

LEWIS KATZ

IBLA 2003-47

Decided October 21, 2004

Appeal from a decision of the Utah State Office, Bureau of Land Management, issuing noncompetitive geothermal resource lease UTU-71373.

Affirmed.

1. Geothermal Leases: Applications: Generally--Geothermal Leases: Noncompetitive Leases

An applicant for a noncompetitive geothermal lease must submit at least one application form bearing an original signature. 43 CFR 3204.10. Xeroxed copies of an original handwritten signature do not qualify as an original signature. A geothermal lease issued in the absence of at least one originally signed lease application is subject to cancellation by BLM. 43 CFR 3213.23.

2. Geothermal Leases: Applications: Amendment--Geothermal Leases: Noncompetitive Leases--Geothermal Leases: Rentals

To withdraw a geothermal resource lease offer, an offeror must clearly inform BLM of his or her intent to withdraw the offer. 43 CFR 3204.17. The submission of a subsequent lease offer which included all the lands in a pending initial offer and added new acreage did not affirmatively demonstrate an intent to withdraw the initial lease offer.

3. Geothermal Leases: Noncompetitive Leases--Geothermal Leases: Rentals

A lease applicant is entitled to receive a full refund of advance rental for a lease offer if he withdraws it before

BLM accepts it, or when BLM rejects the offer. 43 CFR 3204.12. Appellant was not entitled to a full refund of advance rental for an initial lease offer when he filed a second lease offer for the same acreage, while adding new acreage, and did not withdraw the initial offer.

APPEARANCES: Lewis Katz, Salt Lake City, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Lewis Katz has appealed an October 9, 2002, decision of the Utah State Office, Bureau of Land Management (BLM), issuing an amended noncompetitive geothermal resource lease under BLM serial number UTU-71373, effective October 1, 2002, for 1,761 acres located in secs. 21, 27, 28, and 29, T. 30 S., R. 12 W., Salt Lake Meridian (SLM), Beaver County, Utah. The lease was issued pursuant to the Geothermal Steam Act of 1970, as amended, 30 U.S.C. §§ 1001-1028 (2000) (Geothermal Steam Act), and its implementing regulations pertaining to noncompetitive geothermal leases, at 43 CFR Subpart 3204. Katz contends that BLM issued the lease in error and has failed to refund him advance rental in the amount of \$1,125.

Katz filed his noncompetitive geothermal resource lease offer on March 1, 1993, for 1,241 (actually 1,240.79) acres located in secs. 21, 27, and 28, T. 30 S., R. 12 W., SLM.^{1/} It was serialized as UTU-71373. He submitted a \$1,200 check with the offer to lease to cover the nonrefundable \$75 filing fee and one year's advance rental of \$1 per acre or fraction of an acre. BLM took no action on Katz's offer until 2002. On April 2, 2002, BLM issued a decision to Katz informing him that additional advance rental in the amount of \$116 was required before lease offer UTU-71373 could be accepted and issued. Katz was granted 30 days from date of receipt within which to pay the deficiency. The decision further stated that if BLM did not receive the additional amount within 30 days and no appeal was filed, it would reject the lease offer and refund the \$1,125 Katz had tendered towards advance rental.

On April 19, 2002, Katz filed another noncompetitive geothermal resource lease offer that was initially serialized by BLM as UTU-080154. That offer included

^{1/} Specifically, the lease offer applied for lands in NW^{1/4}, N^{1/2}SW^{1/4}, W^{1/2}NE^{1/4}, NE^{1/4}NE^{1/4}, NW^{1/4}SE^{1/4}, and SE^{1/4}SW^{1/4} sec. 21, N^{1/2}S^{1/2} sec. 28, and all of sec. 27.

the same lands Katz had applied for in UTU-71373, plus 520 acres in sec. 29. ^{2/} Katz tendered a check for \$1,675 with that offer to lease. Effective October 1, 2002, BLM approved lease UTU-71373 for 1,761 acres, as amended by application UTU-080154, and authorized a refund to Katz for overpaying advance rental in the amount of \$964. (Receipt and Accounting Advice No. 2556670.)

On October 4, 2002, Katz returned the lease with a covering letter that stated that he believed that BLM had mistakenly issued UTU-71373. Katz stated that the offer filed on April 19, 2002, was intended to be a new offer to lease. He therefore requested that BLM assign a new serial number to the second lease offer, refund the \$1,125 in advance rental submitted with the 1993 offer, and issue a rental deficiency notice giving him 30 days to respond to “the most recent application.” In conclusion, he stated: “I never authorized my monies to be taken from one lease application and applied to the other.”

