

Editor's note: Appealed -- aff'd, Civ. No. 1929-73 (D.D.C. Feb. 15, 1974)

DUNCAN MILLER

IBLA 73-24

Decided July 17, 1973

Appeal from decision (LA 0165160 and LA 0167932) of Riverside District and Land Office, Bureau of Land Management, denying protest.

Affirmed.

Oil and Gas Leases: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: First Qualified Applicant

If an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. However, the Department has plenary authority to refuse to issue any lease and an offeror for such a lease acquires no rights as against the Government.

Oil and Gas Leases: Generally

Benefits afforded by the Act of July 29, 1954, 30 U.S.C. § 187a (1958) were subject to being superseded or modified by later legislation, i.e., the Act of September 2, 1960, §§ 6 and 2, 30 U.S.C. §§ 187a, 226 (1970), except as to vested rights which did not encompass pending offers.

Oil and Gas Leases: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Regulations: Generally -- Regulations: Applicability

A regulation is valid where it constitutes an interpretation of the Act of September 2, 1960, 74 Stat. 781, and that interpretation is not unreasonable and not plainly inconsistent with the statute.

Where a regulation prescribes that all noncompetitive offers issued thereafter will be for a term of ten years, that regulation precludes the issuance of a noncompetitive lease pursuant to a law which had been modified or repealed.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. FISHMAN

Duncan Miller has appealed from a decision, dated June 6, 1972, rendered by the Riverside District and Land Office, denying his protest against the termination of oil and gas leases L.A. 0165160 and 0167932.

Offers for both leases were pending on September 2, 1960, the date of enactment of Public Law 86-705. Appellant was required to consent to changes in the lease terms to meet the provisions of that law and he did so consent. 1/

Leases pursuant to the offers were issued effective June 1, 1962, for a term of ten years. Both leases expired May 31, 1972.

Appellant recites that both lease offers were filed when the previous law 2/ was in existence and that under that law he would have been entitled to a five-year term, renewable for an additional five-year term and for a one-year eleven month extension, by reason of a partial assignment, Southern Union Production Company, 70 I.D. 406 (1963). See Leslie C. Jonkey, 3 IBLA 280 (1971); C. W. Trainer, 69 I.D. 81 (1962).

Appellant states that he "was required to consent to give up his statutory rights to leases for the longer term" and that "this consent was more or less under duress, consequently, no consideration was received for the contractual [sic] change, hence these lease consents were invalid."

The decision below held that oil and gas offerors, whose offers were pending on September 2, 1960, properly were required to consent to the terms of the Act of September 2, 1960, 74 Stat. 781, 30 U.S.C. §§ 187a, 226, (1970), citing Harold Ladd Pierce, 69 I.D. 14 (1962), aff'd sub nom. Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963).

1/ The form of consent recited in part that:

"Sec. 1 is revised to change the term of the lease from 5 to 10 years and to eliminate the last sentence thereof concerning the extension of the lease."

2/ Appellant apparently adverts to sec. 30(a) of the Mineral Leasing Act, as amended by the Act of July 29, 1954, 30 U.S.C. § 187a (1958).

Appellant urges that the cited cases are inapposite since they relate to "only the question of higher rental payments." He requests "equitable relief." It is true that Miller explicitly relates to higher rentals only, but the rationale therein is equally compelling with respect to other lease terms.

It is well-settled law that if an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. Nevertheless, the Department has plenary discretion to refuse to issue any lease at all for such tract. Udall v. Tallman, 380 U.S. 1, 13 (1965), rehearing denied, 380 U.S. 989 (1965). The filing of an oil and gas application does not generate any legal interest, Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966) other than the preference right accorded the first qualified applicant. Even where an applicant is the first qualified applicant the Department retains its discretion to reject his application. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). It necessarily follows that appellant had no right to have his application processed into a lease under the law prevailing prior to September 2, 1960.

Although appellant asserts that the precedents cited in the decision below are inapposite, benefits of the earlier existing legislation were subject to being superseded or modified by later legislation (i.e., the Act of September 2, 1960), except as to vested rights. Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966).

