

AUDRINE G. KNIGHT

IBLA 78-168

Decided June 30, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting application for extension of Lake Mead Mineral Lease AR 035576.

Affirmed.

1. Act of October 8, 1964 -- Public Lands: Leases and Permits

Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof for an additional 5 years is properly denied. Where the lessee fails to develop the lease property diligently during the term of the lease and does not fall within an exception to this requirement, the lease is not in good standing and may not be extended.

APPEARANCES: Audrine G. Knight, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Effective April 1, 1966, the Arizona State Office, Bureau of Land Management (BLM), issued Lake Mead Mineral Lease AR 035576 to Audrine G. Knight under the Act of October 8, 1964, 78 Stat. 1039-40, 16 U.S.C. § 460n-3 (1970). On March 26, 1971, Knight applied for an extension of 5 years for this lease, which was granted on June 25, 1971, after Knight had endorsed certain amended lease terms.

On August 6, 1974, an assignment from Knight to Exxon Corporation (Exxon) was filed. On November 1, 1974, when BLM issued a decision approving this assignment, Exxon became the record holder of this mineral lease.

On January 26, 1976, Exxon applied for a second 5-year extension of this lease. On August 12, 1977, an assignment was filed from Exxon back to Knight of whatever interest remained in the lease. On December 9, 1977, BLM issued a decision rejecting the application for a second extension of the term of the lease, because the lands under lease had not been diligently developed, in that no mining or production on the leased premises had been undertaken by the lessee or her assignee. BLM also rejected the application for reassignment from Exxon to Knight as there remained no interest to transfer. Knight (appellant) alone has appealed from this decision.

Under 43 CFR 3326.5-2 (1966) (presently 43 CFR 3566.4-4), which was in effect both when the lease was originally issued in 1966 and when it was extended in 1971, each mineral lease issued concerning lands within the Lake Mead Recreational Area must contain a provision requiring the following: "Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions \* \*

In the original lease, section 2(a) required that appellant commence mining within 6 months from the date of the lease and mine and dispose of minerals with reasonable diligence, except when operations were interrupted by strikes, the elements or casualties not attributed to her as lessee, or unless operations were suspended under the authority of the Secretary. Section 9 of the lease terms required that she submit a mining plan for approval to the superintendent of the Lake Mead Recreation Area, prior to beginning production.

In 1971, section 9 was amended and Knight was required to endorse the amended provision before the lease term was extended. In the amended version, Knight was required to file a mining plan for approval within 6 months of the extension of the lease, on pain of cancellation. Thus, under the agreement as amended, it appears that actual mining operations did not have to begin within 6 months so long as the mining plan was filed within this period. This requirement was in addition to the general requirement of section 2(a) that the leased property be diligently developed.

[1] Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof is properly denied. 43 CFR 3566.4-5; Apache Oro Company, 14 IBLA 75 (1973). Where the lessee fails to develop the leased property diligently and does not fall within an exception to the requirement that he do so, his lease is not "in good standing" at the end of its term and may not be extended.

Apache Oro Company, supra. Thus, the issue presented here is whether Knight or her assignee undertook diligent development of the leased property, or, if not, whether this failure falls within a recognized exception to this requirement.

Even under the most liberal construction of the term, it is clear that appellant did not undertake diligent development of the leased property. Apart from some preliminary prospecting activity during the first 5-year term of the lease, no mineral development occurred there during the entire 10-year duration of this mineral lease. Appellant does not dispute that there was no production from these lands.

The inactivity during the first 5 years was despite an express provision of the lease terms, section 2(a), requiring that mining begin within 6 months of execution of the lease. Notwithstanding its right to refuse renewal of the lease at the end of its first term because of this failure to begin mining within 6 months, BLM granted Knight's request for a 5-year extension in 1971. However, as a condition of granting the extension, BLM required Knight to endorse a provision expressly providing that failure to submit a mining plan for approval within 6 months of the extension would be grounds for cancellation of the lease. Thus, it is clear that BLM expected a definite step toward initiation of production early on in the extended term of the lease.

Nevertheless, Knight did not file a mining plan. It was not until after she had assigned her interest to Exxon that an "exploration plan" was finally filed, in December 1975. Exxon's late filing hardly allowed adequate time for review before the expiration of the lease, and the nature of Exxon's plan would probably not have qualified it as a "mining plan" for the extraction of ore. Nor did the "exploration plan" provide an adequate basis on which to review the proposed operation. In any event, Exxon has now retracted its participation in the lease.

Appellant asserts in her appeal that the market conditions for the sale of uranium have improved in 1978, thus suggesting that she was not required to develop the leased property diligently, as she could not operate except at a loss because of unfavorable market conditions. Appellant has failed to establish this assertion. In any event, it is too late now for her to show that she fell within an exception. Under 43 CFR 3326.5-2, supra (presently 43 CFR 3566.4-4), the Secretary may allow a lessee to suspend operations which are already underway, if he can show, at the time, that justifying conditions exist for so doing. A lessee may not excuse a failure to begin operations by asserting after the fact that it was financially unfavorable to do so, where the excuse is first offered after the lease has expired.

Finally, appellant asserts that BLM erred by not measuring the diligence of development of the lands from the time when Exxon, her assignee, took over the lease in 1974. This argument is without merit. An assignee of an interest in public lands is not entitled to start over again, as would a new lessee, but rather stands in the shoes of the assignor as regards the status of the lease. Exxon's efforts after 1974 did not constitute such effort as might have made up for the absence of development of the property in the past. Appellant also suggests that Exxon, her assignee, attempted to develop the leased property diligently, in that it submitted an exploration proposal, but that this effort was unreasonably blocked by the superintendent, who failed to respond to this proposal. We have answered this argument above. Exxon's proposal came too late, related to exploration rather than mining, and was too vague to constitute compliance. Moreover, its effect is now moot, as Exxon has no further interest.

In view of our holding in this matter, it is unnecessary to rule on BLM's motion for summary dismissal, filed February 10, 1978, by the Regional Solicitor, nor to decide the correctness of other matters stated in the decision below unrelated to the issue of whether the extension should be granted.

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.

Edward W. Stuebing  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Frederick Fishman  
Administrative Judge

