

DORIS N. STERKEL
RICHARD L. STERKEL

IBLA 77-201

Decided April 12, 1977

Appeal from decision of New Mexico State Office, Bureau of Land Management, requesting additional rental payment prior to issuance of noncompetitive oil and gas lease. NM 29368.

Affirmed.

1. Oil and Gas Leases: Applications: Generally! ! 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: Fred V. Shirley, Esq., Watonga, Oklahoma, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is an appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 4, 1977, requiring payment of additional advance annual rental for the first lease year on noncompetitive oil and gas lease NM 29368 so as to comply with the requirement of \$ 1 per acre imposed by 43 CFR 3103.3-2, effective February 1, 1977, 42 F.R. 1032.

Appellants had drawn first priority for Parcel No. 143 in the November 1976 list of lands for simultaneous filing of oil and gas lease offers in the New Mexico State Office. 43 CFR Subpart 3112. On January 25, 1977, responsive to a notice dated January 11, 1977, they had paid annual rental on the basis of 50 cents per acre. The volume of pending cases in the New Mexico BLM Office prevented processing of this lease offer and issuance of a lease therefor prior to February 1, 1977. Thereafter, BLM issued its decision of February 4, 1977, requesting payment of additional advance rental to the total of \$ 1 per acre pursuant to a change in regulations, 43 CFR 3103.3-2, for all noncompetitive oil and gas leases issued on or after February 1, 1977.

Appellants contend that advertising the parcel with a rental rate of 50 cents per acre, then notifying appellants of their first priority for the parcel and calling upon them to submit payment at the rate of 50 cents per acre, and accepting such payment based on the 50! cent rate, should bind the Government to that rate. They also contend that the Government had accepted their offer when it accepted the money called for in the billing of January 11, 1977, and the Government cannot change the terms of the lease contract to their detriment.

The precise issue raised in this appeal came first before this Board in Raymond N. Joeckel, 29 IBLA 170 (1977). That decision was affirmed in Milton J. Lebsack, 29 IBLA 316 (1977), and in Raymond N. Joeckel, 30 IBLA 32 (1977). Those decisions contain a thorough review of the law. They held that a lease granted after February 1, 1977, must be at the rate provided for in 43 CFR 3103.3-2, as amended effective February 1, 1977. It is enough to quote from a letter of the Secretary of the Interior, as cited in Lebsack:

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/]

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.

[1] We do not accept the contention of appellants that the increase in rental rate after acceptance of payment at the advertised rate is a violation of contract law. The payment of advance rental in connection with a noncompetitive oil and gas lease offer, and the acceptance of such payment by the Bureau of Land Management, do not create a binding obligation on the Bureau to issue an oil and gas lease. Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974). Imposition of the increase in rental from 50 cents per acre to \$ 1 per acre as a condition to issuance of a noncompetitive oil and gas lease issued after February 1, 1977, is within the authority of the Secretary in the exercise of his general powers over the public lands as guardian of the people. Knight v. United States Land Assoc., 142 U.S. 161 (1891). Further, the filing of an oil and gas lease offer does not vest in the applicants any vested right protected by the Fifth Amendment which would preclude subjecting them to the operation of the amended regulation. See, e.g., Udall v. Tallman, 380 U.S. 1, 4 (1965); McDade v. Morton, 494 F.2d 1156 (D.C. Cir. 1974). 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. Raymond N. Joeckel, 29 IBLA 170 (1977).

For the reasons set forth in Joeckel, the appellants were properly required to pay the annual rent as required by 43 CFR 3103.3-2.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

