

**Editor's note: Reconsideration denied by Order dated April 14, 1983**

ASARCO, INC.

IBLA 83-163

Decided January 11, 1983

Appeal from decision of the Eastern States Office, Bureau of Land Management, granting an extension of prospecting permit ES 17946.

Affirmed.

1. Mineral Lands: Prospecting Permits -- Words and Phrases

"Extension." An extension of a prospecting permit is a prolongation of the term of the previous interest. Accordingly, it commences as of the expiration date of the primary term of the permit.

APPEARANCES: Delbert D. Harper, manager, Eastern Exploration Division, Asarco, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Asarco, Inc. (Asarco), has appealed the October 12, 1982, decision of the Eastern States Office, Bureau of Land Management (BLM), insofar as it granted a 2-year extension of prospecting permit ES 17946 from the expiration date of the primary term of the permit, rather than from the date of the decision granting the extension.

The prospecting permit, which is for lead, zinc, copper, and associated minerals, was issued effective July 1, 1980, for a 2-year primary term. Thus, the expiration date of the primary term of the permit was June 30, 1982. On June 28, 1982, just 2 days prior to its expiration date, Asarco requested a 2-year extension of the permit.

By memorandum filed on August 20, 1982, the Minerals Management Service (MMS) advised BLM that Asarco had fulfilled the requirements for an extension, which had been established by special stipulation in the permit. It recommended that the extension be for "two full years." On October 4, 1982, the Forest Service, U.S. Department of Agriculture, filed its consent to the extension, subject to a minor revision in stipulations.

On October 12, 1982, BLM issued its decision extending the permit to June 30, 1984, 2 years from the expiration date of the primary term, conditioned on its execution of the revised stipulations.

On November 1, 1982, Asarco filed the executed stipulations and a notice of appeal of BLM's determination of the new expiration date of the permit. It asserts that "the extension period covers only 20 1/2 months rather than two years," asserting that MMS had recommended a 2-year extension of the permit from the date of BLM's decision. We affirm BLM.

[1] Extensions of the terms of existing property interests, by definition, date from the expiration date of the property interests. "Extending" a lease means a lengthening out of time previously fixed, and not the arbitrary setting of a new date. See In re Parent, 30 F. Supp. 943, 945 (D.C.N.H. 1940). An extension of time means that time is added to a period of time already granted. This is because the word "extended" means "prolonged," and a prolongation of time cannot occur after the time originally limited has expired. State v. Graves, 182 S.W. 2d 46, 51 (Mo. 1944). The practice of granting extensions from the expiration dates of the primary terms of interests is followed throughout the Department in connection with other mineral interests, such as oil and gas leases. BLM properly held that the extension commenced on July 1, 1982, and will end on June 30, 1984.

Appellant asserts that it has been given an extension of only 20-1/2 months rather than a full 2 years, implying that it was disadvantaged because it could not develop the property while its application for extension was pending before BLM. However, any blame for the delay in notification is properly laid upon Asarco, because it waited until June 28 to apply for an extension of a permit expiring June 30. Under the terms of the permit, appellant could have applied for this extension as early as 90 days prior to June 30. Had it done so, assuming the same processing time, it would have received the extension with only a short delay after July 1, 1982.

Appellant misinterprets MMS' advice to BLM. Under the regulations, an extension may be granted "not to exceed 2 years," with lesser extensions possible, depending on the circumstances in each case. 43 CFR 3511.3-3. MMS apparently advised BLM that it regarded appellant's application as suitable for a full 2-year extension, rather than less.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Department of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

