

FRANCIS L. HILL

IBLA 77-262

Decided September 16, 1977

Appeal from a decision of the Nevada State Office, Bureau of Land Management, requesting additional rent prior to issuance of noncompetitive oil and gas lease N 16166.

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: Francis L. Hill, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This is an appeal from a decision dated March 7, 1977, of the Nevada State Office, Bureau of Land Management (BLM), advising appellant that an additional rental of \$1,280 was due on his oil and gas lease offer N-16166. The additional rental was requested pursuant to 43 CFR 3103.3-2, effective February 1, 1977, which increased the rental from 50 cents per acre or fraction thereof to \$1 per acre or fraction thereof.

Appellant timely paid the additional rental but states on appeal that payment was made in protest of unfair government action.

By letter dated April 5, 1977, BLM advised appellant that his oil and gas lease offer had been processed according to 43 CFR 3100, but that no further action could be taken until this Board rendered a decision in the appeal.

The issue raised by appellant's protest, whether the increased rate should apply to offers filed prior to the effective date of the amended regulation, was discussed in the Board's recent decisions in Raymond N. Joeckel, 29 IBLA 170 (1977); Milton J. Lebsack, 29 IBLA 316 (1977); Barbara A. Joeckel, 30 IBLA 376 (1977); and William C. Kirkwood, 31 IBLA 178 (1977). In Raymond N. Joeckel, supra, the Board considered the issue in some detail, stating as follows at p. 173:

[t]he Secretary, [of the Interior] in exercising his general powers over the public lands as guardian of the people, Knight v. United States Land Assoc., 142 U.S. 161 (1891), has discharged his duty to see that the public interest is served by exacting a fair return on behalf of the government from persons engaged in exploiting the oil and gas resources of the public domain. The imposition of an increase in the per acre rental from 50 cents to \$1 as a condition to issuance of a noncompetitive oil and gas lease after February 1, 1977, is within the authority of the Secretary. Further, the filing of an oil and gas lease offer prior to the promulgation of the regulation increasing the rental did not vest in applicant any vested right protected by the Fifth Amendment which would preclude subjecting him 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).

The application of the amended regulation to appellant's lease offer must be affirmed and his protest must be dismissed.

Accordingly, 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:

Newton Frishberg
Chief Administrative Judge

Joan B. Thomspen
Administrative Judge

