

MILTON J. LEBSACK

IBLA 77-117

Decided March 30, 1977

Appeal from decision of Wyoming State Office, Bureau of Land Management, W-57660, which required an increased rental for a noncompetitive oil and gas lease.

Affirmed.

1. Oil and Gas Leases: Applications--Oil and Gas Leases:
Noncompetitive Leases--Oil and Gas Leases: Rentals-- Regulations:
Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

APPEARANCES: Milton J. Lebsack, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Milton J. Lebsack has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 14, 1977, which required an additional rental of \$ 20 for his oil and gas lease W-57660 to be issued after February 1, 1977.

Lebsack filed a simultaneous oil and gas drawing entry card in the BLM Wyoming State Office for Parcel No. 22, consisting of 40 acres. His drawing entry card, W-57660, was drawn first and on December 16, 1976, he was notified by certified mail that he was required to submit payment of the first year's rental of \$ 20 within

15 days in accordance with 43 CFR 3112.4-1. On December 23, 1976, the required rental was paid to the BLM.

On January 5, 1977, the regulations in 43 CFR 3103.3-2 were changed to increase the rental on all noncompetitive leases from 50 cents per acre or fraction thereof, to \$ 1 per acre or fraction thereof for all leases issued on or after February 1, 1977. 42 F.R. 1032. Since appellant's lease could not be issued before that date, he was advised by the BLM of the increased rental requirement and requested to submit the additional rental.

Appellant objects to the increased rental stating on appeal:

The delay in issuing the lease is certainly not my responsibility since I have met all your requirements in a timely fashion as required by existing Federal regulations and I think I am entitled to a Federal Oil & Gas lease under the rules and terms as existed in 1976 and your decision to make and change the rules retroactively is incorrect.

The original proposed change in the regulations was published in the Federal Register on March 18, 1976, 41 F.R. 11314. The period for submission of comments or objections was extended to May 4, 1976. The final text of the amendment to the regulations specifically took note of the possibility that some cases would be caught in the delay in processing stating:

Several commentors pointed out the fact that there had been long delays in the issuance of leases in connection with applications they had filed and that they should not be penalized for the delay in such issuances on the part of the Bureau of Land Management. We are amending the regulations to change the effective date from July 1, 1976, to February 1, 1977, to give the various offices of the Bureau of Land Management additional time to see if necessary work can be completed on pending applications so that they can be issued prior to the new effective date.
[Emphasis added.]

It was clearly considered that in some situations the necessary work for lease issuance could not physically be completed to issue leases in pending cases before that date. Unfortunately, the tremendous backlog of applications in the Wyoming State Office prevented completion of processing for all those successful simultaneous noncompetitive applications for the November and December drawings so that

leases for these cases could not be issued prior to the new effective date.

Although admittedly, appellant was not the cause for this delay in the issuance of the lease, the fact remains that as of February 1, 1977, a lease had not issued at the old rental rate. Accordingly, appellant's lease, if subsequently issued, must be taken at the increased rental rate.

The Secretary of the Interior has recently reviewed the situation involving the problems of applications pending prior to February 1, 1977, and has reaffirmed his policy as expressed in the regulations that the need for the increased rental is justified. In a letter to several Senators the Secretary stated:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977 have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued.[1/]

In a recent decision, Raymond N. Joeckel, 29 IBLA 170 (1977), the Board considered an identical situation involving an offer drawn first in the November 1977 Wyoming drawing. After a thorough discussion of the law it held that any lease issued after February 1, 1977, must bear the increased rental.

For the reasons stated in Joeckel, the appellant was properly required to pay an annual rental of \$ 1 per acre.

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 affirmed.

Martin Ritvo

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

1/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

