

INTERIOR BOARD OF LAND APPEALS

BHB Oil Company

157 IBLA 187 (September 11, 2002)

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BHB OIL COMPANY

IBLA 2002-15

Decided September 11, 2002

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting application for renewal of section 14 oil and gas lease. WYC044844A.

Set aside and remanded.

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

A BLM decision rejecting an application for renewal of a sec. 14 oil and gas lease for failure to file the renewal lease forms within a time period established in a prior decision will be set aside when the lessee filed a timely application prior to lease expiration, BLM failed to transmit the renewal forms to the lessee until more than 15 months after the expiration date of the lease, and the lessee properly paid lease rental as required by BLM.

APPEARANCES: Pam Weikum, Accountant, BHB Oil Company, Casper, Wyoming.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

BHB Oil Company (BHB) has appealed the August 17, 2001, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting BHB's application for renewal of lease WYC044844A and requested a stay of the effectiveness of that decision. By order dated June 13, 2002, we granted the request for stay.

The lease in question was issued in April 1928 effective April 12, 1927, under section 14 of the Mineral Leasing Act, as amended, 30 U.S.C. § 223 (1934). 1/ The lease provided for an initial term of 20 years "with the preferential right in the lessee to renew this lease for successive periods of ten (10) years, upon such reasonable terms and conditions as may be prescribed by the lessor, unless otherwise provided by law at the time of the expiration of such periods." (Lease at Sec. 1.) The original 20-year term of the lease was extended for many years by reason of drilling suspension. See Letter dated Jan. 11, 1957, from Continental Oil Company

1/ The original serial number was Cheyenne 044844(a).

to BLM. Accordingly, the first term did not expire until July 12, 1959. (BLM Decision dated Mar. 11, 1957; Memorandum dated Feb. 25, 1957, from Acting Regional Oil and Gas Supervisor, Geological Survey, to BLM.)

On March 26, 1959, prior to exploration, Continental Oil Company, the then lessee-of-record, duly filed for renewal of the lease, tendering in advance the rental for the 1959-1960 lease year. A renewal lease was issued effective July 1, 1959, noting that the lease was "for a period of 10 years * * * with preferential right in lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by lessor, unless otherwise provided by law at expiration of such periods." (Renewal Lease at Sec. 1.) Second, third, and fourth renewal leases were issued under identical terms effective July 1, 1969, July 1, 1979, and July 1, 1989.

The lease in question was assigned effective February 1, 1996, to Thomas Boyd, and reassigned effective October 1, 1996, from Boyd to BHB.

On March 19, 1999, BLM sent notice to BHB that, unless the lease was committed to a unitization agreement at the end of its primary or renewal term, the lease had to be renewed every 10 years. It advised that the lease had last been renewed effective July 1, 1989, for a 10-year period. Citing the provisions of 43 CFR 3107.8, BLM gave notice that, to ensure continuation of the lease, an application for lease renewal had to be filed, along with a \$75 filing fee. ^{2/} BLM warned that, if a renewal application were not received within the time allowed, the lease would be held to have expired by its own terms effective June 30, 1999.

On May 7, 1999, within the time allowed for doing so by 43 CFR 3107.8-2, BHB filed its application for renewal lease, along with the required \$75 filing fee.

Although BLM promptly reviewed the merits of that application and concluded on July 2, 1999, that there were no objections to renewal of the lease (provided that an additional "timing limit" stipulation be added to the "lease package"), it took no action to transmit the renewal lease forms to BHB for execution until September 7, 2000. BLM issued a decision on that date holding as follows:

Enclosed are an original and two copies of renewal lease forms with two stipulation(s) attached. All three copies of the form must be signed and dated by the lessee of record. The regulations codified at 43 CFR 3103.2(b)(3) and 43 CFR 3103.3-1(a)(1), specify that renewal leases shall be issued at a rental rate of \$2 per acre, or fraction thereof, and a fixed royalty rate of 12½ percent. The Worland Field Office has advised that lease WYC044944A is no longer a producing lease

^{2/} Although doing so ran counter to the provisions of 43 CFR 3107.8-2 (which require that the renewal application be filed at least 90 days prior to the expiration of its term), BLM allowed BHB 120 days to file an application for renewal of the lease.

and is in rental status. Rental in the amount of \$924.00, for the period of July 1, 1999, through June 30, 2000, and \$924.00, for the period of July 1, 2000, through June 30, 2001, a total of \$1,848.00 must be submitted to this office with the executed lease forms.

