

CALDWELL OIL AND GAS CO.

IBLA 87-645

Decided March 9, 1990

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM-A 28235(TX).

Affirmed as modified and remanded.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Lands Subject to

An over-the-counter noncompetitive oil and gas lease offer for acquired military lands filed prior to the passage of legislation making such lands available for leasing must be rejected. However, where the lease applicant completes a new lease form, and submits it at a time when the lands are subject to leasing, BLM should treat the application as a new offer to lease, and assign the offer priority as of that date.

APPEARANCES: John F. Shepherd, Esq., and Gerald J. Schissler, Esq., Denver, Colorado, for appellant; Margaret C. Miller, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Caldwell Oil and Gas Company (Caldwell) has appealed from a decision, dated May 29, 1987, of the New Mexico State Office, Bureau of Land Management (BLM), which rejected over-the-counter noncompetitive oil and gas lease offer NM-A 28235(TX). As stated in the BLM decision, the offer to lease was rejected in its entirety for the following reason:

Section 12 of the Federal Coal Leasing Amendments Act amended Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) by providing that lands set aside for military or naval purposes may be leased to a governmental entity if the Secretary of Defense agrees to such leasing. This Act was effective August 4, 1976. Therefore, because oil and gas lease offer TX NM 28235 was filed May 27, 1976, prior to the effective date of the Act that opened mineral leasing on military lands, it is considered prematurely filed.

Appellant filed its over-the-counter noncompetitive oil and gas lease offer on May 27, 1976, for 2,449 acres of acquired military lands within

the boundaries of Camp Swift in Bastrop County, Texas. On August 4, 1976, Congress amended the Mineral Leasing Act for Acquired Lands to make military lands available for leasing. P.L. No. 94-377, § 12(a), 90 Stat. 1083, 1090 (1976).

Thereafter, on January 4, 1978, BLM wrote to appellant and stated in part:

In order to complete the qualifications evidence of Caldwell Oil and Gas Company, Inc., to hold federal oil and gas leasing interest, please furnish the following information using the duplicate copy of this request for your reply:

The percentage of the voting stock and of all the corporate stock owned by aliens or by those having addresses outside the United States:

Additionally, please have each stockholder owning or controlling more than 10 percent of the corporate stock execute and return the enclosed forms.

Upon receipt of all the required information, the qualifications showing will be formally accepted and action will continue on your offer to lease NM-A 28235 TX.

By letter dated January 24, 1978, BLM acknowledged receipt of the requested statement. <sup>1/</sup> BLM proceeded to process the lease offer, and corresponded with appellant on numerous occasions concerning the status of the lease offer.

Internal memoranda contained in the case file show that BLM was diligently processing the offer for lease issuance. On February 16, 1978, BLM advised appellant of the status of the offer, and noted that its offer was in conflict with two competitive coal lease applications, and stated that the conflicts had to be resolved prior to processing the lease offer. In its letter, BLM detailed the conflicts, and noted that the oil and gas offers within Camp Swift were being processed as expeditiously as possible.

On November 1, 1979, the Secretary of the Interior imposed a moratorium on the leasing of all acquired military and naval lands, and directed BLM to reject all pending oil and gas lease offers involving acquired military and naval lands. 44 FR 64085 (Nov. 6, 1979). That moratorium was rescinded on July 20, 1981, 46 FR 37250, for all acquired military lands except those for which applications were filed prior to September 21, 1978. Offers filed prior to that time remained under moratorium awaiting the

---

<sup>1/</sup> We find no merit to appellant's argument on appeal that submission of the qualifications statement which BLM stated "completed" the application operated to change the filing date of the lease offer to the date of that filing. See our discussion *infra*.

decision by the circuit court in Texas Oil & Gas Corporation v. Watt, 683 F.2d 427 (D.C. Cir. 1982). In Texas Oil & Gas, *supra*, the Court of Appeals for the D.C. Circuit reversed the decision of the district court which had upheld the November 1, 1979, decision of the Secretary. Thus, the Secretary published a notice on February 28, 1983, which lifted the moratorium on the issuance of noncompetitive oil and gas leases for lands acquired for military or naval purposes whose applications were filed prior to September 21, 1978. 48 FR 8280.

BLM proceeded to process appellant's application as one filed prior to September 21, 1978. The process took an extended amount of time in order to resolve conflicts with the competitive coal lease applications. The case file contains additional internal memoranda and letters indicating that BLM was continuing to process the application for lease issuance. On August 25, 1985, BLM issued a "Notice" to appellant requiring the submission of a new oil and gas lease form. Therein, BLM enclosed new forms for execution, and advised appellant that the submission of the new forms would not affect its priority. Appellant returned the forms as directed, and adjudication of the lease offer continued. Eventually, BLM determined that the lease should be offered with a no-surface occupancy (NSO) stipulation on the acreage in conflict with a lignite mining unit. It appears that appellant was not agreeable to the NSO stipulation and advised BLM that the stipulation was not acceptable. On April 8, 1987, the New Mexico State Office in a memorandum to the Director, BLM, forwarded an issue paper supporting its recommendation to issue the lease with the NSO stipulation. In a response dated April 14, 1987, the Chief, Branch of Fluid Minerals, advised that the case file would be forwarded to the Director, BLM. He then noted that the case abstract showed that the application was received May 27, 1976, and that the Federal Coal Leasing Amendments Act of 1975 which opened military and naval acquired lands to leasing was dated August 4, 1976. On May 29, 1987, BLM issued its decision rejecting appellant's lease offer because it was filed prior to the time the land sought was available for leasing.

In the statement of reasons for appeal, Caldwell contends that BLM's decision to reject the lease offer was in error because:

(1) the mining claim "void ab initio" rule does not apply to oil and gas lease applications;

(2) 43 C.F.R. § 2091.1 does not apply where lands have been made available for leasing long before BLM decides to reject an application;

(3) Caldwell's application was not complete until it filed evidence of qualifications on January 11, 1978, i.e., after Congress opened up military lands to leasing, and therefore its application was not premature and § 2091.1 does not apply;

(4) § 2091.1 cannot be applied to deprive Caldwell of priority to the lease because Caldwell had no actual notice of

that regulation, and it was not properly indexed in the Code of Federal Regulations;  
and

(5) the doctrine of estoppel prevents the BLM from relying  
on § 2091.1. [Emphasis in original.]

The Government argues that appellant's lease offer was properly rejected because the offer was premature and further that this particular filing error could not subsequently be cured. The Government maintains that because the offer was made prior to the time there was statutory authority to lease military lands, the "Secretary's decision not to lease is based not on discretion, but on statutory invalidity of the lease offer." With respect to the second application filed by appellant, the Government in its supplemental response states:

It is the agency's position that the appellant's filing date continues to be May 1976, and that the 1985 lease forms were merely a replacement of forms and not of priority date \* \* \*. The result in the present case may have been different had the appellant formally withdrawn its 1976 offer at the time of its 1985 refiling. However, having not done so, the agency is constrained to treat appellant's filing in the same manner as all other applicants who filed in 1985, with a priority and validity date attaching to the original filing date.

The applicable regulation, 43 CFR 2091.1 (1976), provides as follows:

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

Under this regulation, BLM was required to reject appellant's lease offer, and contrary to appellant's arguments on appeal, BLM could never issue a lease based on the 1976 filing. Indeed, this Board has consistently recognized that BLM has no alternative but to reject a lease offer filed for lands that are not available. See Barrick Exploration Co., 82 IBLA 172 (1984); Bruce Anderson, 77 IBLA 376 (1983); and Noel Tenscher, 62 I.D. 210 (1955). Appellant's reliance on Texas Oil & Gas Corp. v. Watt, *supra*, to support its position that its 1976 lease offer is valid is misplaced. In Texas Oil & Gas, the court concluded that the Secretary improperly rejected lease offers which were filed subsequent to the August 4, 1976, amendments, which opened lands set aside for military or naval purposes to leasing, but prior to the enactment of implementing regulations. We agree that the filing of a lease offer is not premature within the meaning of 43 CFR 2091.1(e) where it is received when statutory authority exists to lease the lands, but prior to the time the implementing regulations are issued. However, that is not the case before us. When appellant's lease offer was filed,

no statutory authority to lease the lands sought existed. It was clearly premature, and 43 CFR 2091.1(e) applied because the lease offer could not be approved, and rejection of the lease offer was required.

Neither is there support for appellant's position that the filing defects in its application can be cured. 43 CFR 3111.1-1(e) (1976) provides that a noncompetitive "over-the-counter" lease offer will be approved even though certain deficiencies, as specified in the regulation, exist.

