

HOWARD S. BUGBEE

IBLA 75-180

Decided February 8, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), canceling appellant's oil and gas lease (NM 0477406) because of the failure to provide a bond under 43 CFR 3104.1(b).

Set aside and remanded.

1. Oil and Gas Leases: Generally--Regulations: Applicability

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

2. Oil and Gas Leases: Bonds--Oil and Gas Leases: Cancellation

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. § 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

APPEARANCES: C. Emery Cuddy, Jr., Esq., Santa Fe, New Mexico, and Leonard I. Margolis, Esq., Honolulu, Hawaii, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a September 17, 1974, decision of the New Mexico State Office, Bureau of Land Management (BLM), canceling appellant's oil and gas lease (NM 0477406) because of the failure to provide a known geological structure bond required under 43 CFR 3104.1(b). <sup>1/</sup> Notice was given to appellant by prior decision of the BLM, dated June 20, 1974, that the land embraced in the lease was determined by the Geological Survey to be within the known geological structure of a producing oil or gas field (KGS). The earlier decision further informed appellant that he was required to file a structure bond (KGS bond) in the amount of \$ 1,000 pursuant to 43 CFR 3104.1(b) within 30 days and that the lease would be canceled upon failure to file the bond.

Counsel for appellant alleges that cancellation of the lease would be inequitable. It is asserted that appellant believed, in good faith although erroneously, that Superior Oil Company would take care of any bond requirement pursuant to the operating agreement entered into with the appellant for development of his lease. Counsel points out that appellant was not contacted by the BLM after the decision of June 20, 1974, until he received the decision canceling the lease. Further, counsel alleges that there are no third parties adversely affected by the failure of appellant to file the bond in a timely manner and that no prejudice to the interests of the United States has resulted. Counsel also notes that the required bond was filed by appellant with the notice of appeal in this case. Counsel raises other contentions which need not be considered in view of our disposition of this case.

This Board has previously held that 43 CFR 3104.1(b) requires that a bond in the amount of at least twice the \$ 2 per acre annual rental (but not more than \$ 10,000) be filed by the lessee when any part of the land embraced in a noncompetitive oil and gas lease is included within the limits of a KGS. Duncan Miller, 20 IBLA 9, 10 (1975). However, this requirement of the regulations has very recently been deleted and, hence, a KGS bond is no longer required of oil and gas lessees. 41 F.R. 45566 (October 15, 1976).

This raises the issue of whether a decision canceling an oil and gas lease for failure of the lessee to file a KGS bond required

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<sup>1/</sup> The Secretary is authorized to cancel a lease upon 30-days notice for failure of the lessee to comply with any of the provisions of the lease unless or until the land covered by such lease is known to contain valuable deposits of oil or gas. 30 U.S.C. § 188(b) (1970).

under a regulation in effect at the time of the decision should be reversed on appeal where the regulations have since been amended to delete the bond requirement.

[1] Where a regulation is amended in a way that benefits a lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases. Duncan Miller, 28 IBLA 292 (1976); Norman H. Nielson, 72 I.D. 514, 515-516 (1965); See Henry Offe, 64 I.D. 52, 55-56 (1957). In the present case, there are no third parties with intervening rights that would be adversely affected by application of the amended regulation to appellant's case. Further, there is no adverse impact on the interests of the United States as a consequence of not requiring a bond which the regulations no longer require.

[2] Cancellation of an oil and gas lease pursuant to the statute and the regulation promulgated thereunder is discretionary and not mandatory. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-3; Estate of John P. Wagner, 26 IBLA 119 (1976). An oil and gas lease need not be canceled because of the failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interests of the United States. Estate of John P. Wagner, *supra*.

The case record does not disclose any communication between the BLM and appellant from the time of the notice that a bond was required (June 20, 1974) until the decision canceling the lease (September 17, 1974). Appellant has filed the bond within 30 days of receipt of the decision canceling the lease. In these circumstances, we believe the cancellation of the lease should be set aside, all else being regular.

Therefore, 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 to the Bureau of Land Management.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

