

ROMOLA A. JARETT

IBLA 82-423

Decided April 16, 1982

Appeal from the decision of the California State Office, Bureau of Land Management, canceling in part, oil and gas lease CA 4275.

Affirmed.

1. Accounts: Refunds--Oil and Gas Leases: Rentals

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

APPEARANCES: Romola A. Jarett, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated January 13, 1982, by the California State Office, Bureau of Land Management (BLM), canceling in part

noncompetitive oil and gas lease CA 4275, issued effective June 1, 1977, as to the following lands: "T. 22 S., R. 11 E., Mount Diablo meridian, sec. 5, lots 5 and 6 (81.92 acres)." The decision states that when the lease was issued it was mistakenly believed that the above described lands were available for oil and gas leasing. Subsequently, however, it was found that these lands were patented under Homestead Patent No. 734052, February 11, 1920, with no mineral reservation to the United States. The decision indicates that the lease rental totalling \$410 (5 years x \$82 per year) would be refunded when the decision became final.

In the statement of reasons, appellant does not challenge the partial cancellation of her lease. She does, however, request that the refund to her include interest in the amount of \$107.10. This figure is based on computations applying a 9-1/2 percent per month interest rate to the payment applicable to the 81.92 acres over the number of months elapsed since the lease was issued.

[1] Statutory authorization for refunds is provided by section 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), as follows:

(c) Refunds

In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

The Board has held that refunds are appropriate in instances where lease rentals were paid for lands which were never really subject to oil and gas leasing and where the lessees derived no benefits from the lease. See Bruce Anderson, 30 IBLA 118 (1977) and cases there cited. Exaction of interest from the Government, however, requires statutory authority. Rosenman v. United States, 323 U.S. 658, 663 (1945). In United States v. Thayer-West Point Hotel Co., 329 U.S. 585, 588 (1947), the Court referred to the traditional rule that interest cannot be recovered against the United States upon unpaid accounts or claims in the absence of an express provision to the contrary in a relevant statute or contract. Thus, no foundations are present in the case at bar upon which appellant could base a recovery of interest in addition to the refund properly computed by BLM.

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.

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Gail M. Frazier  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