In cases where the offer is deficient for reasons other than those listed, the Board has long followed the practice of permitting the offeror to "cure" on appeal such deficiencies so that the offer can earn priority as of the date the filing is perfected in conformity with the Departmental requirements. <sup>2/</sup> See, e.g., Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Appellant points to specific submissions made during the time BLM was processing its offer, arguing that each is sufficient to "cure" the deficiencies in its initial filing. Unfortunately, the deficiency in appellant's lease offer is fatal, and no subsequent act can recast this premature offer into a valid offer, i.e., one which under the regulations could be approved. When a lease offer is accepted for filing, it proceeds to processing and adjudication depending on its viability when filed. Unlike the defects listed in 43 CFR 3111.1(d), or those which can be corrected to bring the application into compliance with the filing regulations, there is no additional submission that appellant can provide which would remove the obstacle which prevents approval of the 1976 offer. In this case, the only supplemental filing that could alter the status of the 1976 offer would be evidence that would establish that the land was in fact available for leasing on the date the lease offer was filed. However, we point out that such a submission would not "cure" a defect; rather it would demonstrate that the lease offer could be approved, and was appropriate for processing and adjudication when filed and that rejection was improper for that reason. Consequently, only a new lease offer filed when authority exists to lease the military lands sought could possibly be approved and result in lease issuance.

As stated above, on August 25, 1985, BLM notified appellant that it was required to complete and file new oil and gas lease forms. With the notice, BLM enclosed three copies of the form to replace the original lease offer form, and instructed appellant to sign and date the new forms, advising that it would not lose its filing place, and that if the forms were not returned within 30 days, the lease offer would be rejected. On September 12, 1985, appellant returned the new lease offer forms properly executed and reminded BLM that it was holding \$3,254 in connection with the lease offer which would be sufficient to cover the first year's rental whether the rental was \$.50 or \$1.00 per acre. This filing, we conclude, constitutes the filing of a new lease offer, and appellant is entitled to priority as of September 12, 1985. We reach this conclusion even though BLM requested the

---

<sup>2/</sup> In Gian R. Cassarino, 78 IBLA 242 (1984), the Board announced the practice would be discontinued, and that it would no longer permit such defective filings to be cured on appeal.

submission of the forms and intended that they relate back to the initial filing in 1976.

The 1976 lease offer when filed was premature and should have been rejected immediately. For some reason, it was not. The fact that it was maintained, processed, and adjudicated for over a decade does not make it a legitimate offer. Indeed, until the authorizing legislation was passed in August 1976, there could be no offer to lease the acquired military lands at issue which could result in issuance of a lease. Had BLM followed its regulations, the lease offer would have been rejected. Even so, the fact that no decision was issued in 1976, and that the lease offer continued pending does not make the 1976 filing a proper offer. It was not a legitimate offer on May 27, 1976, which could result in a lease. Indeed, on that date there was nothing to lease, as acquired military lands were then not subject to leasing. As the lease offer was premature on that date, May 27, 1976, subsequent rejection relates back to that date. Thus, it is only offers filed after August 6, 1976, which could result in lease issuance, and which are therefore entitled to priority. <sup>3/</sup>

When BLM advised appellant that submission of the 1985 lease offer forms would replace the 1976 forms, it apparently was not aware that the 1976 offer was premature. Obviously, if it had, it would have notified appellant then, rather than expend resources for another 2 years processing a fatally deficient offer. We do not agree with the Government that appellant was required to withdraw the 1976 offer in order for the 1985 filing to constitute a new offer. When an offer is rejected, the basis for rejection is some point in time when the offer was not in compliance with some Departmental requirements for lease issuance. As stated earlier, the rejection of this lease offer relates back to the date the lease offer was filed in 1976. Essentially, we have a situation where a lease offer is outstanding and recognized as a legitimate offer which in reality did not, and positively could not, result in the issuance of a lease. However appellant came to file a lease offer in 1985, considering the circumstances of this case, it is ludicrous to suggest that it somehow relates back to a time when no viable lease offer could exist. BLM's error in processing and adjudicating the 1976 lease offer is compounded by the Government's notion that the 1985 filing relates back to the 1976 offer which sought land which, for leasing purposes, did not exist. With respect to this 1985 offer, there was nothing to relate back to, because the 1976 filing was premature and could not form the basis of a legitimate offer. Thus, the 1985 filing stands on its own, and is entitled to priority, notwithstanding the fact that the 1976 lease offer had not been officially rejected.

Had BLM acted promptly to reject the 1976 lease offer, we have no doubt that appellant would have submitted a new lease offer immediately. Even

---

<sup>3/</sup> Three offers were filed after Aug. 6, 1976. The offer of Enserch Exploration, Inc., was withdrawn on Sept. 11, 1987. The other outstanding offers include Caldwell's 1985 offer, and one filed by Plains Petroleum Company on Jan. 7, 1987.

so, BLM's failure to act cannot serve as a vehicle to grant appellant a right not authorized by law. It appears that appellant was aware when it filed its 1976 lease offer that legislation making military lands available for leasing had not been signed into law. If appellant intended to file prior to the passage of the legislation in order to gain an advantage over competition, it made an error in judgment. If it was a mistake, it was unfortunate, since appellant had all the essential information in its possession to be on notice of the consequences of a premature filing under the regulations, and must accept responsibility for its own actions. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

In this regard we do not find Caldwell's argument regarding estoppel to be well taken. Estoppel will not lie against the United States where there is no evidence of affirmative misrepresentation or concealment of a material fact by the Government. Ward Petroleum Corp., 93 IBLA 269 (1986). In the absence of a showing of affirmative misconduct by a responsible Federal employee, an estoppel will not lie against the Government because of reliance on erroneous or inadequate information given. United States v. Ruby, 588 F.2d 687 (9th Cir. 1978).

Nonetheless, for reasons previously stated, Caldwell is entitled to the processing of its 1985 offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision dated May 29, 1987, is affirmed as modified and remanded for further action consistent with this opinion.

---

Gail M. Frazier  
Administrative Judge

## ADMINISTRATIVE JUDGE HARRIS CONCURRING IN THE RESULT:

On May 29, 1987, the Bureau of Land Management (BLM) rejected over-the-counter oil and gas lease offer NM-A 28235 (TX) filed by Caldwell Oil and Gas Company (Caldwell) for certain acquired military lands within the boundaries of Camp Swift, Bastrop County, Texas. BLM's decision asserted that at the time Caldwell filed its offer, May 27, 1976, the land was not open to oil and gas leasing. Caldwell appealed, and in its statement of reasons (SOR), it vigorously argued the viability of its May 27, 1976, offer. The reason for this was clear from Caldwell's statement that if BLM's decision were upheld, "it appears that applications filed by Enserch Exploration in September 1981 would have priority, unless Enserch decides not to pursue its applications." SOR at 6. Caldwell noted that BLM had inquired of Enserch whether it intended to pursue its applications, but as of July 21, 1987, had not received a response.

BLM filed an answer in support of its decision rejecting the offer, and Caldwell filed a reply thereto in which it informed the Board that Enserch had withdrawn its conflicting applications. Caldwell asserted that although the issues in the case appeared to be complex, resolution of the case turned on a choice between two arguments which would avoid the premature filing question. First, Caldwell charged that its offer was "ineffective" until January 11, 1978, when it filed the qualifications material requested by BLM in a January 4, 1978, letter, and the land was open to leasing at that time. Second, Caldwell argued, in the alternative, that it should have priority as of September 9, 1985, because on that date it submitted, at the request of BLM, a new oil and gas lease offer for the same land.

In a supplemental answer, BLM argued that the 1985 lease offer forms filed by Caldwell could not be considered a new offer because they were merely solicited by BLM due to a change in lease offer forms. BLM pointed out that its notice requesting the completion and filing of new forms specifically stated that "[y]ou will not lose your filing priority." BLM asserted that if Caldwell had formally withdrawn its 1976 offer at the time of its 1985 refiling the result in the case may have been different.

In response thereto, Caldwell claimed that BLM could not have it both ways, *i.e.*, it could not maintain that both the 1976 and 1985 offers were ineffective. Caldwell reasoned that if its 1976 offer was premature and not cured by the 1978 supplemental filing, the 1985 offer could not have related back to it, and therefore, could only be treated as a new offer. Likewise, it charged that if its 1976 offer was ineffective, no purpose would have been served by formally withdrawing the offer.

The logic of Caldwell's argument is inescapable. If the 1976 offer is ineffective, which it is, as the lead opinion properly concludes, the 1985 offer must be treated as a new offer with priority as of the date of its filing. I agree that the case file must be returned to BLM for the processing of Caldwell's 1985 offer.

---

Bruce R. Harris  
Administrative Judge