

RAYMOND T. DUNCAN ET AL.

IBLA 85-750

Decided April 8, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring oil and gas lease W 83421 to have expired.

Affirmed.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements

Where an oil and gas lease in its primary term is partially committed to a unit agreement, the term of the nonunitized lease created by segregation is the remainder of the primary term of the parent lease but not less than 2 years from the date of segregation.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous or incomplete information given by an employee of the Department cannot create any rights not authorized by law.

APPEARANCES: Richard T. Carroll, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Raymond T. Duncan, Vincent J. Duncan, and J. Walter Duncan, Jr., appeal from a decision, dated June 11, 1985, by the Wyoming State Office, Bureau of Land Management (BLM), declaring oil and gas lease W 83421 to have expired on December 1, 1984.

Lease W 67887 was issued effective June 1, 1979, for a 5-year term, with an expiration date of May 31, 1984. Lease W 83421 came into being when part of the parent lease, W 67887, was committed to the North Timber Creek Unit on December 1, 1982.

On January 24, 1983, BLM sent appellants notice of the lease segregation stating that the nonunitized lease W 83421 "will continue in effect,

unless relinquished, until December 1, 1984, and so long thereafter as oil or gas is produced in paying quantities (Regulation 43 CFR 3107.4-3)." ^{1/}

On March 17, 1983, BLM issued appellants a decision requiring the payment of rental due on lease W 83421. BLM's decision stated in part: "Since the unitized lease W 67887, which issued June 1, 1979, is extended by production, lease W 83421 is extended for so long as the unitized lease is held by production, or through December 1, 1984, if production ceases prior to that date on the unitized lease." BLM required the payment of \$ 80 for the period June 1, 1983, through May 31, 1984. Appellants did not appeal this decision.

On June 11, 1985, BLM issued the decision here appealed, amending its March 17, 1983, decision and holding lease W 83421 to have expired effective December 1, 1984. BLM corrected its earlier decision by noting that lease W 67887 was not in an extended term by production when segregation occurred on December 1, 1982, but was still in its primary term. The June 11 decision states:

Therefore, lease W 83421 does not continue for so long as W 67887 as stated in our notice of March 17, 1983. Under regulation 43 CFR 3107.3-2 (renumbered from 3107.4-3), the lease was extended for two years from the date of segregation through December 1, 1984.

Because we show no activity to further extend the lease, it expired under its own terms effective December 1, 1984. [Emphasis in original.]

Appellants contend that 43 CFR 3107.3-2 is ambiguous because it refers to "term" and not "primary term" of the lease. Appellants cite this perceived ambiguity as support for their reliance on BLM's March 17, 1983, decision stating lease W 83421 was "extended for so long as the unitized lease is held by production, or through December 1, 1984, if production ceases prior to that date on the unitized lease." Appellants contend that BLM should be estopped from amending its March 17, 1983, decision and from declaring lease W 83421 to have expired as of December 1, 1984. Appellants rest their estoppel argument on what they describe as BLM's "interpretation" of 43 CFR 3107.3-2 in the March 17 decision. They allege that they

1/ Regulation 43 CFR 3107.4-3 provided:

"Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities."

35 FR 9686 (June 13, 1970). Revised and redesignated section 3107.3-2 at 48 FR 33662 (July 22, 1983).

relied thereon to their detriment and took no action to extend lease W 83421. Appellants assert that the Board should reverse BLM's June 11, 1985, decision and that they should be given a 2-year extension effective as of the date of the Board's decision.

[1] Section 17(j) of the Mineral Leasing Act (the Act), as amended, 30 U.S.C. § 226(j) (1982), dealing with unit agreements, provides in pertinent part as follows:

Any * * * lease * * * which has heretofore or may hereafter be committed to any such [unit] plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of the lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. [Emphasis added.]

The words "the term thereof" in the above-cited section mean the term of the lease as it exists at the time of segregation. Solicitor's Opinion, M-36349, 63 I.D. 246 (1956). Thus, the term of a nonunitized lease created by partial commitment of the parent lease during the primary term is the remainder of the primary term but not less than 2 years from the date of segregation. Solicitor's Opinion, M-36543 (Jan. 23, 1959); Conoco, Inc., 80 IBLA 161 (1984); F. M. Tully, 37 IBLA 62 (1978); American Resources Management Corp., 36 IBLA 157 (1978). Moreover, production during the primary term of a lease does not change the character of the existing term of years. Solicitor's Opinion, M-36543, supra.

We therefore conclude BLM's March 17, 1983, decision was not authorized by section 17(j) of the Act and its June 11, 1985, decision properly determined lease W 83421 was extended for 2 years from the date of segregation, and, in the absence of evidence of production, expired by its own terms on December 1, 1984.

[2] Appellants argue that BLM should be estopped from amending its March 17, 1983, decision and that they should be afforded a period of 2 years to attempt to extend lease W 83421.

In Enfield v. Kleppe, 566 F.2d 1139 (10th Cir. 1977), a party relied upon a Departmental regulation misinterpreting section 17(e) of the Act and refrained from actions that might have succeeded in extending his oil

and gas lease. The court concluded that these facts did not give rise to estoppel, holding an administrative provision contrary to statute must be overturned. This holding is consistent with the well settled proposition that reliance on erroneous or incomplete information by BLM employees cannot create rights not authorized by law. See Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981). 2/ Further, Departmental regulation 43 CFR 1810.3(c) provides in relevant part that "[r]eliance upon information or opinion of any officer, agent or employee * * * cannot operate to vest any right not authorized by law."

For the reasons previously indicated, we have concluded that BLM's March 17, 1983, decision was erroneous and not authorized by section 17(j) of the Act. We also conclude that granting appellants additional time to extend the lease would result in a lease extension not authorized by section 17(j) of the Act. Thus, estopping BLM from amending its March 17 decision and granting appellants 2 years to extend the lease would both create rights not authorized by law. We must, therefore, reject appellants' estoppel argument and deny their claim for relief.

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.

John H. Kelly
Administrative Judge

We concur

Administrative Judge

Franklin D. Arness

Administrative Judge

James L. Burski

2/ Appellants cite Texas Oil & Gas Corp., 58 IBLA 175, 88 I.D. 879 (1981), as a case in which reasonable reliance on erroneous BLM advice resulted in relief. The case is distinguishable on facts and law from the instant case. In Texas, BLM issued a lease with conflicting and confusing rental provisions. In reliance on those provisions, the lessee calculated and paid only half the rental amount, resulting in termination of the lease. In reinstating the lease, the Board noted that the statute involved, 30 U.S.C. § 188(b) (1982), provided for relief given circumstances such as those obtaining in that case. The Board also observed that a written contract (oil and gas lease) is to be construed most strongly against its author. Compare Safarik v. Udall, 304 F.2d 944, cert. denied, 371 U.S. 901 (1962), with Enfield v. Kleppe, *supra*.

