

BURTON HANCOCK

IBLA 79-84 Decided March 6, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring oil and gas leases U 5870 and U 5875 to have terminated by operation of law at the end of their terms.

Affirmed.

1. Oil and Gas Leases: Termination—Oil and Gas Leases: Unit and Cooperative Agreements

A noncompetitive oil and gas lease cannot be extended beyond the end of its primary term by commitment to an approved unit agreement where no actual drilling has been commenced anywhere within the unit on the date the lease is due to expire.

2. Oil and Gas Leases: Suspension

The Department of the Interior is not authorized to suspend an expired noncompetitive oil and gas lease so as to revive and extend the lease term unless an application therefor was filed before the expiration of the lease.

APPEARANCES: Burton Hancock, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Burton Hancock appeals from an October 12, 1978, decision of the Utah State Office, Bureau of Land Management (BLM), which held his noncompetitive oil and gas leases U 5870 and U 5875 to have expired at the end of their primary terms on May 31, 1978.

Hancock argues that the leases in question, both of which were committed to an approved unit agreement, 1/ should be extended by drilling operations which are presently being conducted on the unit. He concedes that no such operations were being conducted on any of the unitized leases at the time that the two subject leases expired, but argues that the leases should be suspended and extended by reason of an administrative prohibition which precluded drilling on certain of the unitized lands during the spring months of 1978.

The facts surrounding the "administrative injunction" cited by Hancock are as follows: On February 17, 1978, Hancock filed, with the State of Utah and the United States Geological Survey, applications to drill a test well on lands leased from the State of Utah within the Winter Camp Unit. On March 14, 1978, the State of Utah issued the desired permit, 2/ but its approval was subject to the condition that Hancock, "not attempt to do any location work or move in any equipment until clearance is given by the Grand Resource District of the Bureau of Land Management, Moab, Utah." The reason for this restriction was, in the words of the Utah Chief Petroleum Engineer, "abnormal moisture conditions in the area and the potential for severe land damage if drilling is attempted at the present time." Abnormal moisture conditions in the area persisted throughout May 1978 and it was not until May 30, 1978, 1 day before the end of the subject lease terms, that Hancock was permitted to commence drilling on the State lease.

[1] Hancock contends on appeal that the United States should not be allowed to require actual drilling operations as a precondition to extension of his leases and simultaneously, by administrative action, prohibit drilling on the leasehold. We note at the outset that:

(1) The restriction in question was created by the State of Utah in connection with an application to drill on State lands.

(2) There is no showing in the record that operations on the two federal leases here in question were barred by any "administrative action."

(3) Even if Hancock had been precluded from drilling on any of the unitized leases, the fact remains that the two expired leases were held for a term of 10 years while the restriction in question lasted less than 3 months.

1/ Winter Camp United Agreement, # 14-08-001-16156, approved September 27, 1977.

2/ Permit No. 43-019-30427.

Thus we cannot agree that, "administrative constraints were the immediate cause of Hancock's inability to preform * * *." We hold moreover, that even if this contention were correct, it would afford no grounds for granting lease extensions in contravention of 30 U.S.C. § 226(e) (1976) which clearly requires "actual drilling operations" as a precondition to an extension under these circumstances. See also 43 CFR 3107.2, Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977).

[2] Hancock, in a related line of argument, maintains that his leases should be extended since the unit agreement to which they were committed "provides for relief from obligations under the agreement when Unavoidable Delay is established, including 'Acts of God, Federal, State, or Municipal law or agencies * * *.'" ^{3/} This force majeure clause, however, is limited by its own terms to providing relief from "obligations under this agreement requiring the Unit Operator to commence or continue drilling * * *." (Emphasis added.) The obligation to commence actual drilling operations on the leased lands arises not from the unit agreement, but from the terms of the leases themselves. The "actual drilling operations" requirement contained in the leases derives, in turn, from the language of the statute, supra and, as such, cannot be modified by anyone other than the United States Congress.

There is a second impediment to Hancock's assertion that the force majeure clause of the unit agreement should be found to have suspended the leases in question throughout the period during which Hancock was precluded from drilling. We held in Duncan Miller, 6 IBLA 283 (1972), that under 30 U.S.C. § 209 (1976), no suspension of operations and production can be granted on any lease in the absence of a well capable of production except where the Secretary directs a suspension in the interest of conservation prior to the normal expiration of the lease.

Miller was overruled by Jones-O'Brien, 85 I.D. 89, 93-95 (1978), holding that a nonproducing lease "may be suspended retroactively in the interest of conservation if a suspension application is properly filed before the lease expires." (Footnote omitted.) Id. at 94.

In the case at bar, no such application was filed seasonably; and it is clear that the Secretary has not directed or assented to a suspension. It follows that the leases expired on May 31, 1978.

^{3/} See appellant's Exhibit 5.

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.

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