On October 9, 2002, BLM issued its decision addressing Katz’s letter. BLM’s decision noted that Katz’s April 2002 lease offer applied for all the lands originally sought in 1993, and added 520 acres in sec. 29. The decision stated: “Because you did not officially withdraw the original application in accordance with 43 CFR 3204.17 we concluded your intent was to amend application UTU-71373.” (October 9, 2002, decision, at 2.) BLM explained that the lease was issued effective October 2, 2002, that it included the additional acreage Katz applied for, and that “[t]he monies submitted for the first year’s rental on your original application UTU-71373 (\$1,125.00) was [sic] combined with the rental submitted on April 19, 2002 (\$1,600.00) to issue the lease. A refund in the amount of [\$]964.00 was subsequently authorized for the overpayment.” Id. The decision concluded that “noncompetitive geothermal resources lease UTU-71373 was not issued in error and your lease will remain effective as authorized October 1, 2002.” Id.

In his Notice of Appeal and Statement of Reasons on appeal (NA/SOR), Katz contends that BLM issued the amended lease in error. He argues that the second application was intended as a new application “being deficient in the first year’s rental.” (NA/SOR at 2.) He contends that his intention was apparent from the circumstances, because he paid a second filing fee, which would not have been required for an amended application. He argues that BLM expunged UTU-080154 and amended UTU-71373 without his “knowledge or consent.” He explains that “[t]he new application was filed to give the applicant time to reassess the property,” and insists that “the entire original rental [for UTU-71373] should have been returned.” He requests that the Board “reinstate the second filing.” Id.

^{2/} The additional 520 acres are located in the N½, SE¼, and NE¼SW¼ sec. 29.

[1] We initially note that none of the lease offers in the record bears Katz's original signature; all lease offers are photocopies. Departmental regulations require a noncompetitive geothermal lease offeror to submit at least one lease offer form bearing an original signature. 43 CFR 3204.10. Where departmental regulations require a document to bear an original signature, xeroxed copies of the signature will not qualify as an original signature. Reed Gilmore (On Reconsideration), 107 IBLA 37, 42 (1989).^{3/} Accordingly, to the extent BLM is not in possession of at least one originally signed application form, Lease UTU-71373 is also subject to cancellation pursuant to 43 CFR 3213.23. See also 43 CFR 3213.24; 43 CFR 3200.4.

[2] An offeror may withdraw his or her lease offer. 43 CFR 3204.17.^{4/} To do so, however, an offeror must clearly and affirmatively communicate that desire and intention to BLM. Here, Katz's subsequent offer added acreage to an existing offer, but doing so did not constitute notice that the initial offer was withdrawn. Katz contends that payment of the \$75 filing fee for the latter offer demonstrates his intent to withdraw the initial offer, but the \$75 filing fee is required for all lease offers. 43 CFR 3204.18; 43 CFR 3204.12.^{5/} Katz argues that BLM approved lease UTU-31373 and eliminated application UTU-080154 without his "knowledge and consent." However, nothing in the regulations requires BLM to notify or obtain a lease offeror's consent to issue an amended lease in circumstances such as those presented here. As Katz did not notify BLM that he intended to withdraw his original offer, and given that the second offer included all the lands identified in the initial offer, and added 520 acres, BLM reasonably issued an amended lease.

[3] A lease applicant is entitled to receive a full refund of advance rental for a lease offer if he withdraws it before BLM accepts it, or when BLM rejects the offer. 43 CFR 3204.12. In this instance, Katz did not withdraw the original lease offer before BLM accepted it; thus he was not entitled to a full refund of the advance rental

^{3/} Where multiple copies of a lease application form are required to be submitted, the Board has upheld the submission of photocopies of the original signature so long as one form bears an original handwritten signature. Richard F. Carroll (On Reconsideration), 76 IBLA 151, 90 I.D. 432 (1983).

^{4/} 43 CFR 3204.17 provides, in pertinent part, that "[y]ou may withdraw your lease offer in whole or in part before we issue you a lease."

^{5/} 43 CFR 3204.18 provides, in part: "You may amend your lease offer before we issue the lease, provided your amended lease offer meets all the lease offer requirements in this subpart." Pursuant to 43 CFR 3204.12, a filing fee of \$75 per lease offer is required. Nothing in 43 Subpart 3204 states or suggests that the filing fee is inapplicable to amended lease offers.

for that offer. BLM received a total of \$2,875 from Katz and deducted \$150 from that amount for two nonrefundable filing fees, which left \$2,725 for the advance rental due for both lease offers. The advance rental was \$1,761, at \$1 per acre. 43 CFR 3204.12. BLM properly authorized a refund in the amount of \$964, which is \$2,725 less the \$1,761 in advance rental owed. We therefore find no error in BLM's calculation of the amount of the refund due Katz.

To the extent appellant has advanced arguments other than those specifically addressed herein, they have been considered and rejected.

Therefore, 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.

T. Britt Price
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge