

WILLIAM C. KIRKWOOD

IBLA 83-374

Decided June 1, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, holding noncompetitive oil and gas lease to have expired upon the running of its primary term. W-35142.

Affirmed.

1. Oil and Gas Leases: Expiration -- Oil and Gas Leases: Suspensions

An oil and gas lease expires upon the running of its primary term unless eligible for extension as provided by 43 CFR Subpart 3701. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease, unless it can be found that actions of the Department have constituted a de facto suspension of the lease during its term.

APPEARANCES: David J. Perkins, Land Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated December 29, 1982, the Wyoming State Office, Bureau of Land Management (BLM), held that noncompetitive oil and gas lease W-35142 expired upon the running of its primary term at midnight, November 30, 1982. Appellant, the lessee of record, has timely appealed that determination to this Board. We affirm.

Noncompetitive oil and gas lease W-35142, embracing 680 acres in secs. 24 and 25, T. 47 N., R. 64 W., sixth principal meridian, issued to Viola J. Kirkwood pursuant to a simultaneously filed oil and gas lease offer on November 7, 1972, bearing an effective date of December 1, 1972, with a primary term of 10 years. On January 19, 1976, Viola Kirkwood filed an assignment of 100 percent record title interest to William C. Kirkwood, appellant herein. Subsequently, appellant filed an assignment of operating rights to 520 acres to Phillips Petroleum Corporation, which was approved on March 8, 1976. The area excluded from this assignment consisted of NW 1/4 sec. 25.

On February 22, 1976, appellant filed an application for a permit to drill a well (APD) in the NW 1/4 sec. 25, to a depth of 2,600 feet. This APD

was approved on March 22, 1976. A well, No. 22-25, was apparently drilled, but it is clear that it was not completed as a producing well. Later, through two subsequent assignments, the operating rights to all 680 acres embraced by the subject lease were eventually vested in appellant, effective April 13, 1977.

The records of BLM showed no further action on the lease until November 22, 1982, when the Casper District Office advised the District Engineer, Geological Survey, that it recommended "final approval of the Sundry Notices and Reports on Wells, Subsequent Report of Abandonment, and release from bond liability" for well No. 22-25.

In the interim, on November 17, 1982, appellant had tendered the advance annual rental for the 11th year of the lease. By memorandum dated December 22, 1982, the District Supervisor, Oil and Gas, transmitted a copy of a request from appellant, dated December 3, 1982, requesting an extension of the subject lease. This memorandum noted:

Mr. Kirkwood describes a series of events which occurred in November in regard to obtaining approval of an Application for Permit to Drill for a well on Lease W 35142. The APD was not approved before the lease expiration date of November 30, 1982. Mr. Kirkwood states that the lease could have been extended had the operator "been rendered adequate assistance by the Minerals Management Service in processing his drilling permit".

The memorandum then noted that the local office disagreed with a number of factual assertions made by appellant. It concluded, however, that:

Regardless of the sequence of events, the situation is that timely drilling was not commenced on Lease W 35142 to permit a two-year extension by drilling. Also, no application for suspension of operations and production was filed, although under the circumstances it is doubtful that a favorable recommendation would have been made because a reasonably complete APD had not been timely filed.

Subsequent to receipt of this memorandum, the State Office issued its decision of December 29, 1982, noting that no drilling operations were in progress over the anniversary date nor was the lease otherwise eligible for extension. Accordingly, the State Office held the lease to have expired upon the completion of its primary term.

In his statement of reasons in support of his appeal, appellant essentially reiterates his assertion that he received inadequate assistance from Minerals Management Service (MMS) in processing his APD. In order to place appellant's contentions in proper focus, it is necessary to briefly review the chronology of events from appellant's point of view. 1/

1/ We note, however, that the District Supervisor, Oil and Gas, disputes this chronology on a number of points. The areas of disagreement are set forth in the text.

Following a telephone call initiated by one Al Smith on November 1, 1982, a farmout agreement was negotiated on November 3, 1982, between Smith and appellant for the drilling of two test wells, to a depth of 200 feet, within appellant's lease. Pursuant thereto, Smith undertook to obtain approval of an APD by MMS. On November 3, and again on November 5, Smith called the Newcastle, Wyoming, office of MMS and eventually arranged a meeting for November 9, 1982, with the engineer (Giweke) in charge of approval of APD's. At that time, Smith was provided with an outline of the application procedure and received copies of the APD forms.

Subsequent to this meeting, it is alleged that Smith attempted to contact Giweke a number of times seeking assistance on completing the forms. It is alleged that none of Smith's calls were returned.

