

Appeal from a decision of the Eastern States Office, Bureau of Land Management, notifying lessee of noncompliance with special stipulation and commencement of action to cancel the lease.

Appeal dismissed.

1. Oil and Gas Leases: Stipulations--Rules of Practice: Appeals: Failure to Appeal

If the successful bidder for a competitive oil and gas lease elected to execute a special stipulation required by BLM rather than appealing the decision requiring the stipulation, failure to appeal that decision renders it final and precludes the lessee from contending, in a later appeal brought from action by BLM enforcing the stipulation, that the requirement was not properly imposed.

APPEARANCES: Jack H. Kaplan, Esq., Shreveport, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

George A. Haddad, Jr., has appealed from the October 7, 1986, decision of the Eastern States Office, Bureau of Land Management (BLM), finding that he failed to comply with a stipulation requiring him to commit oil and gas lease ES 32858 to a production unit within 45 days of lease issuance, and notifying him that proceedings would be commenced to cancel the lease. For the reasons set out below, we dismiss the appeal.

The tract embraced by the lease is within the Greenwood-Waskom Field known geologic structure (KGS). Haddad's bid for the parcel was the highest of five bids submitted in a lease sale held by BLM on September 27, 1983. By memorandum dated December 19, 1983, BLM's Chief, Branch of Fluid and Solid Minerals, wrote the Chief of its Branch of Minerals Adjudication, as follows:

Please be advised that this office has completed its post-sale evaluation of Parcel No. 2 and has discovered that Parcel No. 2 is within a State designated production unit. In view of this,

the negotiation of a Federal communitization agreement and the addition of certain lease stipulations are required prior to leasing. The subject lease offering did not contain any of the required special stipulations. Therefore, in view of this over-sight, we recommend that Parcel No. 2 be withdrawn from the subject lease sale and that all deposits be refunded to all those who bid on this parcel. You will be advised of the special lease stipulations required prior to the next lease sale in this area.

While it considered what to do with parcel No. 2, on January 28, 1984, BLM issued a decision informing Haddad of the acceptance of his high bids for two other parcels in the September 27, 1983, sale, but making no reference to parcel No. 2, the parcel involved in this appeal. By memorandum dated March 5, 1984, the Chief, Branch of Minerals Adjudication, wrote to the Chief, Branch of Fluid and Solid Minerals, that it was not advisable to withdraw the parcel from the competitive sale, as the latter had recommended in his December 19, 1983, memorandum. Instead, he recommended that a lease for the parcel be issued to Haddad, subject to a stipulation that he enter into a communitization agreement. He further recommended sending Haddad a copy of the communitization agreement and the additional stipulation for his signature prior to issuing the lease.

On April 4, 1984, in furtherance of its decision to require communitization, BLM wrote to TXO Production Corporation (TXO), the operator of the State designated production unit which included parcel No. 2. BLM suggested that an escrow account be established for all of the proceeds attributed to the, as yet, unleased Federal land within the spacing unit of the producing well. The letter advised TXO that any lease issued for the parcel would contain a stipulation requiring the lessee to execute the communitization agreement and reimburse the unit operator for the pro rata share of the drilling, completion, and operating costs attributed to the lands contained in the lease.

By memorandum dated May 31, 1984, the Adjudication Chief again wrote the Minerals Chief, reminding him of the March 5, 1984, memorandum which advised him to forward copies of the special stipulations to Haddad for signature, and again asked the Minerals Chief for recommendations regarding this matter. In a June 19, 1984, memorandum, the Minerals Chief responded to the Adjudications Chief proposing language for the stipulation.