* * * Failure to return the executed lease forms and stipulations within the time allowed will result in rejection of your application for renewal. [3/]

The record reflects that BHB received that decision by certified mail on September 18, 2000.

At some unspecified time, BHB submitted \$1,848, which was credited to the lease account balance of the lease in question. However, the record does not otherwise indicate that BHB responded to BLM's September 2000, decision. Specifically, it does not contain executed copies of the renewed lease.

On August 17, 2001, BLM issued the decision under appeal herein, stating as follows:

On September 7, 2000, renewal lease forms were sent to your attention for execution in order to successfully renew lease WYC044844a. You were given 30 days from receipt of that Decision * * * in which to submit the signed forms, stipulations and any monies due.

[In November 2000, a BLM employee] contacted a [BHB employee] inquiring about the renewal forms which were never returned or received in the Wyoming State Office (BLM). After several attempts on our part to contact [BHB] and to stress the urgency to return the renewal forms and rental in a timely fashion, to date nothing has been received and we have had no further communications from your office.

By certified mail of September 7, 2000, a decision was sent to you allowing 30 days in which to execute and return all copies of the lease forms and stipulations. The decision was received by you on September 12, 2000. To date we have not received the executed forms and stipulations[;] therefore, your application for renewal of lease WYC044844a is hereby rejected. Lease WYC044844a is deemed to have expired under [its] own terms effective June 30, 1999.

In its notice of appeal/statement of reasons (SOR), BHB does not deny that it failed to submit the forms within the time allowed by BLM. It does

3/ BLM also advised BHB that, as a result of amendments to the Mineral Leasing Act enacted on Nov. 15, 1990, the term of the lease would be renewed for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities.

state, however, that "[t]he rentals were paid for the last two years," by which it appears that it means that rentals were paid for the lease years that would have begun on July 1, 1999, and July 1, 2000, if the lease had been renewed. This has been confirmed by lease account materials that BLM recently filed.

The Secretary of the Interior may require the execution of special stipulations as a condition precedent to issuing an oil and gas lease. James M. Chudnow, 69 IBLA 87, 145 (1986); First Mississippi Corp., 62 IBLA 184 (1982), and cases cited therein. In the exercise of that authority, BLM may, even in the absence of a regulation so providing, impose by correspondence a 30-day time limit for filing the signed stipulations or objecting to them. Bill Mathis, 90 IBLA 353, 355 (1986).

However, Departmental regulation 43 CFR 1822.15 provides as follows:

If I miss filing a required document or payment within the specified period, can BLM consider it timely filed anyway?

BLM may consider it timely filed if:

- (a) The law does not prohibit BLM from doing so;
- (b) No other BLM regulation prohibits doing so; and
- (c) No intervening third party interests or rights have been created or established during the intervening period.

From our review there appears no reason to prevent application of the above regulation to this case. See Bill Mathis, 90 IBLA at 355-56 (applying 43 CFR 1821.2-2(g) (1998), the previous version of this regulation). We find nothing in the statute or regulations dictating that failure to timely submit renewal lease forms must result in rejection of the renewal application. Compare, Gian Cassarino, 78 IBLA 242 (1984) (where governing regulations mandated rejection of defective submission of lease forms for over-the-counter offer.) Accordingly, we find nothing in the law barring BLM from accepting untimely-filed lease forms. That is, in the words of the regulation, BLM may properly consider the document "timely filed." Nor does it appear the rights of third parties have intervened here. ^{4/}

It appears that BHB made an honest mistake as to whether the renewal forms had been signed and returned to BLM. In view of the fact that BHB paid rental for the period as demanded by BLM, it is possible that the forms were also submitted to the Minerals Management Service along with that rental payment. We are also influenced by the fact that, although the application for renewal was timely submitted in May 1999, BLM did not submit renewal lease forms for execution until September 2000, long after passing of the July 1, 1999, renewal date. This no doubt contributed to BHB's apparent confusion as to the status of the lease.

^{4/} Again, this would not be true in the noncompetitive simultaneous context, where multiple offers are routinely filed. Nothing in the record shows that the lands covered by this lease have been subject to offers by third parties.

In these circumstances, it is appropriate to set aside BIM's decision rejecting BHB's lease renewal application. The matter is remanded with instructions to allow BHB a reasonable time to complete and file the lease renewal forms.

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 set aside and the case is remanded.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge