

JERRY CHAMBERS

IBLA 77-535

Decided January 16, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, requesting additional rent prior to issuance of noncompetitive oil and gas lease U 34991.

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: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In the October 1976 simultaneous filing drawing, the drawing entry card of Jerry Chambers (appellant) was drawn first by the Utah State Office of the Bureau of Land Management for parcel UT 39. On November 9, 1976, appellant was notified that advance rental was due on the offer in the amount of \$1,180, at the rate of \$.50 per acre. On November 17, 1976, appellant paid this amount.

On August 8, 1977, BLM notified appellant that he was required to pay an additional \$ 1,180 in additional advance rental before it could take further action on his offer, since 43 CFR 3103.3-2, the regulation governing advance rental payment, had been revised to require rental at the rate of \$1 per acre on all leases issued on or

after February 1, 1977. On August 26, 1977, appellant paid this amount under protest and filed a notice of appeal to this Board of BLM's decision requiring this additional rental.

[1] 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, the increased rate is applicable to all leases issued subsequent to that date even though the lease offers were filed and/or drawn with first priority prior to the specified date. D. R. Gaither, 32 IBLA 106 (1977); Brad J. Hays, 31 IBLA 374 (1977); Guy M. Willis, 30 IBLA 374 (1977). Therefore, since appellant's lease was not issued prior to February 1, 1977, the effective date of the rental increase, it can now be issued only at the increased rental rate required by 43 CFR 3103.3-2(a). Guy M. Willis, *supra*; Milton J. Lebsack, 29 IBLA 316 (1977).

Appellant filed his offer to lease several months before the effective date of the increased rental rate. However, the filing of an application for a noncompetitive oil and gas lease, prior to acceptance ^{1/} does not create a right to a lease which is immune from application of a subsequently amended administrative regulation. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Paul C. Kohlman, 32 IBLA 240, 241 (1977); Barbara A. Joeckel, 30 IBLA 376, 377 (1977).

The fact that the administrative procedures caused delays in processing this lease offer does not vest any rights in the appellant. 43 CFR 1810.3 provides: "(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties." It is thus clear that the delay cannot preclude a proper application of the regulation. Paul C. Kohlman, *supra* at 242; see Thelma Wright, 27 IBLA 198, 200 (1976).

Appellant's argument that the Secretary's application of the revised rental rate to lease applications pending prior to the change in regulation was arbitrary and capricious was discussed in Milton Lebsack, *supra* at 318:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977, have

^{1/} Acceptance of the offer and issuance of the lease is indicated by the signature of the authorized officer of the BLM. 43 CFR 3111.1-1(c); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), *aff'd*, 494 F.2d 1156 (D.C. Cir. 1974).

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. [2]

Accordingly, we find that the \$ 1 per acre rate must be imposed.

Appellant's other argument, that the regulation requiring additional rental is invalid because it was improperly promulgated, is without merit. This argument was fully considered and rejected in D. R. Gaither, 32 IBLA 106, 111-113 (1977).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

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.

