

WILLIAM C. KIRKWOOD

IBLA 77-141

Decided July 5, 1977

Appeal from decision of Colorado State Office, Bureau of Land Management, requiring additional rental for noncompetitive oil and gas lease offers C-14691 and C-14696.

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 effective date of the increase.

APPEARANCES: William C. Kirkwood, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal from decisions dated February 1, 1977, by the Colorado State Office, Bureau of Land Management (BLM), advising appellant that additional rentals of \$616.50 and \$1,321, respectively, were due on his oil and gas lease offers C-14691 and C-14696.

The subject oil and gas lease offers were filed in the Colorado State Office on December 17, 1971. C-14691 included 1,199 available acres for which appellant paid \$582.50 and C-14696 included 2,521 available acres for which he paid \$1,200. These payments were made

on the basis of 50 cents per acre as required by the regulations governing advance rental payments on noncompetitive leases, 43 CFR 3103.3-2.

On January 5, 1977, 43 CFR 3103.3-2 was changed to increase the rentals 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 FR 1032.

Appellant asserts in his statement of reasons that the revised rental should only apply to oil and gas lease applications filed after February 1, 1977. Appellant does not contend that the Department has no right to raise rental fees, but asserts that since his offers were made prior to February 1, 1977, he should be charged at the former rental rate.

The issue raised by this appeal was discussed in the Board's recent decisions in Milton J. Lebsack, 29 IBLA 316 (1977); Raymond N. Joeckel, 30 IBLA 32 (1977); and Barbara A. Joeckel, 30 IBLA 376 (1977). These decisions thoroughly review the law on the subject and hold that a lease granted after February 1, 1977, must be at the new rental rate provided in amended 43 CFR 3103.3-2. As quoted in these cases, the Secretary of the Interior, in considering the matter of the application of the revised rental rate to lease applications pending prior to the change in regulation stated:

Although it might appear that appellants 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 application until the lease is actually issued. 1/

Accordingly, the application of the amended regulation to appellant's lease offers must be affirmed.

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.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Newton Frishberg
Chief Administrative Judge