

T & M CORP.
LARRY G. McLATCHY

IBLA 82-1352

Decided February 3, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, holding a renewal lease to have expired. Great Falls 051995-C.

Vacated and remanded.

1. Oil and Gas Leases: Renewals -- Oil and Gas Leases: Twenty-Year Leases

To obtain a renewal of a 20-year oil and gas lease, the lessee should file an application for renewal at least 90 days prior to the expiration of the lease. This requirement is permissive, however, and a delay in filing the application may be excused in the presence of special circumstances.

APPEARANCES: Stephen H. Dalby, Esq., Missoula, Montana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

T & M Corporation and Larry G. McLatchy, its sole stockholder, have appealed from the decision of the Montana State Office, Bureau of Land Management (BLM), dated August 16, 1982, holding that oil and gas lease Great Falls 051995-C expired by its own terms as of midnight, November 30, 1981. The lease resulted from a partial assignment effective August 6, 1953, of lease Great Falls 051995(b) issued October 6, 1936, for a period of 20 years with a preferential right to successive 10-year renewals. The life of the lease, Great Falls 051995-C, was extended 5 years and 2 months, or to and including December 5, 1961, for reasons not pertinent to this case. Renewal leases were issued to appellants' predecessors in interest effective December 1, 1961 and 1971. T & M Corporation acquired the lease by assignment approved with an effective date of June 1, 1976.

To obtain renewal, the lessee should have filed an application to renew at least 90 days prior to the expiration date of the lease term, November 30, 1981, under 43 CFR 3107.8-2. When no renewal was filed on January 4, 1982, BLM sent a letter directed to T & M Corporation at its address of record informing it that the lease could not be held by production but must be

renewed, and if it intended to renew it should do so immediately by submitting an application, the \$10 fee, and reasons why the renewal was not timely requested before the expiration date. The letter was returned to BLM with a notation reflecting that the addressee was unknown. BLM thereafter communicated with the lease bondholder which put it in touch with the operators of the lease. Appellants apparently received notice of the BLM decision at issue through the lease operators as the decision, again sent to the address of record for T & M Corporation, was returned.

In their statement of reasons, appellants request that we grant a 10-year renewal retroactive to December 1, 1981. Appellant McLatchy explains that the address of record with BLM for T & M Corporation was that of C. L. Overfelt who served as attorney for the corporation from its inception in 1974 until November 1977 when he assigned his interest in the lease to appellant McLatchy and who moved his office in 1978 without informing BLM of any change of address for the corporation. McLatchy reports that until receiving BLM's August decision he believed that the lease term coincided with that of the original 1936 lease and that as a result Overfelt had renewed the lease for 10 years in October 1976. He states that he intends to transfer the lease to the present operators to whom he sold adjacent leases in 1979. He asserts that production of sour gas from a well on the lease, although limited in quantity, is essential to the continuing economic production of the adjoining leases.

[1] Decisions of this Department have held that regulation 43 CFR 3107.8-2 is permissive and that delay in filing a renewal application may be excused in the presence of special circumstances. Homestake Oil and Gas Co., 40 IBLA 262 (1979); Peacock Oil Co., Inc., 30 IBLA 103 (1977); Oscar L. Butcher, 61 I.D. 120 (1953). The BLM decision was proper at the time it was rendered as appellant had not applied for renewal. Appellants now seek a favorable exercise of discretion in waiving the requirement that the application be timely filed. Therefore, we will remand the case to BLM to permit appellant to submit the appropriate filing fee and documents, and in the absence of any countervailing policy considerations or other considerations which would militate against granting the application, BLM may allow renewal. See 43 CFR 1821.2-2(g).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is vacated and the case is remanded for further action consistent herewith.

Will A. Irwin
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

The subject lease expired by its own terms on December 1, 1981. No application for renewal was filed, and, as yet, none has been filed. The explanation offered by appellant for not filing is, to put it kindly, weak. The lease has been a dead letter for more than a year at this writing.

My attitude towards this case coincides precisely with that of Judge Burski as expressed in his concurring opinion in Homestake Oil and Gas Co., 40 IBLA 262, 264 (1979). As noted there, the result reached is the product of a long line of consistent cases which are directly in point, and which, "while notably bereft of an animating rationale, clearly support the grant of the renewal in the present case."

The quality of the explanation offered in earlier cases appears to have had no influence on the result. For example, in Homestake Oil and Gas Co., *supra*, it was merely alleged by the appellant that the failure to apply for a lease renewal was "due to an administrative oversight." In Peacock Oil Co., Inc., 30 IBLA 103 (1977), a delay of 4 1/2 years in filing for renewal was excused where the only explanation was that the record title holders at the time of the lease expiration had failed to file, and the subsequent purchasers of the expired lease didn't know that. In Oscar L. Butcher, 61 I.D. 120 (1953), no explanation was offered at all. I conclude that historically the Department and this Board have not been concerned with the exculpatory nature of the reasons given for the failure to make timely application for renewal. Rather, the "special circumstances" identified in these cases were related to the financial expenditures of appellants and their predecessors, the absence of any intervening third party rights, and the accrual of no disadvantage to the United States.

I am not satisfied that a lease which has expired by its own terms, through the lessee's long-term lack of diligence is deserving of nunc pro tunc renewal on the basis of either law or equity. However, I can find no justification for denying this appellant the charitable treatment which has been accorded all previous appellants in similar circumstances. Therefore, I concur in the result reached by the majority.

Edward W. Stuebing
Administrative Judge

