

Appeal from decision of the Oregon State Office, Bureau of Land Management, denying the requested withdrawal of oil and gas lease offers OR 28175, OR 28244, OR 28245, OR 28246, OR 28248, and OR 28249.

Dismissed in part; vacated and remanded in part.

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

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

APPEARANCES: Robert P. Schafer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Appellant executed six instruments in July 1981 by which he offered to lease certain Federal land for oil and gas development. On May 7, 1982, the Chief, Branch of Lands and Mineral Operations, Oregon State Office, Bureau of Land Management (BLM), signed five of these lease instruments on behalf of the United States, thereby issuing leases OR 28244, OR 28245, OR 28246, OR 28248, and OR 24249; on May 14, 1982, the same officer signed the sixth lease instrument, thereby issuing lease OR 28175. <sup>1/</sup> Appellant's letter communicating his withdrawal of all six lease offers was received in the Oregon State Office on May 14, 1982. By decision issued on June 21, 1982, BLM

---

<sup>1/</sup> Leases OR 28244 and OR 28245 together cover 13,552.21 acres in T. 41 S., R. 22 E., Willamette meridian, Oregon; lease OR 28246 covers 5,891.21 acres in T. 41 S., R. 18 E.; lease OR 28248 covers 6,161.20 acres in T. 38 S., R. 22 E.; lease OR 28249 covers 7,318.13 acres in T. 37 S., R. 22 E.; and lease OR 28175 covers 26.96 acres in T. 4 N., R. 30 E.

denied the requested withdrawals because the leases had been signed on behalf of the United States before the withdrawals were communicated to BLM. 2/

Appellant filed a notice of appeal on July 19, 1982, of the BLM decision rejecting his request to withdraw lease offers OR 28244, OR 28245, OR 28246, OR 28248, and OR 28249. No notice of appeal was filed regarding OR 28175, although this lease was included in the statement of reasons for appeal, a copy of which was received by BLM on August 9, 1982. The BLM decision was received by appellant on June 25, 1982. A notice of appeal to the Board must be filed within 30 days after receipt of the decision being appealed. 43 CFR 4.411(a). The timely filing of the notice of appeal is jurisdictional and failure to file within the time allowed requires dismissal of the appeal. Ilean Landis, 49 IBLA 59 (1980). Therefore, the appeal must be dismissed as to OR 28175.

Robert P. Schafer contends on appeal that BLM added stipulations to the terms of the leases which he did not have an opportunity to review and accept prior to the issuance of the leases and argues, therefore, that he should not be bound by the leases. He requests that the Board declare the leases void and order BLM to refund his advanced, unearned rental payments. In support of his position, appellant has cited the Board's decisions in Emery Energy, Inc., 64 IBLA 285, aff'd on reconsideration, 67 IBLA 260 (1982), and John D. La Rue, 66 IBLA 347 (1982).

[1] In Emery Energy, supra, the Board held that an oil and gas lease offeror could not be bound by leases containing terms of which the offeror did not have either constructive notice or actual knowledge before the issuance of the leases, in the absence of the offeror's consent to those terms. Accord, Security Resources Corp., 70 IBLA 319 (1983); John D. La Rue, supra. The Board has noted that this decision is based on the legal principle that requiring additional terms in the form of stipulations without prior notice to the offeror constitutes a counter offer. Emery Energy, Inc. (On Reconsideration), 67 IBLA 260, 264 (1982). 3/

The provisions of 43 CFR Subpart 3109 afford a noncompetitive lease offeror constructive notice that the offeror may be required to consent to various stipulations in obtaining an oil and gas lease, and on the face of

---

2/ Under 43 CFR 3110.1-4, "An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the proper office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States."

3/ We note that on Feb. 4, 1983, the Deputy Director of Energy and Mineral Resources, BLM, issued Instruction Memorandum No. 83-298 to the BLM state directors and mineral managers, informing them of a lessee's option to refuse a lease and receive a refund of advanced rental fees, in accordance with the Board's Emery Energy decision, when BLM issues a lease containing stipulations to which the lessee did not consent and the lessee protests the lease within 30 days of its issuance.

BLM's noncompetitive lease instruments there is specific reference to 43 CFR 3103.2 in Item 5(c). <sup>4/</sup> Also, the "Special Instructions" on the back of the lease instrument contain a description of the types of stipulations that may be added to the lease upon issuance, in accordance with 43 CFR 3103.2. These instructions further inform the offeror that "[w]henver other stipulations are necessary, lessee will be required to agree to them before the issuance of the lease." <sup>5/</sup> (Emphasis added.)

In each of the six leases under our review, BLM added a "notice" at the time of its issuance of the leases, that, prior to surface disturbance, a complete and intensive cultural resources survey will be required. This "notice" and the attached stipulation further indicates that the lessee "will have the option of providing [at his own cost] a report by a qualified archeologist in the event that BLM is unable to provide the survey." Also, in five of the leases (all except OR 28175), BLM added stipulations limiting surface disturbance in the vicinity of an identified road and/or on all slopes in excess of 40 percent and potentially further limiting surface disturbance on the basis of future environmental analyses related to such factors as to endangered species which might be found to exist in the area.

Neither the requirement of an antiquities survey nor the surface disturbance stipulations appear to be within the scope of the stipulations described in 43 CFR Subpart 3109 and the lease offers tendered by appellant; therefore, appellant did not have constructive notice of these lease terms at the time he submitted his lease offers. See John D. La Rue, supra. Further, there is no evidence in the records that appellant was actually notified of the additional lease terms prior to BLM's issuance of the leases. We conclude, under these circumstances, that appellant did not consent to the additional lease terms and, therefore, cannot be bound by the leases as issued. Although this Board has no jurisdiction to consider the appeal with respect to OR 28175, as explained above, BLM received notice of appellant's expressed desire to withdraw the lease offer on the same day the lease issued with additional stipulations not consented to by the offeror. In light of this timely protest, BLM is not precluded from reconsidering its prior decision regarding OR 28175 in accordance with the recent instruction memorandum.

---

<sup>4/</sup> The reference in the lease to 43 CFR 3103.2 is outdated. The provisions of that regulation are now set forth at 43 CFR 3109.4-2.

<sup>5/</sup> The full instructions regarding stipulations in the lease are as follows:

"Whenever applicable the stipulations referred to will be made a part of this lease and will be furnished to the lessee with the lease when issued. The forms covering them with a brief description are as follows: 3103-2 Stipulations for lands where the surface control is under the jurisdiction of the Department of Agriculture; 3103-1 Lands potentially irrigable, lands within the flow limits of a reservoir site, lands within the drainage area of a constructed reservoir; 3500-1 Lands withdrawn for power purposes; and 3120-3 Wildlife Refuge, Game Range, and Coordination Lands. Whenever other stipulations are necessary, lessee will be required to agree to them before the issuance of the lease." (Emphasis added.)

For the foregoing reasons, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed as to OR 28175 and the decision denying appellant's request to withdraw lease offers OR 28244, OR 28245, OR 28246, OR 28248, and OR 28249 is vacated, and the cases are remanded to BLM to process the withdrawals, including refund of his advanced, unearned rental payments.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

