

ROBERT A. SHRYOCK
JAS. O. BREENE, JR.

IBLA 80-573
80-574

Decided June 1, 1981

Appeals from decision of New Mexico State Office, Bureau of Land Management, requiring payment of first year's rental due for noncompetitive oil and gas leases. NM 39544 and NM 39568.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals -- Rules of Practice: Appeals: Effect of

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

APPEARANCES: Robert A. Shryock and Jas. O. Breene, Jr., pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert A. Shryock and Jas. O. Breene, Jr., have appealed from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated March 25 and 27, 1980, entitled "Notice of Rental Due," requiring payment of first year's rental due for noncompetitive oil and gas leases, NM 39544 and NM 39568. Appellants' drawing entry cards had been drawn with first priority at the December 1979 noncompetitive oil and gas lease sale for parcels NM 199 (Breene) and NM 223 (Shryock). The decisions required payment of the first year's rental within 15 days from receipt thereof, pursuant to 43 CFR 3112.4-1, or "you will be automatically disqualified to receive the lease."

In their statements of reasons for appeal, appellants contend that BLM could not require payment of the first year's rental because the Secretary had "suspended issuance of federal onshore oil and gas leases until further notice," pursuant to Secretarial Order No. 3049 (Feb. 29, 1980), 45 FR 30553 (May 8, 1980). Appellants argue that further action on their lease offers must be "suspended until the Secretary's Order is withdrawn or modified to permit issuance of the lease."

[1] Secretarial Order No. 3049 provided in section 3.b(2) that BLM "shall issue no lease in response to a pending offer based on an entry card drawn with priority under 43 CFR Subpart 3112." The offer was not rejected by reason of the suspension, but issuance of a lease was suspended until further notice. The effective date of the order was February 29, 1980.

While Secretarial Order No. 3049 suspended BLM's authority to issue leases, it did not remove authority to require compliance with the regulations governing lease offers. The applicable regulation 43 CFR 3112.4-1 (1979) required payment of the first year's rental within 15 days of receipt of notice that payment was due or the first drawee would be automatically disqualified to receive the lease. Therefore, in order to preserve his rights under a lease offer, an otherwise qualified first drawee was required to submit the first year's rental. Issuance of a lease would be suspended pending modification or revocation of the Secretary's order. 1/ Accordingly, failure to timely submit

1/ The Secretary revoked "the suspension of noncompetitive oil and gas leasing instituted by Order No. 3049," pursuant to Secretarial Order No. 3051 (Apr. 7, 1980), 45 FR 30553 (May 8, 1980). In that order, he provided that section 3.b(2) of Secretarial Order No. 3049 was revoked effective Apr. 8, 1980, and that leasing could resume pursuant to certain specified conditions. Revised regulations have since been issued. See 45 FR 35156 (May 23, 1980).

the first year's rental would result in automatic disqualification. Robert E. Bergman, 53 IBLA 122 (1981). Appellants, however, filed their appeals within the 15-day time period required for compliance. This suspended the running of the time period, and appellants upon receipt of this decision are properly given a new 15-day period in which to comply. Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978).

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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

