

GEORGE GABRIEL

IBLA 77-505

Decided November 25, 1977

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer for failure to submit additional advance rental. N 16138.

Set aside and remanded.

1. Administrative Procedure: Administrative Review -- Oil and Gas Leases:
Applications: Generally -- Oil and Gas Leases: Rentals

Where the Bureau of Land Management issued a decision notifying a successful drawee in the simultaneous oil and gas filing program of the increased advance rental rate from 50 cents to \$ 1 per acre pursuant to a regulation change effective February 1, 1977, 43 CFR 3103.3-2, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board. Payment of the required increased rental during the appeal period is deemed timely and a lease may issue.

APPEARANCES: George Gabriel, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Gabriel appeals from a decision of the Nevada State Office, Bureau of Land Management, dated July 26, 1977, which rejected his offer N 16138 for a noncompetitive oil and gas lease.

The record shows that appellant was the successful drawee for Parcel No. 132 in the December 1976 simultaneous oil and gas filing procedure conducted by the Nevada State Office. 43 CFR Subpart 3112. Following notice dated January 3, 1977, appellant paid \$ 120 as rental for the first lease year at the rate of 50 cents an acre for the 240 acres included in Parcel No. 132. The rental rate for noncompetitive oil and gas leases was increased to \$ 1 an acre for all leases issued after February 1, 1977. 43 CFR 3103.3-2(a), 42 F.R. 1032, January 5, 1977. Pursuant to this increased rental rate, the State Office, by decision dated March 8, 1977, requested additional advance rental of 50 cents an acre, to be paid within 30 days from notice under peril of having the lease offer rejected. Service of the March 8 decision was not accomplished until May 31, 1977. Thereafter, in response to an inquiry from appellant, the State Office, by letter of June 10, 1977, gave a further explanation of the need for the increased rental payment. When the allowed time for payment had elapsed without response from appellant, the State Office issued the decision of July 26, 1977, rejecting the offer N 16138. This appeal followed, accompanied by payment of the required \$ 120.

Essentially, appellant argues that he could not have made the payment within the 30 days following March 8, 1977, because he had not received the decision until much later, and that he would have paid within the allotted time period if he had received the decision. He does not assail the higher rental rate in the appeal, although in interim correspondence, he did question the propriety of such increased rental for his offer, which antedated the new increase.

Parenthetically we state that the issue of the increased rental rate for noncompetitive oil and gas leases has been fully considered by this Board in a number of recent cases, e.g., D. R. Gaither, 32 IBLA 106 (1977); Milton J. Lebsack, 29 IBLA 316 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977). These decisions held that the filing of an oil and gas lease offer does not confer upon an offeror any vested right to a lease so as to shield the offeror from the consequence of a revision in the regulation which requires a higher annual rental payment, and that the increased rental must be paid on any noncompetitive oil and gas lease issued after February 1, 1977. For those same reasons, appellant in this case was properly required to pay an annual rental of \$ 1 per acre.

[1] The issue on appeal is whether the payment by appellant may be considered as timely compliance with the State Office decision of March 8, 1977. That decision gave sufficient notice of the additional money required for the first lease year's rental and adequately explained the change in the rental rate. However, no right of appeal was granted in that decision. Therefore, it must be held that the decision was interlocutory in nature and appellant was not bound to appeal from the decision in order to preserve the priority status of his offer.

In Paul Landis, 32 IBLA 374 (1977), a case involving the similar facts of a demand for additional rental by means of a notice which did not include a right of appeal, and subsequently a decision rejecting the lease offer, with a right of appeal, the Board held that when appellant took his timely appeal from the decision rejecting the offer, that appeal suspended the effect of both decisions pending the final determination of the merits of his appeal by this Board. 43 CFR 4.21. Accordingly, we hold that appellant herein having appealed the decision of July 26, 1977, rejecting his offer and having paid the required rental within the appeal period, the payment is timely so that lease N 16138 may issue to George Gabriel, all else being regular.

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 set aside, and the case is remanded for action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

