooperative agreement which he had apparently executed with the Bell Petroleum Company been approved as required by 43 CFR 3107.2-3. Consequently, we can find no basis for appellant's assertions that any of his rights have been violated. He simply did not qualify for an extension under the statute or the regulations and his lease expired at the end of its regular term. 30 U.S.C. § 226-1 (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

