

Editor's note: Appealed -- dismissed, Civ. No. 74-1116 (D.Wyo. Oct. 22, 1974)

DUNCAN MILLER

IBLA 74-152

Decided April 26, 1974

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against expiration of oil and gas lease

W-0103568, and rejecting oil and gas lease offer W-42322.

Affirmed.

Oil and Gas Leases: Generally--Oil and Gas
Leases: Stipulations--Oil and Gas Leases:
Termination--Rules of Practice: Protests

A lessee's protest against the termination of an oil and gas lease is properly denied when the lessee fails to prove his charges that there was a breach of the terminated lease or unlawful activity with respect thereto.

Oil and Gas Leases: Generally--Oil and Gas
Leases: Applications: Generally--Oil
and Gas Leases: Noncompetitive Leases--
Oil and Gas Leases: Termination

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease and subsequently leased in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Duncan Miller has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated October 24, 1973, dismissing his protest against the expiration of oil and gas lease W-0103568, and rejecting his oil and gas lease offer W-42322 for lands formerly under W-0103568.

The incidents leading up to this appeal are as follows. On April 25, 1960, appellant filed an offer to lease the subject lands. The offer was rejected by the Cheyenne Land Office on the grounds that appellant had failed to consent to changes in the lease terms required by the Act of September 2, 1960, P.L. 86- 705, amending the Mineral Leasing Act, 30 U.S.C. § 226 et seq. (1958, Supp. III), and because the check in payment of the advance rental was uncollectible due to a bank error. In Duncan Miller, A-29278 (May 13, 1963), the Secretary of the Interior reversed a decision of the Division of Appeals, Bureau of Land Management, which affirmed the rejection of Miller's noncompetitive offer to lease the subject lands. The decision of the Secretary held that the required advance rental was properly paid, and that an oil and gas lease offer filed before the September 2, 1960, amendment of the Mineral Leasing Act, and still pending, was subject to the amendment and the offeror was properly required to subject his lease to its terms. Thereafter, Miller consented to the changes and was issued oil and gas lease W-0103568 on August 1, 1963, for a period of ten years.

On July 31, 1973, the lease automatically expired at the end of its term. On September 22, 1973, appellant filed a protest against the termination of the lease charging that there had been a violation of the lease contract based upon the unlawful imposition of stipulations under the authority of the "Environmental Act of 1959." 1/ In a decision dated October 15, 1973, the Wyoming State Office dismissed appellant's protest stating that the only stipulation in the lease was the consent to a change in terms required by the Act of September 2, 1960, and that no stipulations in connection with the "Environmental Act of 1959" were made a part of the lease. In a subsequent decision, dated October 24, 1973, the State Office amended its earlier protest dismissal, again denying appellant's protest for the reasons stated in its earlier decision, and also rejected appellant's oil and gas lease

1/ It seems likely that appellant was making reference to the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 et seq. (1970), as he objected to stipulations being applied to leases issued "prior" to the date of the Act. The record does not indicate that Miller's 1963 lease included any environmental stipulations.

offer W-42322, received October 9, 1973, for lands formerly under W-0103568. The State Office informed appellant that following termination of W-0103568, the land was posted on the September 1973 simultaneous filing list in accordance with 43 CFR 3112.1-1. A drawing was held, with Ada M. Davis being the first successful drawee (W-42086).

In his statement of reasons in support of his appeal, appellant argues that his protest was not adequately and correctly adjudicated, and that there was a breach of the original lease contract in addition to unlawful activity with respect to the lease.

Appellant's arguments are without merit. Miller did not present any evidence demonstrating a breach of the original lease nor unlawful activity with respect to the lease. Accordingly, we find that the State Office properly adjudicated appellant's protest and correctly found that his lease did not include any impermissible stipulations. Furthermore, rejection of appellant's lease offer W-42322 was required as lands formerly included in a terminated oil and gas lease may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112. Carl C. Robinson, 14 IBLA 338, 339 (1974); Claude C. Kennedy, 12 IBLA 183, 184 (1983); Jack E. Griffin, 7 IBLA 155, 156 (1973).

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.

Martin Ritvo
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge