

INTERIOR BOARD OF LAND APPEALS

John Messinger

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JOHN MESSINGER

IBLA 97-578

Decided

Appeal from a decision of the Nevada State Office, Bureau of Land Management, dating oil and gas lease offers for issuance on September 1, 1996. N-60793, et al.

Reversed and remanded.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease offer was accepted on behalf of the Department when it was signed by the authorized officer on May 30, 1997, and under Departmental regulations 43 C.F.R. §§ 3110.7(c) and 3110.3-2, should have been given an effective date of June 1, 1997.

APPEARANCES: John Messinger, West Seneca, New York, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John Messinger has appealed from an August 29, 1997, Decision by the Nevada State Office, Bureau of Land Management (BLM), finding that oil and gas leases N-60793, N-60806, N-60807, and N-60808 were effective on September 1, 1996. On September 8, 1997, Messinger filed a timely appeal for which he requested expedited consideration by this Board because, until the question of the date of issuance of the leases can be resolved, the leases will not be saleable. Given the basic nature of the question presented, and under the circumstances described by Messinger, we advance this case on the docket for immediate disposition.

The BLM Decision acknowledges that, although Messinger's lease offers were complete on July 8, 1996, and were prepared for issuance on August 15, 1996, they were not signed until May 30, 1997, by the BLM officer authorized to accept them on behalf of the Department. The Decision observes that, under 30 U.S.C. § 226(c)(1) (1994), BLM is required to issue such leases as these "within 60 days of the date on which [BLM] identifies the first responsible qualified applicant." Id.

In earlier correspondence with Messinger, BLM stated that

[o]n May 30, 1997, Mr. Messinger telephoned * * * to discuss oil and gas leases N-60793, N-60806, N-60807 and N-60808. While reviewing the casefiles, [it was] discovered that although the subject leases had been prepared for approval by our office, they had inadvertently not been signed by the authorized officer.

(Tentative Decision dated June 9, 1997.) Continuing this explanation, BLM stated that "[w]e apologize for the inconvenience caused you as a result of our oversight." Nonetheless, BLM reached a preliminary finding that the leases "were approved effective September 1, 1996." Id.

Messinger objected to this result, and BLM conducted a further review into the handling of his lease offers before issuing the Decision presently before us on review. This further investigation revealed that BLM's

plats and corresponding database were clearly noted to reflect the issuance of said leases. Additionally, Item 3 of the original lease form bears a rubber stamp, used by this office to reflect the date the issued leases were posted to the appropriate records. On the subject leases, that stamp reveals a "records posted" date of September 3, 1996.

(Decision at 2.)

Referring to a protest filed against issuance of the leases to Messinger in 1996, BLM explains that, once the protest was disposed of, it had been the intention of the BLM staff to approve the leases. Since the protest was finally rejected on August 15, 1996, BLM chose to assign a September 1996 date to the leases issued to Messinger, on the assumption that their rejection of the protest coincided exactly with the authorized officer's approval of Messinger's lease offers, because there was no other impediment to lease approval. Following this reasoning, BLM states it was intended

that these leases be signed as they had been stamped, showing an approval date of August 15, 1996, and an effective date of September 1, 1996. This administrative error was not brought to our attention until May 30, 1997, the date you contacted our office and we discovered that the leases had inadvertently not been signed. At that time the authorized officer signed these four leases. Therefore, it is still the position of this office, as stated in our decisions of August 15, 1996, and June 9, 1997, that oil and gas leases N-60793, N-60806, N-60807 and N-60808 were determined to be approved effective September 1, 1996.

(Decision at 2.)

Messinger challenges this finding and argues that his leases were not accepted until they were signed by the authorized officer in 1997.

[1] Messinger's position is supported by Departmental regulations and practice of long standing. The controlling rule provides that "[t]he United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror." 43 C.F.R. § 3110.7(c).

This regulation governing lease acceptance is of longstanding duration in the Department. In James W. Cannon, 84 Interior Dec. 176, 182 (1977), Secretary Andrus refused to accept arguments that noncompetitive oil and gas offers had ripened into property rights so as to prevent him from rejecting them. He pointed out that the offers had not been signed by the authorized officer, and that, under Departmental regulations substantially the same as those presently in effect, "an offer does not become a lease until executed by the appropriate officer." Id. This Board has followed this construction of the regulation, applying it in other cases involving noncompetitive oil and gas leases. Mobil Oil Corp., 35 IBLA 375, 380 (1978).

We therefore conclude that, until these four lease offers were signed by the authorized officer, they were not accepted. When they were signed in 1997, they became leases under provision of 43 C.F.R. § 3110.7(c) and should then have been dated in conformity to 43 C.F.R. § 3110.3-2, which provides that, following acceptance by the authorized officer, noncompetitive leases become effective on the first day of the next month following signing. They should, therefore, have been assigned effective dates of June 1, 1997, inasmuch as they were signed on May 30, 1997. While it may have been the intention of some BLM staff member to sign the leases on August 15, 1996, as stated in the Decision, it is clear the planned event did not occur. That BLM was required, under existing law, to execute the document in 1996 does not mean, in this case, that the action was accomplished since it admittedly was not. Under Departmental regulations and practice the leases were not accepted for the United States until they were signed in May 1997; they must be dated in conformity to 43 C.F.R. §§ 3110.7(c) and 3110.3-2.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed and the case file remanded to BLM to permit the leases to be issued bearing the correct date.

Franklin D. Amess
Administrative Judge

I concur.

James P. Terry
Administrative Judge