

Editor's note: Appealed -- dismissed, Civ. No. 75-0905 (D.D.C. Aug. 8, 1975)

DUNCAN MILLER

IBLA 75-194

Decided March 18, 1975

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 28291 and M 28197.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Lands Subject to

Land formerly included in a canceled or relinquished lease or in a lease terminated or expired by operation of law shall be subject to filing of new lease offers only as provided in 43 CFR 3112.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Duncan Miller appeals from decisions dated October 3, 1974, by the Montana State Office, Bureau of Land Management, rejecting his noncompetitive oil and gas lease offers M 28291 and M 28197, filed in April 1974 for lands in T. 26 N., Rs. 45 and 46 E., and T. 25 N., R. 46 E., P.M., McCone County, Montana, on the basis that the lands in the offers are included in leases issued effective October 1, 1974, processed from offers submitted pursuant to 43 CFR 3112 and are not subject to open filings.

Each of Miller's offers states: "This offer is based on rights under prior lease [M 17387 or M 17390]. Offeror points to the regulation which protects prior rights and requires that no adverse action be taken until these prior rights are adjudicated."

Miller's prior leases for the subject lands were issued February 1, 1971. Each was terminated February 1, 1974, for failure to pay timely the annual rental. Although checks in payment of the rental had been submitted, the drawer's bank refused

to honor the checks for the stated reason: "Stale Date." Miller then issued new checks dated February 23, 1974, which BLM received February 25, 1974, after the due date when the leases were automatically terminated by operation of law, and not within the 20-day period after the due date during which the Department is authorized to reinstate leases pursuant to 30 U.S.C. § 188(c) (1970). Miller's appeal on this matter was decided by this Board in Duncan Miller, 16 IBLA 379 (1974), affirming the BLM holding that the leases did terminate automatically by operation of law.

During the pendency of the appeal, BLM posted the lands described in the two leases as available for oil and gas leasing under the simultaneous filing procedures for March 1974. The successful offerors, John M. Beard and John R. Groom, Jr., respectively, were so notified by notices dated April 4, 1974, and called upon to submit the first year's rental. Each complied within the time allowed. Meanwhile, Miller submitted his two lease offers, M 28291 and M 28197 as over-the-counter filings, on April 10 and 4, 1974, respectively. Action on the offers of Beard and Groom was suspended until Miller's appeal relative to the termination of leases M 17387 and M 17390 was disposed of. Following this Board's decision on August 21, 1974, Miller, supra, BLM executed leases M 28136 and M 28138, effective October 1, 1974, to Beard and Groom, respectively. On October 3, 1974, BLM rejected Miller's over-the-counter filings, and this appeal followed. 1/

Miller's appeal contends the previous leases (M 17387 and M 17390) had been unjustly canceled. This Board has already ruled on that question. Miller, supra. Miller has not presented anything on those cases which merits any further consideration.

There is no provision in the Mineral Leasing Act which gives a preference right to a new lease to the lessee of an oil and gas lease which terminates by operation of law for failure to pay the annual rental timely. When an oil and gas lease is relinquished or canceled or a lease terminates or expires by operation of law, the land embraced therein is available to the filing of new oil and gas lease offers only as provided in 43 CFR Subpart 3112. Over-the-counter filings for such lands may be accepted only if

1/ The State Office named John M. Beard and John R. Groom, Jr. as an adverse party for the respective cases on whom notice of appeal and statement of reasons had to be served. 43 CFR 4.413. The files do not disclose evidence of service of the notice of appeal and reasons on Beard or Groom. The appeals are thus subject to summary dismissal 43 CFR 4.412. Nonetheless, we have examined the merits in the cases, and ruled on them.

no offers were received during the simultaneous filing period provided in 43 CFR 3112.1-2. Claude C. Kennedy, 12 IBLA 183 (1973).

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

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

