

SOUTHWEST SALT COMPANY

IBLA 70-59 Decided March 24, 1971

Sodium Leases and Permits: Rentals

Where a sodium lessee files a relinquishment of the lease after accrual but before payment of the rental for that calendar year, the Secretary is empowered to determine whether the lessee demonstrated reasonable diligence so as to obtain the benefit of proration of rent on a monthly basis pursuant to the Act of November 28, 1943; but the act does not confer authority to relieve the lessee of liability for rental accrued for those months prior to the filing of the relinquishment.

Federal Employees and Officers: Authority to Bind Government

Erroneous advice given by personnel of the Bureau of Land Management cannot confer a right not authorized by law.

Words and Phrases

"Calendar year or fraction thereof" as that term is employed by the Act of December 11, 1928, refers to a period beginning on January 1 and ending on December 31 of the same year, both dates inclusive.

IBLA 70-59:	LA 0158996	:	LA 0159227
		:	
SOUTHWEST SALT COMPANY		:	Sodium Lease
		:	
OPINIONBY: STUEBING		:	Affirmed as modified

DECISION

Southwest Salt Company has appealed from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated May 23, 1969, affirming as modified a decision of the Riverside district and land office dated January 24, 1969. The decision below affirmed that sodium leases LA 0158996 and 0159227 were each in default for lease rental payments due January 1, 1969. In the case of lease LA 0158996, the lessee was directed to pay rental for the calendar year 1969 in the amount of \$2,563. In modifying the decision of the Riverside district, the Bureau directed payment of prorated rental for LA 0159227 computed at \$214.50, one-twelfth of the annual rental of \$2,574, based on relinquishment of that lease filed on January 30, 1969.

On June 9, 1969, immediately after receiving a copy of the Bureau's decision, appellant filed a Petition for Relinquishment of Sodium Lease LA 0158996 with the Manager, Riverside district and land office.

The record shows that each of the subject leases was issued to Danby Salt Corporation as a preference right lease based on discovery of sodium under a prospecting permit. Lease LA 0158996 was issued effective November 1, 1964; lease LA 0159227 was issued effective February 1, 1963. Assignment of record title to each lease was approved to Southwest Salt Company effective January 1, 1969.

Although the leases were prepared on different editions of the same Bureau form (Form 4-1134), each provides it is issued pursuant to and subject to the terms and provisions of the Act of February 25, 1920 (41 Stat. 437), as amended, and to all reasonable regulations of the Secretary of the Interior now or hereafter in force when not inconsistent with any express and specific provisions of the leases.

Lease LA 0159227 is on Form 4-1134 (Dec. 1958) and provides in Section 2(b) for payment of rental annually in advance for the first calendar year or fraction thereof at the rate of \$.25 per acre or fraction thereof; for the second, third, fourth, and fifth calendar years, respectively, at the rate of \$.50 per acre; and for the sixth and each succeeding year of the lease term at the rate of \$1.00 per acre. Lease LA 0158996 is on Form 4-1134 (Mar. 1964) and provides in Section 2(c) for payment of rental annually in advance at the same respective rates of \$.25, \$.50, and \$1.00, but does not refer to payment on a calendar year basis. 1/

The pertinent part of section 24 of the Mineral Leasing Act, as amended, supra, provides and has provided since the amendment approved December 11, 1928 (45 Stat. 1019, 30 U.S.C. 262), that all sodium leases shall be conditioned upon payment in advance by the lessee of a rental of \$.25 per acre for the first calendar year or fraction thereof, \$.50 per acre for the second, third, fourth, and fifth calendar years, respectively, and \$1.00 per acre per annum thereafter during the continuance of the lease.

Each lease file shows that the land office has been sending to the lessee an advance courtesy billing notice for each calendar year starting with January 1, 1964 for lease LA 0159227, and with January 1, 1965, for lease LA 0158996, and that the annual rental on a calendar year basis has been paid by the lessee on or before the first business day of January of each year to and including January 1968. No rental for calendar year 1969 has been paid for either lease. The billing notices for calendar year 1969 were sent to the then lessee of record, Danby Salt Corporation, in November 1968.

In its appeal, Southwest Salt Company raised questions concerning the following issues: (1) The due date under which rental is payable with respect to Sodium Lease No. LA 0158996; (2) The applicability of the doctrine of estoppel against the agents of the Department of the Interior; (3) The petition for relinquishment on Sodium Lease No. LA 0158996 is timely and that payment due (if any) should be prorated to February 1, 1969.