In Southwestern, the Court stated at 654-655:

The comprehensive authority of Congress over public lands includes the power to prescribe the times, conditions and mode of transfer thereof, and to designate the persons to whom the transfer shall be made. Gibson v. Chouteau, 80 U.S. (13 Wall.) 92, 20 L.Ed 534. Except as rights are vested, the benefits of existing legislation may be superseded or be modified by later legislation. For example, oil and gas lease offers which were filed before the 1960 amendments to the Mineral Leasing Act, 74 Stat. 781, and which were still pending on September 2, 1960, have been held to be subject to the revised lease terms and increased rental rates contained in the 1960 Mineral Leasing

Act amendments. Offerors were properly required to consent to leases subject to the terms of the 1960 Mineral Leasing Act amendment, or have their offers rejected. Miller v. Udall, 115 U.S. App. D.C. 162, 317 F.2d 573 (D.C. Cir.); Harold Ladd Pierce, 69 I.D. 14 (1962). Also where a contest over a preemption entry was pending which involved one private party whose prior entry was alleged defective and a second private party who held a statutory but unperfected right of preference, and Congress in the meanwhile directed a patent to issue to the party who had made the prior entry, the United States Supreme Court held that the second party's preference right was not a vested interest, and was cut off by the Congressional action. Emblem v. Lincoln Land Co., 184 U.S. 660, 22 S.Ct. 523, 46 L.Ed. 736 (1902). * * * (Emphasis supplied.)

It is noteworthy that 26 F.R. 3422, amended 43 CFR 192.40(b) (1962 Supp.) to provide:

All competitive leases shall be for a primary term for five years and so long thereafter as oil or gas is produced in paying quantities and noncompetitive leases for a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities. (Emphasis supplied.)

Thus, the Secretary construed the Act of September 2, 1960, as prohibiting thereafter the issuance of noncompetitive leases for a primary term other than ten years.

The broad authority of the Secretary of the Interior to make regulations for the purpose of carrying out the provisions of the Mineral Leasing Act of 1920 cannot be doubted. Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. § 189 (1970), states:

That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any all things necessary to carry out and accomplish the purposes of this Act * * *.

In the case at bar, the Secretary has issued a regulation constituting an interpretation of the 1960 Act. See Harold Ladd Pierce, *supra*, at 15-16. The Secretary has promulgated the regulation under the express power to issue regulations given by Section 32 of the Mineral Leasing Act of 1920. Inherent in a grant of power to administer the law is a grant of discretion to interpret the law, and the administrator's interpretation of the law is not subject to being lightly overturned. Riverside Oil Co. v. Hitchcock, 190 U.S. 316, 324-325 (1903); Ness v. Fisher, 223 U.S. 683, 691-692 (1912); Hall v. Payne, 254 U.S. 343, 347-348 (1920). The law on this principle, as applied specifically to administrative regulations, is well summarized in Review Committee, Venue VII, Etc. v. Willey, 275 F.2d 264, 272 (8th Cir. 1960), as follows:

It is well settled, of course, that administrative construction of an Act is entitled to great weight. [Citations omitted.] Regulations are to be sustained unless unreasonable and plainly inconsistent with the statute and they are not to be overruled except for weighty reasons. [Citations omitted.] * * * One claiming that a regulation is invalid has the heavy burden to "make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress." Boske v. Comingore, 177 U.S. 459, 470 [other citations omitted]. Regulations, however, cannot be arbitrary. They must have a basis in the statute and be within the authority granted the administrative agency.

Appellant assumes that he would automatically have enjoyed tenure of 11 years and nine months, had his leases been issued under the law prevailing pursuant to the Act of July 29, 1954, *supra*. However, under that law, if the lands during the initial five-year period had been designated as being within the known geologic structure of a producing oil and gas field, he would be entitled, after such initial period, to only a two-year extension.

Other circumstances could have interdicted the extension of five-year leases under the 1954 Act, *e.g.*, disqualification of the lessee to hold oil and gas leases, John E. Miles, 62 I.D. 135 (1955); failure to file timely the application for extension of the lease, Mattie B. Kinsey, 62 I.D. 334 (1955), *see* Earl C. Hartley,

65 I.D. 12 (1958); failure to file such application in the proper land office, cf. Donald C. Ingersoll, 63 I.D. 397 (1956); commitment of the land in the lease to a unit agreement Seaboard Oil Co., 64 I.D. 405 (1957), see Pan American Petroleum Corp., A-28832 (June 27, 1962); failure to pay filing fee prior to expiration of primary term, Duncan Miller, A-28076 (November 16, 1959), failure to accompany application for extension with payment of rental for the sixth year, Duncan Miller, A-28398 (August 31, 1960); and where the application for extension was filed by an unauthorized agent or agency and was not ratified until after expiration of time of filing extension application, Frank Naporan, A-29420 (June 20, 1963). Thus it clearly appears that appellant's certitude about the tenure he would have enjoyed is misplaced.

Finally, appellant's plea for "equitable relief" must be put into focus. He has permitted ten-year leases to run their course without objection. He has not demonstrated that he has been dealt with unfairly or in any manner different from other offerors whose offers were pending on September 2, 1960. The equitable doctrine of laches interdicts any favorable consideration, even if we were to find that the Department has authority to grant equitable relief under the circumstances.

Therefore, 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.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

