

CHARLES M. GOAD

IBLA 76-441

Decided June 7, 1976

Appeal from decision of New Mexico State Office, Bureau of Land Management, holding oil and gas lease NM 0557100 expired by operation of law as of May 31, 1975.

Affirmed.

1. Oil and Gas Leases: Drilling--Oil and Gas Leases: Extensions

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well as demonstrated by subsequent circumstances, i.e. by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

2. Authority to Bind Government--Federal Employees and Officers: Generally--Oil and Gas Leases: Extensions

Assertions, even if established, that employees of the Bureau of Land Management assured an oil and gas lessee that drilling a leasehold on the last day of the lease term was sufficient, without more, to extend the lease, and that the lessee relied upon such representations,

afford the lessee no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management.

APPEARANCES: James E. Kirk, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Charles M. Goad has appealed from a decision rendered by the New Mexico State Office, Bureau of Land Management (BLM), dated September 12, 1975, holding that oil and gas lease NM 0557100 expired by operation of law as of May 31, 1975.

A memorandum, dated August 12, 1975, from the District Engineer, Geological Survey, at Durango, Colorado, to the Area Oil and Gas Supervisor, Geological Survey, at Roswell, New Mexico, with respect to the lease in issue recites as follows:

On May 31, 1975, a representative from this office witnessed the timely commencement of drilling operations on subject lease, which was due to expire on May 31, 1975. Mr. Charles M. Goad, the operator and lessee, was advised that drilling operations must be diligently continued to the proposed objective of 475 feet in order to qualify for lease extension.

A Sundry Notice dated July 1, 1975 was received in this office on July 17. The Notice indicated that drilling operations had temporarily ceased until notification from the B.L.M. that the lease had been extended.

A Certified letter was sent to the operator on July 18, 1975 advising that failure to promptly resume and complete the drilling operations would result in lease termination. A representative of this office inspected the well on July 29, 1975 and found that no operations were being conducted.

By memorandum of August 1, 1975, the Area Oil and Gas Supervisor was advised that drilling operations were not being diligently conducted and recommendation was made that the lease be terminated.

On August 12, the District Engineer contacted the operator by telephone and advised him that a recommendation had been made that the lease be terminated. Mr. Goad stated that he had complied with the law by

drilling across the termination date and plans to move a rig back to the location and resume drilling to the proposed depth after B.L.M. advises him that the lease is extended. He stated that he will bring court action, if necessary, to extend the lease.

Appellant asserts in the main that: he "conducted proper drilling operations on the subject leasehold to extend the said lease for two years" as provided by 43 CFR 3107.2-3; he consulted with representatives of the "Bureau of Land Management before and during such operations and was advised that the operations planned and then actually undertaken by * * * [him] were sufficient to extend the said lease;" and he "relied on such representations of the said agents." Attached to the statement of reasons is a letter to appellant from the District Engineer's Office, Geological Survey, at Durango, Colorado, dated July 18, 1975. That letter states in pertinent portion as follows:

A report of your spudding operations on the No. 8 Gola well located in the SW 1/4 NW 1/4 sec. 4, T. 17 N., R. 3 W., Sandoval County, New Mexico, on Federal lease New Mexico 0557100 was received by this office yesterday. Said report indicated drilling operations have been suspended on the well until you have received a lease extension.

Pursuant to Federal oil and gas regulations the subject lease, due to expire May 31, 1975, may be entitled to a two year extension provided diligent drilling operations were initiated prior to expiration of the lease and diligently continued until the proposed oil and/or gas objective of the test is reached. Your drilling operations on the well were timely commenced on May 31, 1975, and were witnessed by a representative of this office. A subsequent inspection of your operations on June 9, 1975, revealed surface casing to be set and operations suspended. A steel cap had been welded on top of the casing. This suspension of drilling operations jeopardizes your lease. Several unsuccessful attempts to inform you of this fact were made by telephone.

In order to protect your interest in the lease, drilling operations must be immediately resumed and continued without interruption until your proposed objective has been penetrated. Failure to promptly resume and complete your drilling operation will result in lease termination. [Emphasis in original.]

