

SHELL OIL CO. ET AL.

IBLA 84-286, 84-287
84-293, 84-294

Decided September 21, 1984

Appeals from decisions of Alaska State Office, Bureau of Land Management, accepting high bids offered for tracts in competitive oil and gas lease sale. AA-51195, et al.

Vacated and remanded.

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

Where a competitive oil and gas lease imposes additional stipulations without prior notice to the offeror, the offeror may accept or reject the lease containing the additional stipulations. The imposition of additional stipulations without notice to the offeror defers the 15-day period in 43 CFR 3132.5(e) until the offeror has notice of the stipulations to be included in the lease.

APPEARANCES: D. Warren Hoff, Jr., Esq., Houston, Texas, for Shell Oil Company, Union Oil Company of California, and Amoco Production Company; Mark K. Seifert, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Shell Oil Company, on behalf of itself and other bidders, Union Oil Company of California and Amoco Production Company, has appealed from decisions of the Alaska State Office, Bureau of Land Management (BLM), dated January 17, 1984, accepting high bids for various tracts included in National Petroleum Reserve-Alaska (NPR-A) competitive oil and gas lease sale No. 831, held July 20, 1983.

In its January 1984 decisions, BLM required appellants to execute enclosed lease forms and pay the balance of the bonus bids and the first year's rentals within 15 days of receipt of the decisions, or their bids would be declared forfeited. BLM also stated that the leases would be "subject to the order of the Ninth Circuit Court of Appeals" in Kunaknana v. Clark, Civ. No. 83-4325, issued January 13, 1984.

In Kunaknana, the Ninth Circuit denied plaintiff's motion to enjoin execution of leases under NPR-A sale No. 831, because of the lack of irreparable harm justifying an injunction, pending an appeal. However, the Court did enjoin defendants "from taking any action on the leased tracts that would substantially and adversely affect subsistence use pending further order of this court. Such action would include, but is not limited to, exploratory drilling."

In their statement of reasons for appeal, appellants noted that the lease restrictions derived from the January 1984 court order in Kunaknana were conditions not contained in the original notice of the lease sale and requested a stay in issuance of the leases by BLM until the court proceedings permitted issuance of the leases without the additional conditions. On June 6, 1984, BLM filed a request for a stay in the Board proceedings until a ruling in Kunaknana. By order dated March 16, 1984, the Board stated that BLM could not issue the leases in view of the automatic stay provision of 43 CFR 4.21(a), suspended consideration of the case and required appellants to promptly notify the Board of any disposition in Kunaknana.

During the pendency of this appeal, the Board acted in a substantially similar case, Texaco, U.S.A., 82 IBLA 61 (1984), also involving the lease of various tracts included in NPR-A sale No. 831. In that case, BLM similarly required appellants therein to execute leases which would be subject to the court order in Kunaknana. We stated that the conditions imposed under the court order varied from the lease terms set forth in the original notice of the lease sale. We noted that BLM should have deferred the 15-day period for execution of the lease forms and payment of the balance of the bonus bids and first year's rentals until the conclusion of the Kunaknana litigation, in accordance with 43 CFR 3132.5(e). Moreover, we stated that appellants did not have notice of the additional conditions prior to the bidding, therefore, imposition of such conditions constituted a counteroffer, which was not effective absent appellants' acceptance. Texaco, U.S.A., *supra*, and cases cited therein. Therefore, we concluded that appellants had the option of either accepting or rejecting the leases within 15 days after notice from BLM that the litigation had concluded. If the restrictive stipulations imposed by the court as a result of the Kunaknana litigation remain, and appellants decline the leases, they will have the right to recover their bid deposits because the leases will constitute a counteroffer by BLM and not an acceptance of appellants' offer. We also declined to grant a stay in Texaco, U.S.A., because the Board's decision relieved appellants of "the necessity for immediate compliance with the BLM decision, which is the only relief they sought by this appeal." The result would be determined by the outcome of the Kunaknana litigation in any event. Texaco, U.S.A., *supra* at 63. We, therefore, vacated the BLM decision and remanded the case to BLM for further action consistent with final resolution of the litigation in Kunaknana v. Clark, *supra*.

By order dated July 18, 1984, we lifted our suspension of the present case and notified the parties of our intent to decide this case in accordance with Texaco, U.S.A. We also allowed the parties 30 days from receipt of the order to submit any desired response.

On August 23, 1984, appellants submitted a response in which they agreed with the Board's intent to decide the case in accordance with Texaco, U.S.A. However, appellants request that the Board issue an "interim stay" until BLM can act to defer the 15-day period for payment of the balance of the bonus bids and the first year's rentals, to follow the automatic stay which "might terminate" upon issuance of a decision to vacate and remand.

[1] Because of the substantial similarity of the present case and Texaco, U.S.A., supra, we hereby decide the present case in accordance therewith. Therefore, we vacate the January 1984 BLM decisions and remand the case to BLM with instructions to afford appellants the option of accepting or rejecting the leases and, if accepted, paying the balance of the bonus bids and the first year's rentals within 15 days after notice from BLM that the litigation in Kunaknana has concluded. If the restrictive stipulations remain, and appellants decline the leases, they shall have the right to recover their bid deposits.

Even though the automatic stay imposed by 43 CFR 4.21(a) will terminate upon issuance of this decision, BLM is hereby directed to afford appellants the alternative of compliance with the requirements within the 15-day period upon notification of the conclusion of the litigation in Kunaknana. Effectively, the 15-day period for compliance pursuant to 43 CFR 3132.5(e) is deferred until notification of the conclusion of the litigation in Kunaknana. No further action by BLM is necessary with respect to deferral of the 15-day period. Accordingly, the Board declines to grant an interim stay. As we said in Texaco, U.S.A., supra at 63, "appellants are relieved of the necessity for immediate compliance with the BLM decision." That is also the situation herein.

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 vacated and the case is remanded to BLM for further action consistent herewith upon final resolution of the litigation in Kunaknana v. Clark, supra, including all opportunities for appeal.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge