

HAVOCO OF AMERICA, LTD.

IBLA 82-390

Decided April 22, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, imposing stipulation implementing P.L. 97-78 on prospective lease U-48315.

Affirmed.

1. Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Stipulations

A stipulation properly implementing an amendment to section 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

APPEARANCES: Barry E. Van Der Meulen, Chairman of the Board, Havoco of America, Ltd., for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Havoco of America, Ltd. (Havoco), has appealed a notice sent to it by the Utah State Office, Bureau of Land Management (BLM), on December 14, 1981, which imposed a stipulation implementing the provisions of P.L. 97-78 in prospective lease U-48315.

Havoco's application for parcel UT 38 was drawn with first priority in BLM's January 1981 simultaneous oil and gas lease drawing. On September 1, 1981, having adjudicated the application and found it acceptable, BLM sent Havoco notice of advance first year rental due, together with lease offer forms to be executed by Havoco within 30 days. BLM sent this notice by certified mail to 155 Harbor Drive, Unit 813, Chicago, Illinois 60601, the address indicated on Havoco's application card. On September 24, 1981, the Postal Service returned this mailing with the envelope marked "unclaimed." The envelope bore notations indicating that the Postal Service had left notices of attempted delivery on September 4 and 17, 1981, and that the Postal Service had returned it to the sender on September 24, 1981. BLM received its letter back on September 29, 1981.

On October 23, 1981, BLM received a letter from Havoco stating that it had not "received any official lease documents to accommodate the payment of the lease acreage rental or to facilitate" their holding of the lease. On November 9, 1981, BLM advised Havoco by certified mail that it had sent the notice of rental due and unexecuted lease forms on September 1, 1981, to Havoco's address of record but that the mailing had been returned as unclaimed after the two delivery attempts described above. BLM cited 43 CFR 3112.4-1, requiring that executed lease forms and applicant's rental payment be filed in the proper BLM office within 30 days from the date of receipt of the notice, and advised Havoco that it regarded the 30-day time period as having begun on September 29, 1981, the date the returned mailing was received by BLM as unclaimed by Havoco. Therefore, BLM indicated, the payment of rental and executed lease offer forms were required to be filed no later than October 29, 1981. In lieu of rejecting Havoco's application because of its failure to file its offer forms timely, however, BLM's November 9 letter afforded Havoco an opportunity to explain within 30 days why it did not claim the earlier certified mailing.

On November 30, 1981, BLM received a letter from Havoco stating that it was not advised of any attempt to deliver the notice of rental due and unexecuted lease forms. This answer satisfied BLM that Havoco had not received notification of the attempted delivery. On December 14, 1981, BLM again sent the notice of rental due and unexecuted lease forms to Havoco at their address of record. The lease forms included a "non-conventional oil recovery stipulation" incorporating a new definition of "oil" in accordance with P.L. 97-78, enacted on November 16, 1981. This stipulation had not been included in the forms previously sent to Havoco.

On January 4, 1981, Havoco filed with BLM a notice of appeal objecting to the inclusion of the stipulation implementing P.L. 97-78 in prospective lease U-48315. On January 5, 1982, BLM received the executed lease forms and a check for \$7,360 from Havoco, representing the advance first-year rental.

[1] BLM properly imposed the nonconventional oil recovery stipulation here. The stipulation provides as follows:

Oil and Gas Lease Stipulation for Non-Conventional Oil Recovery

Under the provisions of Public Law 97-78, this lease includes all deposits of nongaseous hydrocarbon substances other than coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Development by methods not conventionally used for oil and gas extraction such as fire flooding and including surface mining will require the lessee to submit a plan of operations and will be subject to regulations governing development by such methods when those rules are issued by the Bureau of Land Management (BLM), the U.S. Geological Survey, and the rules or procedures of the surface managing agency, if other than BLM. Development may proceed only if the plan of operations is approved.

Section 4 of P.L. 97-78 amends section 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), as follows: "(4) Section 1 of such Act (30 U.S.C. 181) is further amended by adding after the first paragraph the following new paragraphs: 'The term "oil" shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).'" Thus, the stipulation properly states this new definition of "oil." The provision concerning approval of a plan of operations for development by nonconventional methods is consistent with the Department's reporting requirements (see 30 CFR 221.581) and its concern to protect the lands. 43 CFR 3109.2-1, 3109.4-2. Further, the stipulation serves to put the lessee on notice that such development may be subject to additional regulatory restrictions in the future.

Havoco objects to the imposition of the stipulation because its application was selected in January 1981, and because BLM unsuccessfully attempted to issue lease forms to it in September 1981, prior to the enactment of P.L. 97-78 in November 1981. Havoco argues, in effect, that, but for the delay in its receiving the lease forms, which delay was not its fault, it would have received the lease without the stipulation.

Havoco gained no vested right to any lease interest when its application was drawn with first priority in January 1981, but merely the right to have it adjudicated ahead of other applications. Up to this point, Havoco was entitled only to submit a lease offer and has gained no lease interest. See 43 CFR 3112.4-1 and 3112.6-2. The Department retains the authority to impose stipulations, as allowed by law, up until the time a successful applicant's lease offer is formally accepted by the authorized office. Melvin A. Brown, 53 IBLA 45, 46 (1981). The stipulation brings the lease into conformance with the governing statutory authority, as recently amended. It was properly imposed.

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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