Finally, on August 14, 1984, BLM issued a decision indicating the acceptance of Haddad's high bid, subject to the execution of the following stipulation:

The lands in this lease is [sic] within a producing gas unit. The producing unit consists of 640 acres, more or less, in Section 6, T. 17 N., R. 15 W., Caddo Parish, Louisiana and is further identified as State production unit CV BOD RA SUA of the Greenwood-Waskom Field. The lessee shall be required, within 30 days of lease issuance, to commit this parcel to the producing unit by executing the communitization agreement which is being negotiated for the producing unit. The lessee shall also be

required, within 45 days of lease issuance, to reimburse the operator of this producing unit, TXO Production Corp., for the prorated share of drilling, completion, and operating costs attributed to the lands contained in this lease. As per the terms of the communitization agreement, all proceeds attributed to the land under this lease, i.e., the full 8/8ths, are held in an interest earning escrow account by the unit operator. These proceeds are for the time period from the date of first production to the date of this lease and shall be paid to the United States by the unit operator within 45 days of lease issuance. Royalties to the United States shall be payable from the date of this lease.

Haddad did not object to the imposition of this stipulation and acknowledged acceptance by signing the lease on August 20, 1984. The effective date of lease issuance was September 1, 1984.

On December 8, 1985, more than a year after his acceptance and lease issuance, Haddad sought to challenge the requirement of the stipulation under which BLM was entitled to receive the full eight-eighths of production from the date of initial production until September 1, 1984, the effective date of the lease. BLM did not respond to Haddad's letter until May 8, 1986, when it issued a letter advising Haddad that he must adhere to the terms of the special stipulation or BLM would undertake action to cancel the lease. The letter gave Haddad an additional 60 days in which to reimburse TXO and submit a communitization agreement.

Haddad again objected by letter dated May 14, 1986, and BLM by letter dated June 13, 1986, reiterated its requirements, reminding him that he must comply with the stipulation within 60 days from the date of receipt of BLM's May 8 letter.

By letter dated July 3, 1986, Haddad expressed his view that the "stipulation was signed by me and returned with the original lease based upon the good faith and acceptance that this lease had been won and should have been issued in September 1983." Haddad objected to BLM's retention of the full eight-eighths royalty during the period from September 1983 to September 1984 while requiring him to pay his pro rata share of drilling, completion, and operation expenses. On October 7, 1986, BLM issued the decision again requiring compliance and threatening cancellation, from which this appeal is taken.

[1] Haddad's appeal must be rejected as untimely. Haddad received notice of the action he now challenges, to-wit, the imposition of the requirement that he commit the leased parcel to the producing unit, from BLM's decision of August 14, 1984, which unequivocally required him agree to this requirement as a condition to receiving the lease. Haddad was free to appeal at that time, but, under the mandatory provisions of 43 CFR 4.410(c), he was required to file a notice of appeal within 30 days of service of this decision. He did not do so, and, in fact, complied with the decision, thus tacitly agreeing to its terms, including the requirement that he enter into a unit agreement.

In Luexco Oil Co., 93 IBLA 351, 353 (1986), we observed:

The doctrine of administrative finality bars claimants before the Department from reviving issues which were previously decided in circumstances where, as here, an opportunity to appeal from a final determination affecting the claimant's right was offered, but where the claimant failed to take a timely appeal. See Ida Mae Rose, 73 IBLA 97 (1983).

Thus, when Haddad executed the stipulation rather than filing an appeal his failure to appeal rendered the BLM decision final, and he is now precluded from contending that the requirement should not be imposed. Accordingly, Haddad's appeal is properly dismissed as untimely.

BLM's decision properly recognizes that it cannot cancel this lease by issuing its own decision, but that the initiation of judicial proceeding is required. Although a lease which is not known to contain valuable deposits of oil or gas is "subject to cancellation by the Secretary of the Interior after 30 days' notice upon failure of the lessee to comply with any of the provisions of the lease," 30 U.S.C. § 188(b) (1982), the instant lease is within a producing unit and is thus known to contain valuable deposits of oil or gas. Thus, Haddad's lease is subject to cancellation under 30 U.S.C. | 188(a) (1982), which provides for cancellation "by an appropriate proceeding in the United States District Court for the district in which the prop-erty, or some part thereof, is located."

Accordingly, 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.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge