

THOMAS CONNELL

IBLA 81-83

Decided June 30, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, requiring additional rental as a precondition to issuance of oil and gas leases. ES 15928 and ES 15931.

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: Thomas Connell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Thomas Connell appeals from a decision dated December 8, 1978, of the Eastern States Office, Bureau of Land Management (BLM), requiring an increased annual rental rate of \$1 per acre instead of 50 cents per acre affecting two lease offers, ES 15928 and ES 15931.

Appellant's oil and gas lease offers were filed on January 19, 1976, and were accompanied by the first year's annual rental at the

rate of 50 cents per acre as then required by the regulations. Effective February 1, 1977, 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. 42 FR 1032-1033 (Jan. 5, 1977).

Appellant's statement of reasons reads as follows:

Above applicant appeals from Decision of Dec. 8, 1978 requiring additional rental and submitting special stipulations, on grounds that applicant has paid rental required for said lands at time of filing. Applicant further appeals on grounds that Special Stipulations required are indefinite and vague. Said stipulations do not set forth the special values of lands applied for, creating uncertainty as to what restrictions might be placed on operations.

Apparently, appellant filed a similar statement of reasons in several cases. See Thomas Connell 46 IBLA 331 (1980). However, in the BLM decision here before us, there appears to be no issue as to "Special Stipulations." The decision solely required appellant to submit increased rentals.

[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 leases to be issued after that date for over-the-counter offers filed prior to the effective date of the regulations. Thomas Connell, *supra*, Tipperary Oil and Gas Corp., 35 IBLA 120 (1978); Altex Oil Co., 32 IBLA 44 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977). An oil and gas lease is not issued until it is signed by the authorized officer. Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); James W. Canon, 84 I.D. 176 (1977); and the Department's authority to lease or not to lease is properly judged as of the time of lease execution, rather than the date the offer was filed. Rowe v. United States, 464 F. Supp. 1060 (D. Alaska 1979), *aff'd*, 633 F.2d 799 (9th Cir. 1980). Moreover, it is incumbent on the Secretary to see that the public interest is served by exacting a fair return on behalf of the Government from the persons engaged in exploiting its resources. Hannifin v. Morton, 444 F.2d 200 (10th Cir. 1971). As appellant's leases were not issued prior to February 1, 1977, the effective date of the regulation, he is required to pay the additional rental.

Appellant is allowed 30 days from receipt of this decision to comply with the requirements set out in the BLM decision for payment of additional rental. Failure to comply within the time allowed will result in final rejection of the lease offers.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge