

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting a petition for class I reinstatement of noncompetitive oil and gas lease CA 9714.

Affirmed.

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

Where a noncompetitive oil and gas lease is terminated for failure to timely make annual rental payments, and rental payments are made after the termination pending a BLM decision on a petition seeking class I reinstatement of the lease, BLM may properly return the rentals as excess payments pursuant to 43 U.S.C. § 1734(c) (1982), once it denies the reinstatement petition. However, in the absence of statutory provisions, no interest may be paid by the Government on such refunds.

APPEARANCES: Ruth Brammer Johnson, Esq., Denver, Colorado, for Amoco Production Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Amoco Production Company (Amoco) has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 11 1985, which denied Amoco's petition for a class I reinstatement of Federal noncompetitive oil and gas lease CA 9714.

Lease CA 9714 was issued to Carl J. Taffera on May 4, 1982, with an effective date of June 1, 1982. The lease as originally issued encompassed 9,490.60 acres, but, in decisions dated June 2, 1982, and April 21, 1983, BLM notified Taffera that the lease had been cancelled in part, with 8,770.60 acres of land remaining subject to the lease.

No rental payment was submitted for lease CA 9714 on or before June 1, 1983, the first anniversary date of the lease. Accordingly, on June 14, 1983, BLM issued an oil and gas lease termination notice to Taffera. On June 21, 1983, Amoco responded to the notice by tendering the \$ 8,771 rental

amount that was due on or before June 1, 1983, and petitioning for reinstatement of the lease under the class I reinstatement procedures set forth in 30 U.S.C. § 188(c) (1982). <sup>1/</sup> During the interim between Amoco's filing and BLM's September 11, 1985, denial of the class I petition, <sup>2/</sup> Amoco submitted two additional annual rental payments, each in the amount of \$ 9,491.

The BLM decision denied Amoco's class I petition for reinstatement, but provided that the lessee Taffera could request reinstatement under class II procedures. No such request was made. In addition, the BLM decision stated that "[s]ince it appears Amoco has been paying the rentals since 1983, these rental payments will be returned to Amoco if lease CA 9714 is not reinstated."

On appeal, Amoco states that it "accepts the denial of the Class I Reinstatement in this situation and has chosen not to pursue a Class II Reinstatement through the lessee as of June 1, 1983, Carl J. Taffera." Amoco's sole argument on appeal is that BLM should not only make repayment of the tendered rental payments, but should also pay "interest on those payments at the rate applicable under Section 6621 of the Internal Revenue Code of 1954 [26 U.S.C. § 6621 (1982)]." <sup>3/</sup> In making this argument, Amoco asserts: "Certainly there is general precedence [sic] in the federal government for Amoco's request." As an example of such precedent, Amoco cites 30 CFR 218.103, which provides that if the Minerals Management Service owes a state monies in connection with a Federal oil and gas lease, and fails to pay the state on the due date, the state accrues interest as computed under 26 U.S.C. § 6612 (1982).

[1] This Board has expressly ruled that an individual who is entitled to a refund for excess rental payments made on a noncompetitive oil and gas lease is not entitled to interest on the amount refunded. Romola A. Jarett, 63 IBLA 228, 89 I.D. 207 (1982); see also Evelyn D. Ruckstuhl, 91 IBLA 384 (1986). In the absence of an express statutory authority, interest cannot be recovered against the United States upon unpaid accounts or claims. United States v. Thayer-West Point Hotel Co., 329 U.S. 585, 588 (1947); see Romola A. Jarett, supra. While there is clear statutory authority for reimbursement of excess rental payments, see 43 U.S.C. § 1734(c) (1982), no statute authorizes payment of interest on such reimbursements.

<sup>1/</sup> Amoco was a potential assignee of the lease at the time it terminated. Apparently, however, the lease was not actually assigned to Amoco until Sept. 26, 1983. This assignment was filed for approval by BLM on Oct. 19, 1983. The petition for reinstatement was denied because only the lessee who is holder of record of the lease, and not a potential lessee, can properly petition to have the lease reinstated. See J. Edward Hollington, 86 IBLA 345 (1985).

<sup>2/</sup> In reference to the length of time it took to make a determination on Amoco's reinstatement petition, BLM stated in its decision: "Lease CA 9714 embraces lands within the Yuma Basin Area of Environmental Concern. \* \* \* [A] delay in processing the petition was caused by an appeal of the Sierra Club involving Areas of Environmental Concern." See Sierra Club Legal Defense Fund, Inc., 84 IBLA 311, 92 I.D. 37 (1985).

<sup>3/</sup> 26 U.S.C. § 6621 (1982) provides methods for determining rates of interest for overpayment or underpayment of taxes.

Amoco's citation to 30 CFR 218.103, supports a determination that statutory authority is required before interest payments can be authorized. This regulation implements section 111(b) of the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2455, 30 U.S.C. § 1721(b) (1982), which provides:

Any payment made by the Secretary to a State under [30 U.S.C. § 191] and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under [30 U.S.C. § 191] shall include an interest charge computed at the rate applicable under [26 U.S.C. § 6621].

Thus, in the example cited by Amoco, there is clear statutory authority for the payment of interest pursuant to 30 CFR 218.103. No similar statutory authority exists for payment of interest on rental amounts paid by an oil and gas lessee but subsequently reimbursed.

Therefore, pursuant to the authority granted to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

I concur:

Gail M. Frazier  
Administrative Judge

## ADMINISTRATIVE JUDGE IRWIN CONCURRING:

Appellant's notice of appeal of the Bureau of Land Management (BLM) decision in this case was filed on October 17, 1985. The file was transmitted to the Board by the Deputy State Director, Operations, of the California State Office of BLM on October 24, 1985. The top sheet of paper in the file is an undated, unsigned statement that reads:

## CARL D. TAFFERA, AMOCO PRODUCTION COMPANY APPEAL

As stated in the Notice of Appeal, oil and gas lease CA 9714 terminated on June 1, 1983, for failure to pay timely rental. Amoco petitioned for a Class I reinstatement and continued to pay the annual rentals for 83, 84 and 85 before this office denied their petition for a Class I reinstatement. Amoco does not challenge the denial of the petition but demands interest on the rental held by the Government for the two years and three months it took to process their petition.

The Board has held that refunds are appropriate in instances where rentals were paid for lands which were never subject to oil and gas leasing and where the lessee derived no benefit from the lease. The extraction of interests [sic] from the Government, however, requires statutory authority. In U.S. 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.

It is regrettable [sic] that this office was unable to timely process this petition; however, we were informally advised at that time by the Solicitor that where the lease had terminated, we must verify whether the lands were in a wilderness study area (WSA) or in an area of critical environmental concern (ACEC) as we had at that time the moratorium on leasing in WSA's and the protest filed in September 1982 and subsequent appeal from the Sierra Club on leasing in ACEC's. The lands affected by the petition were reported to be in an ACEC and thus no action was taken until the Board ruled in 84 IBLA 311, decided January 7, 1985. The District was subsequently requested to report on whether the existing stipulations in the terminated lease were adequate in the event the reinstatement was granted. While Amoco did not qualify for a Class I reinstatement, we would have granted a Class II reinstatement.

I see no reason for representation by the Solicitor before the Board on this appeal.

There is no indication that a copy of this statement was served on appellant.

43 CFR 4.27(b)(1) provides in part:

(b) Ex parte communication -- (1) Prohibition. There shall be no communications concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Proceedings include cases pending before the Office, rulemakings amending Part 4 of this title that might affect a pending case, requests for reconsideration or review by the Director, and any other related action pending before the Office. The terms "interested person" and "person interested in the proceeding" include any individual or other person with an interest in the agency proceeding that is greater than the interest that the public as a whole may have.

The term "interested person" (and "person interested in the proceeding")

is intended to be a wide, inclusive term covering any individual or other person with an interest in the proceeding. The interest need not be monetary, nor need a person be a party to, or intervenor in, the proceeding to come under this section. The term includes, but is not limited to, parties, competitors, public officials, and nonprofit or public interest organizations and associations with a special interest in the matter. The term also includes Departmental bureaus and offices (and employees thereof), whether or not parties to the proceeding. [Emphasis added.]

50 FR 43704 (Oct. 29, 1985). <sup>1/</sup>

The Board of course finds it helpful to have the kind of background and analysis that BLM provided in this case, either directly or via the Office of the Solicitor, and welcomes its submission. But if it is provided after an appellant files a notice of appeal or statement of reasons, a copy of it must be served on the appellant and proof of service made in accordance with 43 CFR 4.401(c). 43 CFR 4.414. See James C. Mackey, 96 IBLA 356, 361 n.1, 94 I.D. 132, 135 n.1 (1987). This includes notations on the memorandum transmitting the file to the Board or any other statement about the merits of the decision. If it is placed in the file after BLM makes its decision but before a person files a notice of appeal, there is no regulation requiring that it be sent to affected parties; nevertheless, in fairness BLM should mail a copy of it to such persons at the time it is placed in the file so

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<sup>1/</sup> The term "representative" is "intended to include, but is not limited to, a member of the Department's Office of the Solicitor who is representing a bureau or office before OHA. It would also include anyone who, though not interested in the proceeding himself, communicates with OHA at the request or suggestion of a party." Id.

that they may consider it in deciding whether to appeal the decision and what to say in a statement of reasons.

The memorandum in this case was submitted to the Board before the November 29, 1985, effective date of the revision of this regulation. If it had not been, we would be obligated to further delay a decision in this case in order to comply with the requirement of the regulation that provides: "In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing." 2/ Indeed, I would urge we provide such an opportunity anyway if I had any doubt about the correctness of the result of our decision. Presumably, however, appellant would prefer to be done with the matter.

Will A. Irwin  
Administrative Judge

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2/ We would also have to consider whether it would be appropriate to impose sanctions on the offending individual, e.g., discipline pursuant to the Department's standards of conduct. 43 CFR 4.27(b)(2).