

DUNCAN MILLER

IBLA 76-355

Decided June 7, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dismissing appellant's protest of the BLM determination that appellant's noncompetitive oil and gas lease (NM 0557829) had expired by operation of law at the end of its 10-year term.

Affirmed.

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

In order to support extension of an oil and gas lease on the basis of production within a pre-existing unit to which the lease was not previously committed, the lessee must reach an agreement with the parties to the unit agreement and the unit operating agreement in accordance with the procedures for subsequent joinder outlined therein and submit evidence of such agreement for approval of the Oil and Gas Supervisor, United States Geological Survey, prior to expiration of the lease. The mere sending of notice by the lessee to the Bureau of Land Management announcing his intention to commit his lease to an existing unit agreement is not sufficient.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dismissing appellant's protest of the prior decision of the same office which held that appellant's noncompetitive oil and gas lease (NM 0557829) expired by operation of law on August 31, 1975, at the end of its 10-year term.

Appellant contends that his lease was in fact committed to the North King Camp Unit prior to the expiration of the lease, that production was had in said unit prior to the expiration date, and that, hence, the lease continued in effect and did not expire. Appellant further contends that he was negotiating with the unit operator to further the commitment.

The case file contains no evidence that the subject lease was ever committed to the North King Camp Unit although some of the leased lands are located within the unit area. The BLM informed appellant by letter of October 29, 1975, that the United States Geological Survey ^{1/} confirmed that the lease was never committed to the unit. Asserting that the course of action which he pursued prior to expiration of the lease had the effect of committing the lease to the unit, appellant thus raises the question of what is required to commit a lease to a unit agreement.

The case file contains what appears to be a copy of correspondence of the appellant with McClellan Oil Co. in which the appellant expressed a desire to join the agreement. The file also contains a letter from appellant to the BLM dated June 23, 1975, stating that he has informed the unit operator that he has committed his lease to the unit. Appellant enclosed the advance rental payment for the eleventh lease year. In addition, a copy of a letter dated August 8, 1975, apparently sent by appellant to all members of the unit, expressing appellant's desire to join the unit and requesting the written consent of the members, appears in the file. The only response in the file is a copy of a letter dated August 15, 1975, from Harold E. Kurtz, Jr., to the appellant expressing the refusal of the former to consent to appellant's proposed joinder on appellant's terms.

Review of the North King Camp Unit file discloses that appellant was requested to join the unit agreement at the time that the unit was formed in 1968 by three letters from Pan American Petroleum Corporation, founder of the unit. Appellant expressly refused to join the unit in a letter dated May 15, 1968.

Subsequent joinder of the unit is governed by paragraph 28 of the unit agreement. It provides that after commencement of operations under the unit plan, a working interest in oil or gas not previously committed to the unit may be committed by the owner thereof consenting to the unit agreement and consenting to the unit operating agreement, subject to such requirements and approvals

^{1/} United States Geological Survey is the agency to which the Secretary has delegated the authority to approve unit agreements. 30 CFR 226.2a.

as may be provided for in the operating agreement. Paragraph 28 of the unit agreement further states that:

Except as may otherwise herein be provided subsequent joinders to this agreement shall be effective as of the first day of the month following the filing with the Supervisor and the Commissioner of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this agreement *
* *

The unit operating agreement further elaborates the procedure for subsequent joinder in Section 8.3:

After commencement of operations under the unit agreement, however, subsequent joinder in the unit agreement and this agreement by any party owning a working interest in the unit area shall be on such reasonable terms and conditions as the parties who are then committed to the unit agreement and this agreement may require in view of the circumstances existing at the time such subsequent joinder is sought.

Noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities expire by operation of law at the termination of the 10-year term for which they are issued. 30 U.S.C. §§ 226(e) and (f) (1970).

Lessees are authorized by statute to join together in a unit plan of development or operation of an oil or gas field for the purpose of conserving the resources of such field where such a unit plan is deemed necessary or advisable in the public interest by the Secretary of the Interior. 30 U.S.C. § 226(j) (1970). It is further provided in the statute that an oil and gas lease which is committed to such a plan "shall continue in force and effect as to the land committed so long as the lease remains subject to the plan," provided that production in paying quantities under the plan commences prior to the expiration date of the lease. 30 U.S.C. § 226(j) (1970). Production in paying quantities has been obtained within the unit.

The issue raised by this appeal is whether the unilateral action of the appellant in communicating his intent to commit his lease to the unit agreement to the members of the unit and to the BLM coupled with his negotiations over terms of joinder is sufficient to achieve a commitment of the lease to the unit and avail appellant of the statutory extension due to production on the unit.

A unit agreement is essentially a contract between private parties-- the lessees holding oil and gas operating rights and other holders of interests in the oil and gas under the tracts committed to the unit agreement. Shannon Oil Company, 62 I.D. 252, 255 (1955). One of the essential requirements of a contract is the mutual assent of the parties to the agreement. 17 C.J.S. Contracts § 30 (1963).

Appellant expressly refused to join the North King Camp Unit when the agreement was initially entered into and approved. The file contains no evidence that appellant has since joined the unit agreement in accordance with the procedures outlined therein and in the unit operating agreement. The conduct of negotiations with the unit operator and the making of proposals to other members of the unit which were not accepted indicate the absence of mutual assent. Thus mutual assent to the contract is lacking and the appellant cannot be held to have committed his lease to the unit.

Any modification of an approved unit agreement requires the approval of the Secretary of the Interior or his delegate based on a finding that it is necessary or advisable in the public interest and is for the purpose of conserving natural resources. 30 CFR 226.8(c). All papers and documents submitted pursuant to 30 CFR Part 226 relating to unit or cooperative agreements are to be filed in the office of the Oil and Gas Supervisor for the geographic area in which the unit is located. 30 CFR 226.9(a).

[1] A mere letter of the lessee to the BLM stating that the lessee has entered into a unit or cooperative agreement is not sufficient to justify an extension of the term of the lease in the absence of submission of an executed agreement to the Geological Survey prior to expiration of the lease. Duncan Miller, 10 IBLA 4, 6 (1973). A fortiori, the mere sending of a notice by the appellant to the BLM announcing his intention to commit his lease to the existing unit agreement without allegation of agreement having been reached with the other parties to the unit agreement and the unit operating agreement in accordance with the procedures outlined therein for subsequent joinder and without submission of documents evidencing such agreement for approval by the Geological Survey prior to expiration of appellant's lease is not sufficient to support an extension of the lease. Cf. Harry D. Owen, 13 IBLA 33 (1973).

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.

Anne Poindexter Lewis

Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

