

THOMAS G. FAILS, ET AL.

IBLA 77-203
77-204
77-205
77-209

Decided September 30, 1977

Appeals from decisions of the New Mexico and Arizona State Offices, Bureau of Land Management, requesting additional rent prior to issuance of noncompetitive simultaneous oil and gas leases.

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 rates 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: Thomas G. Fails, pro se; Vera Kochergen, pro se; Richard Lovatt, pro se; and Robert G. Pruitt, Jr., Esq., Pruitt & Gushee, Salt Lake City, Utah, for appellant, Murel G. Goodell.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

These are consolidated appeals 1/ from decisions of the New Mexico and Arizona State Offices, Bureau of Land Management (BLM),

1/ The factual data for each of the four appeals here consolidated are set forth in the following table:

advising appellants that additional rentals were due on their oil and gas lease offers pursuant to 43 CFR 3103.3-2, effective February 1, 1977. This regulation increased the rental from 50 cents per acre or fraction thereof to \$ 1 per acre or fraction thereof.

The issue raised by these appeals, whether the increased rate should apply to offers filed prior to the effective date of the amended regulation, has been frequently discussed in recent Board decisions. See, for example, Raymond N. Joeckel, 29 IBLA 170 (1977); Milton J. Lebsack, 29 IBLA 316 (1977); Barbara Joeckel, 30 IBLA 376 (1977); and William C. Kirkwood, 31 IBLA 178 (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 rate provided in amended 43 CFR 3103.3-2. As quoted in Lebsack, Barbara Joeckel and Kirkwood, supra, 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 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 application until the lease is actually issued. 2/

In Raymond Joeckel, supra, the Board considered the question 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

fn. 1 (continued)		State BLM		
<u>Appeal No.</u>	<u>Appellant</u>	<u>Lease No.</u>	<u>Office</u>	<u>Decision Date</u>
IBLA 77-203	Thomas G. Fails	NM 29389	New Mexico	Feb. 8, 1977
IBLA 77-204	Vera Kochergen	NM 29174	New Mexico	Feb. 4, 1977
		NM 29176	New Mexico	Feb. 9, 1977
IBLA 77-205	Richard Lovatt	NM 27013	New Mexico	Feb. 4, 1977
IBLA 77-209	Murel G. Goodell	A 9796-A 9817	Arizona	Feb. 11, 14 and 15, 1977

2/ 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.

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).

Accordingly, the applicability of the amended regulation to appellants' lease offers and the decisions below must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

