

DOROTHY RADANT  
ROBERT RADANT

IBLA 87-496

Decided September 9, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, informing lessees that the lands in their oil and gas lease had been incorporated into a known geologic structure, and that the annual rental due would be calculated at \$ 3 per acre or fraction thereof in accordance with their lease. C-45148.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Rentals

Regulation 43 CFR 3103.2-2(a) requires the holder of a noncompetitive oil and gas lease to pay rental of \$ 3 per acre or fraction thereof for the sixth and each succeeding lease year.

APPEARANCES: Dorothy and Robert Radant, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Dorothy and Robert Radant appeal from a May 1, 1987, decision of the Colorado State Office, Bureau of Land Management (BLM), informing them that all of the lands in their noncompetitive oil and gas lease C-45148 had been incorporated into the Greater Douglas Creek Known Geologic Structure, effective December 31, 1986, and that "thirty days after [receipt of] this notice, the annual rental due thereafter will be calculated at the rate per acre specified in the lease as consequence of the classification and this notice." BLM explained further: "Since your lease (or the original lease out of which your lease was assigned) was issued with a provision providing for rental rate of \$ 3.00 per acre or fraction thereof for the next rental due, this notice will not reduce the rental rate on your lease."

On May 15, 1987, appellants filed a notice of appeal from BLM's decision, stating that they wished "to appeal the raise of rental payment from \$ 1.00 to \$ 3.00," because their "purchase agreement filed June 5, 1986 \* \* \* called for \$ 1.00 per acre."

The subject oil and gas lease, assigned to appellants by Petroleum Research Corporation effective December 1, 1986, received serial number

C-45148. The base lease, C-36035, which contained 1335.92 acres, was issued under the regulations regarding simultaneous filings found at 43 CFR Subpart 3112, and was effective March 1, 1983.

The lease assignment, which appellants executed on September 24, 1986, provides that they agree to "be bound by the terms and conditions of the lease described herein as to the lands covered by this assignment, including, but not limited to, the obligation to pay all rentals and royalties due and accruing under said lease \* \* \*." Under section 2(d) of lease C-36035, appellants are required to pay rental in accordance with the following rates:

- (a) if the lands are wholly outside the known geologic structure of a producing oil or gas field: (i) for the first through the fifth lease year, a rental of \$ 1 per acre or fraction thereof; (ii) for the sixth and each succeeding year, a rental of \$ 3 per acre or fraction thereof; (b) if the lands are wholly or partly within the known geologic structure of a producing oil or gas field: (i) for the second through the fifth lease year, beginning with the first lease year after thirty days notice that all or part of the land is included in such a structure, prior to a discovery of oil or gas on the lands leased, \$ 2 per acre or fraction thereof; (ii) for the sixth and each succeeding year, prior to discovery of oil and gas on the lands leased, \$ 3 per acre or fraction thereof \* \* \*.

[1] Section 2(d) of lease C-36035 reflects the rental payment schedule established in 43 CFR 3103.2-2, which provides in relevant part:

- (a) On leases issued under Subpart 3112 of this title, an annual rental of \$ 1 per acre or fraction thereof for each of the first 5 lease years and an annual rental of \$ 3 per acre or fraction thereof for each remaining lease year;

\* \* \* \* \*

- (d) On lands within a lease issued under Subpart 3111 of this title after the effective date of this regulation which is later determined to be within a known geologic structure outside of Alaska or a favorable petroleum geological province in Alaska, the annual rental shall be \$ 2 per acre or fraction thereof beginning with the first lease year after the expiration of 30-days notice to the lessee. During the first 5 years of the lease term, the same rental increase is applicable to leases issued under Subpart 3112 of this title.

The last sentence of 43 CFR 3103.2-2(d) means that if lands subject to a noncompetitive oil and gas lease are included within a known geologic structure (KGS), during the first 5 years of the lease, the rent will increase from \$ 1 to \$ 2 in accordance with the first sentence of subsection (d). However,

once a lease issued under 43 CFR Subpart 3112 reaches the sixth year it is subject to the \$ 3 rental rate, whether or not the lands are included within a KGS. 1/

Lease C-36035 was issued with an effective date of March 1, 1983. Under section 2(d) of that lease, and under 43 CFR 3103.2-2(a), the lessee, or the lessee's assignee, was required to pay rental at \$ 1 per acre or fraction thereof for the first through the fifth lease years. The casefile does not contain a copy of the "purchase agreement filed June 5, 1986," alluded to by appellants. Appellants apparently believe the "purchase agreement" controls the amount of rental due the Government. They are mistaken. The cited lease terms and regulation govern the rental due. Nevertheless, the purchase agreement apparently called for the correct rental (\$ 1 per acre) for the third lease year. BLM's decision correctly points out that "thirty days after any lessee receives this notice, the annual rental due thereafter will be calculated at the rate per acre specified in the lease \* \* \*," and that the lease provides "for a rental rate of \$ 3 per acre or fraction thereof for the next rental due \* \* \*." [Emphasis added]. BLM's decision is dated May 1, 1987, so that the next rental, due on March 1, 1988, for the sixth lease year, will be \$ 3. The provisions increasing rental from \$ 1 to \$ 2 during the first 5 years are obviously inapplicable, since the next lease anniversary date, March 1, 1988, will begin the sixth lease year. The lease and the regulation do not provide for a decrease in rental from \$ 3 to \$ 2 or \$ 1. See J. A. Masek d.b.a. Masek Oil Co., 92 IBLA 12 (1986) (application of the \$ 2 rental provisions of 43 CFR 3103.2-2(d)).

Accordingly, 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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John H. Kelly  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anita Vogt  
Administrative Judge  
Alternate Member

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1/ The previous version of 43 CFR 3103.2-2 specifically provided that the \$ 2 rental increase for lands incorporated into a KGS was "not applicable to leases for which the annual rental is \$ 3." 43 CFR 3103.2-2(f) (1982); see 47 FR 2864 (Jan. 20, 1982).