[1] The governing regulation in 43 CFR reads as follows:

§ 3107.2-3 Period of extension.

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 record amply establishes that drilling operations were commenced on the leasehold on May 31, 1975, prior to the end of the primary 10-year term. The above-quoted regulation is supplemented by 43 CFR 3107.2-2, which provides:

Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

The term "actual drilling operations" includes "not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas." 43 CFR 3107.2-1.

As indicated earlier, appellant was informed by the Geological Survey that drilling operations must be diligently continued to the proposed objective of 475 feet to meet this regulatory standard. On or before June 9, 1975, appellant ceased drilling operations pending notification from the Bureau of Land Management that the lease had been extended. He was apprised by the Geological Survey on or about July 18, 1975, that failure to promptly resume and complete the drilling operations would result in the expiration of his lease. The Geological Survey inspected the well on July 29, 1975, and found that no operations were being conducted. Appellant has not disputed the foregoing.

It is clear that appellant's bona fide initiation of drilling on the last day of the lease is not sufficient, in and of itself, to meet the statutory and regulatory standards. The Department, in Thelma M. Holbrook, 75 I.D. 329, 333 (1968), stated:

A common sense reading of section 4(d) [of the Mineral Leasing Act Revision of 1960, 30 U.S.C. § 226-1(d) (1970)] makes it apparent that post-lease termination activities may properly be considered in determining whether the statutory requirements have been met. Indeed

they may afford the only basis for making this determination. Section 4(d) requires that actual drilling operations be commenced prior to the end of the primary term. This means that a well can be spudded at any time prior to midnight of the last day of the lease term. Suppose that actual drilling of a well was begun at 11:45 p.m. and diligently continued for 20 minutes until 12:05 a.m. Then drilling was stopped and the rig removed. Could it rationally be said that the post-midnight activities could not be considered and that the lessee must be held to be entitled to an extension because he had commenced his drilling prior to midnight and was diligently drilling at midnight? The statute cannot be so literally--and blindly--read as permitting so obvious a sham and deception.

Applying these precepts to the facts of this case, we now consider whether the operator's activities on the last day of the lease constituted "actual drilling operations" within the spirit and intent of the statute. In resolving this question we examine not only the procedures he was following on that day but also his later performance to determine whether his "last day" activities were undertaken in good faith. The district engineer's memorandum of February 1, 1967, indicated that the operator's activities on the lease on January 31, 1967, were of a nature to earn the lease an extension, if they were carried to completion. The memorandum said as much, and only asked that the extension be held in abeyance until it could be determined whether the operator had made a bona fide effort to test for oil or gas. In other words, the district engineer wanted to evaluate the "last day" operations in the light of the operator's later performance. [Footnote omitted.]

We hold that to qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the last day of the lease term with a bona fide intent to complete a producing well, as demonstrated by subsequent circumstances, i.e., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where the discovery of commercial quantities of oil or gas could be reasonably anticipated. D. L. Cook, 20 IBLA 315 (1975).

Since appellant chose to suspend operations on or before June 9, 1975, without reaching a depth of 475 feet, and elected not to proceed to that depth until such time as he might be notified that the lease had been extended, and failed to recommence

drilling after the notification of July 18, 1975, that immediate resumption thereof was necessary for such extension, we must find that he failed to satisfy the test prescribed in D. L. Cook, supra. In essence, we find lacking the required good faith intent to complete a producing well for which drilling was initiated in the primary term of the lease. See Daisy E. Hook, 21 IBLA 147 (1975).

[2] Appellant asserts that agents of the Bureau of Land Management assured him that the operations planned and actually undertaken by him were sufficient to extend the lease and that he relied upon such representations. However, appellant did not complete the drilling he had indicated would be performed. Even assuming, arguendo, that appellant had indicated to BLM personnel that he merely intended to commence drilling, that assertion, even if substantiated by credible evidence, would avail appellant no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management. 43 CFR 1810.3(c); Gordon R. Epperson, 16 IBLA 60 (1974).

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.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