On November 22, 1982, Smith allegedly delivered the application to the Newcastle office. ^{2/} Appellant asserts that Smith attempted to call Giweke on both November 24 and November 26, but was unsuccessful in reaching him. On Saturday, November 27, Smith received a notice rejecting his APD. Appellant states that on November 29, Smith contacted Giweke who advised him that it was too late for the instant application but also invited Smith to confer with him about future applications. On November 30, Smith visited the Newcastle office but was unable to see Giweke, as he was ill. Finally, on December 3, 1982, appellant met with the District Supervisor, Brock Short, concerning this matter. Appellant asserts that Short advised him that he would write to the State Director recommending that the lease be granted an extension to permit approval of an APD. Appellant notes, however, that the substance of the actual memorandum submitted to the State Director, set forth above in the text, was to the opposite effect.

The memorandum from the District Supervisor to the State Director recites a chronology at some variance with that presented by appellant. Thus, while there is agreement that Smith first visited the office on November 9, 1982, ^{3/} the District Supervisor states that no further contact was made by Smith until November 23 when the APD was hand-delivered. The District Supervisor further stated the APD, as submitted, was lacking numerous required items of information "including such basic items as a survey plat and a Designation of Operator." The memorandum notes that it was simply not possible to approve a proper APD for the lease prior to expiration.

It is not necessary to resolve the varying factual discrepancies between these two accounts. The facts not in dispute clearly show that the decision of BLM holding the lease to have expired upon the completion of its primary term was correct.

^{2/} It is likely that this delivery occurred after close of official business as appellant states it was date stamped the next day. See 43 CFR 1821.2-2(d). Unfortunately, the case file contains no copy of this APD. However, in light of the fact that appellant admits in his statement of reasons that the APD was inadequate, this documentary omission is not of critical effect.

^{3/} The memorandum further notes that not only had the well not been staked but that no PER (Preliminary Environmental Review) had even been filed.

There is no contention that actual drilling operations were being conducted over the expiration date of the lease term such as would serve to extend the lease. See 43 CFR 3107.1. Nor is there any allegation that the lease could be extended by any other means. See generally 43 CFR Subpart 3107. While it is true that the decision in Jones-O'Brien, 85 I.D. 89 (1979), permits retroactive suspension of a lease even where the lease has expired prior to the approval of the suspension, authority to grant the suspension only exists where the application to suspend was filed prior to the expiration of the primary term of the lease. Id. at 94. No such application was ever filed. Even had it been, however, the grant of the suspension, given the facts of this case, would have been discretionary. See Sierra Club, 80 IBLA 251, 262-64 (1984).

Thus, the only possible way that this lease could be extended would be if the actions of the Department constituted, in effect, an order of suspension. See Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595 (D.C. Cir. 1981). This issue brings into focus appellant's allegation that the failure to timely obtain approval of the APD is attributable to a lack of diligence by MMS employees.

While it may be that, in the proper circumstances, failure of MMS (now BLM) employees to timely approve an APD might be treated as an effective suspension of the lease, the particular facts of the present case clearly provide no basis for such action.

Appellant held the lease herein for 9 years and 11 months knowing that, in the absence of production or diligent drilling operations, the lease would expire at midnight on November 30, 1982. It is not until the first day of the final month of the lease term that discussions are initiated by Smith concerning a farmout of the lease. While it is true that Smith visited the Newcastle office on November 9, no APD was even filed until November 22 (at the earliest), and it is not questioned that the APD which was submitted was not acceptable. Given these realities, it is hardly credible that appellant held a reasonable expectation that the APD could be reviewed and approved, the well site staked, and drilling commenced all prior to midnight on November 30.

Indeed, Notice to Lessees (NTL)-6, published over 6 years earlier (see 41 FR 18116 (Apr. 30, 1976)), had expressly advised oil and gas lessees that completed APD's should be filed no later than 30 days in advance of the contemplated starting date. ^{4/} Moreover, NTL-6 expressly warned lessees that:

In general, the processing of applications will be assigned a high priority and individual applications will be processed according to the date the complete application is filed. A higher priority due to an emergency, such as an imminent lease expiration date, will be duly considered but no special consideration will

^{4/} Even then, NTL-6 expressly notes that the early filing of a complete application is no guarantee that it will be approved within 30 days "as environmental considerations or the volume of applications in the affected Federal agencies may result in more than [a] 30-day delay." 41 FR 18117 (Apr. 30, 1976).

be given simply because a late filing is made. [Emphasis supplied.]

41 FR 18117 (Apr. 30, 1976).

It may be, as appellant suggests, that Smith was unfamiliar with the procedures mandated by NTL-6 for the filing of an APD. Nevertheless, the responsibility of complying with these requirements rests with the lessee and his agents and he cannot shift this burden to the Government by pleading ignorance. See generally Reichhold Energy Corp. v. Andrus, No. 79-1274 (D.D.C. Apr. 30, 1980). While it may be unfortunate that MMS was unable to approve an APD prior to the expiration of lease W-35142, the onus for this failure clearly resides with appellant, who failed to exercise due care to protect his own interests. The Wyoming State Office correctly held lease W-35142 to have expired upon completion of its primary term.

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.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge

