

TIPPERARY OIL AND GAS CORP.

IBLA 78-139

Decided May 15, 1978

Appeal from decisions of the Nevada State Office, Bureau of Land Management, requiring the payment of additional rental and the execution of special stipulations for noncompetitive oil and gas lease offers N-15792 through N-15825, N-15827, N-15828, and N-15830.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- 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, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

APPEARANCES: Robert C. Bledsoe, Esq., of Cotton, Bledsoe, Tighe, Morrow & Dawson, Midland, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Tipperary Oil and Gas Corporation appeals from the November 17, 21, and 28, 1977, decisions of the Nevada State Office, Bureau of Land Management (BLM), requiring the payment of additional rental and the execution of special stipulations prior to the issuance of leases for noncompetitive over-the-counter oil and gas lease offers N-15792 through N-15825, N-15827, N-15828, and N-15830. In its statement of reasons, appellant states that it is willing to execute the special stipulations but objects to the imposition of additional rental.

Appellant's oil and gas lease offers were all filed on December 1, 1976, and were accompanied with the first year's annual rental at the

rate of 50 cents per acre as required by the regulations. Effective February 1, 1977, regulation 43 CFR 3103.3-2 was amended to increase the rental rate to \$1 per acre for all noncompetitive oil and gas leases issued thereafter. 43 FR 1032 (January 7, 1977). As indicated above, oil and gas leases were not issued on appellant's offers prior to February 1, 1977.

Appellant argues that the policy of requiring oil and gas lease offerors who filed their offers prior to the effective date of the rental increase to pay the increased rental offends a basic sense of fair play by changing the rules in the middle of the game. It suggests that this "offense" is obvious by the numerous appeals filed with the Board on this matter. Finally, appellant urges that the duty of the Secretary of the Interior is to remedy this situation by changing the amended regulation to apply only to oil and gas lease offers filed after February 1, 1977.

[1] As appellant concedes, 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 leases to be issued after that date for over-the-counter offers filed prior to the effective date of the regulation. Altex Oil Co., 32 IBLA 44 (1977); Raymond W. Joeckel, 29 IBLA 170 (1977). Appellant's arguments would have been more appropriately raised during the comment period after the rental increase was proposed in the Federal Register on March 18, 1976. The final rulemaking provided partial relief to pending oil and gas lease offers by delaying the effective date from July 1, 1976, to February 1, 1977. However, offerors who filed closer to February 1 had less of a chance to be issued a lease at the old rental rate due to the time it takes BLM to process an oil and gas lease offer. The Secretary of the Interior commented on this problem in a February 1, 1977, letter: ^{1/}

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 applicant until the lease is actually issued.

Accordingly, appellant is properly required to pay the increased rental. See Hannifan v. Morton, 444 F.2d 200 (10th Cir. 1971);

^{1/} This comment was contained in a letter by Secretary Cecil B. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963). If appellant does not wish the leases at the increased rental rate, it may, of course, withdraw its offers and receive a refund of the rental already paid.

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.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