In its appeal to the Director, adopted by reference in this appeal, Southwest Salt Company alleges, among other matters, that in

1/ The current form for sodium leases, Form 3150-2 (Oct. 1966), provides for rental payment in advance on a calendar year basis.

response to a telephone inquiry by their counsel on January 16, 1969, an employee of the Riverside district and land office had declared that a relinquishment of lease LA 0158996 filed before November 1, 1969, would be timely. The appellant further contends that it finds itself in the present predicament principally because of failure of the Riverside district and land office to act promptly on the assignments perfected September 30, 1968, and thereafter to communicate accurate information relative to the rental status of Lease LA 0158996.

Even if completely substantiated without other mitigating factors, the facts on which appellant bases his arguments fall far short of the standard required for the invocation of the doctrine of estoppel. The cases cited by appellant merely serve to emphasize that those who deal with government agents are extremely limited as to the information upon which they can rely, if the advice given conflicts with statutory requirements. As stated by Justice Frankfurter in Federal Crop Insurance Corp. v. Merrill, et al., 332 U.S. 380 (1947):

Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitation upon his authority.

Moreover, the Department has specifically provided by regulation in Title 43 CFR that it will not be bound or estopped by the errors or delays of its employees in the performance of their duties, as follows:

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

Further, departmental decisions have consistently held that the errors, delays or omissions of employees cannot confer a right or benefit not authorized by law. Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969), and cases cited therein.

With respect to the contention that annual rental for the sodium lease LA 0158996 is not due on or before January 1 of each year, we look to the language of the statute which is clear and unambiguous in its requirement that rental for a sodium lease be paid in advance on a calendar year basis. 30 U.S.C. § 262 (1964). The decision below was correct in affirming the land office decision that rental for calendar year 1969 was in default.

The majority of those jurisdictions which have considered the phrase have construed "calendar year" to mean a period beginning on January 1 and ending on December 31 of the same year. 6 WORDS AND PHRASES § 17, and cases collected therein. With specific reference to the term as it is employed in section 24 of the Act, supra, we may refer to the maxim nositur a sociis. SUTHERLAND STATUTORY CONSTRUCTION (3rd ed.) § 4908. By association of the phrases "calendar year" and "or fraction thereof" the legislative intent is made manifest. If we construed the words "calendar year" to mean merely a period of 365 consecutive days from the effective date of a lease, for example, September 1, there could be no "fraction thereof" in the regular term of a lease issued for a given number of full years. This would be to deny meaning to the phrase, which we clearly cannot do. On the other hand if "calendar year" is construed to mean from January 1 to December 31, both days inclusive, we instantly discern a four-month "fraction thereof" in our hypothetical lease beginning on September 1. It is apparent to us that this is the intended meaning.

Therefore, appellant's failure to relinquish prior to January 1 subjected it to liability for additional rental.

With respect to appellant's arguments concerning its petition for relinquishment of Sodium Lease LA 0158996 we think it informative to review the Bureau's decision concerning a similar petition for relinquishment of Lease LA 0159227. In allowing appellant's request that rental be prorated for the period of 1969 prior to the time of filing of the relinquishment, the decision below noted that this was in accordance with the Act of November 28, 1943, 30 U.S.C. § 188a (1964), which provides that where relinquishment of a lease is filed after accrual but before payment of rental, the rental may be prorated on a monthly basis when it is found that the lessee's failure to file a timely relinquishment prior to the accrual of rental was not due to lack of reasonable diligence. We agree with the decision below that the lessee did not show lack of reasonable diligence in filing the relinquishment of Lease LA 0159227, and therefore is entitled to the benefits of the Act of November 28, 1943, supra.

For the reasons stated in that decision, as outlined above, we believe the filing of the petition for relinquishment for Lease LA 0159227 should permit proration on a monthly basis of rental for the period of 1969 prior to the filing of the relinquishment, on the premise that the relinquishment was filed as soon as possible after it was affirmed that the rental had accrued. Accordingly, the rental payment required is \$1,281.50, being sixth-twelfths of the calendar year. In rejecting appellant's contention that the proration should be from February 1, 1969, we find that the statute empowers the Secretary to determine whether a lessee has shown reasonable diligence in filing a petition for relinquishment so as to obtain the benefit of proration, but it does not confer authority to relieve the lessee of liability for rental accrued for those months prior to the filing of the relinquishment.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Chief, Office of Appeals and Hearings is affirmed as modified.

Edward W. Stuebing, Member

We concur.

Anne Poindexter Lewis, Member

Francis Mayhue, Member.

