



LIBERTY PETROLEUM CORPORATION

178 IBLA 121

Decided September 14, 2009



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

LIBERTY PETROLEUM CORPORATION

IBLA 2009-63

Decided September 14, 2009

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting three noncompetitive oil and gas lease offers. WYW-177533, WYW-177534, WYW-177535.

Affirmed.

1. Administrative Procedure: Standing--Oil and Gas Leases: Offers to Lease--Oil and Gas Leases: Noncompetitive Leases

The Bureau of Land Management's refund of the advance rental payments made by the offeror in connection with noncompetitive oil and gas lease offers that were rejected does not deprive the offeror of standing to challenge the rejection of its lease offers.

2. Oil and Gas Leases: Offers to Lease--Oil and Gas Leases: Noncompetitive Leases

Where the offeror's representative signed by hand most of the noncompetitive lease offers it submitted at one time but did not sign others, the Board cannot infer intent on the part of the offeror that the offeror intended for its purely typewritten name to meet the requirement of 43 C.F.R. §§ 3102.4(a) and 3110.4 that a noncompetitive oil and gas lease offer be "signed in ink" or that it intended its signature on the signed offers to be superfluous.

3. Oil and Gas Leases: Offers to Lease--Oil and Gas Leases: Noncompetitive Leases

The failure to sign in ink noncompetitive oil and gas lease offers is a substantive defect in the offers, and BLM's rejection of the lease offers without an providing an opportunity to correct was proper.

APPEARANCES: Greg Klurfeld, President, Liberty Petroleum Corp., Dix Hills, New York, for appellant; Tyson H. Powell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management; Laura Lindley, Esq., Denver, Colorado, for Intervenor John P. Strang.

#### OPINION BY ADMINISTRATIVE JUDGE HEATH

Liberty Petroleum Corporation, headquartered in Dix Hills, New York<sup>1</sup> (Liberty), has appealed from an October 31, 2008, decision of the Wyoming State Office, Bureau of Land Management (BLM) (Decision), rejecting three noncompetitive oil and gas lease offers because the offers were not signed by the offeror or its authorized representative. For the reasons explained below, we affirm.

#### BACKGROUND

Section 17(c)(1) of the Mineral Leasing Act (MLA), as amended, 30 U.S.C. § 226(c)(1) (2006), provides that if lands are not leased competitively or are not subject to competitive leasing, “the person first making application for the lease who is qualified to hold a lease under this chapter [the MLA] shall be entitled to a lease of such lands without competitive bidding” upon payment of a required application fee. Regulations at 43 C.F.R. § 3110.1(b) make available for noncompetitive leasing lands that had been offered competitively for which no bids were received, beginning on the first business day following the last day of the competitive oral auction. Section 3110.2(a) then provides that noncompetitive offers “shall receive priority as of the date and time of filing . . . except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction . . . .” In the event of simultaneous filings, 43 C.F.R. § 1822.18 requires BLM to determine the order in which to accept documents by a drawing open to the public.

On October 8, 2008, the day following an October 7, 2008, competitive auction of Federal oil and gas leases in Wyoming, Liberty filed noncompetitive oil and gas lease offers for parcels of public land offered in the competitive lease sale. The applications were serialized as WYW-177533, WYW-177534, and WYW-177535, respectively. Liberty filed a single lease offer (WYW-177533) for one of the two parcels, WY-0810-176 (“Parcel 176”), consisting of 400 acres of public land in parts of sec. 12, T. 49 N., R. 93 W., Sixth Principal Meridian, Big Horn County, Wyoming. It filed two lease offers (WYW-177534 and WYW-177535) for the remaining parcel, WY-0810-177 (“Parcel 177”), consisting of 720 acres of public land in all of sec. 13

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<sup>1</sup> As distinguished from Liberty Petroleum Corporation headquartered in Phoenix, Arizona, and Liberty Petroleum, LLC, headquartered in Sunbury, North Carolina.

and N½NW¼ sec. 24 of the same township. The second parcel adjoins the first parcel on the south.

At the same time, Liberty filed eight lease offers for parcel WY-0810-129 (“Parcel 129”). See Attachment 1 to Affidavit of Kelly Roberts, BLM Land Law Examiner, Ex. A to “BLM’s Brief in Support of Decision Rejecting Noncompetitive Oil and Gas Lease Offers” (hereinafter “BLM Brief”). Liberty paid the first year’s advance rentals and filing fees in conjunction with its three lease offers for parcels 176 and 177, as well as its eight lease offers for parcel 129, on October 9, 2008. See BLM Receipt No. 1801052, a copy of which is included in each of the files for lease offers WYW-177533 through WYW-177535.

Under 43 C.F.R. § 3110.2(a), quoted above, Liberty’s offers for each parcel would be considered as filed simultaneously with other noncompetitive lease offers for the same parcels filed on October 8, 2008. According to Roberts, the BLM Land Law Examiner, BLM received a total of 11 offers for parcel 176, 12 offers for Parcel 177, and 11 offers for Parcel 129 (including Liberty’s offers). BLM Brief at 3; Roberts Affidavit at 1, ¶ 4, and Attachment 1. BLM explains that it checked all the offers and rejected offers that had errors such as not being signed. See Roberts Affidavit at 1, ¶ 4. The card prepared for the drawing can that corresponds to a rejected offer “is pulled from the can prior to the drawing being held and is not included in the drawing.” *Id.*

In submitting its lease offers, Liberty used the current BLM onshore oil and gas lease offer form (BLM Form 3100-11 (October 1992)), titled “Offer to Lease and Lease for Oil and Gas.” See case files for lease offers WYW-177-533 through WYW-177535. On the front of each form, Liberty was identified as the offeror by name and address. On the back of each form, paragraph 4(a) states that the “Undersigned certifies” seven statements that are qualifications for the offeror to hold a noncompetitive oil and gas lease. See 43 C.F.R. § 3102.5-2. Paragraph 4(b) states that the “Undersigned agrees,” *inter alia*, that its “signature to this offer constitutes acceptance of this lease.”

Slightly below the certification/agreement, the document states in boldface: “This offer will be rejected and will afford offeror no priority if it is not properly completed *and executed* in accordance with the regulations” (emphasis added). Below this follow the words: “Duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.” In the case of each of Liberty’s offers filed for Parcels 176 and 177, the word “8th” was typed in the first blank, “October” was typed in the second, and “2008” was typed in the blank following “19.” To the right of this appears a signature line, below which appears a printed parenthetical “(Signature of Lessee or Attorney-in-fact).” In the case of each of Liberty’s offers, the words “Liberty Petroleum Corporation; By:” are typewritten on the blank line. Underneath the line and the printed parenthetical,

the words “Norma Rose, Agent” are typewritten. In the case of the three offers filed for Parcels 176 and 177, no handwritten or hand-printed signature, or facsimile thereof in any form, appears anywhere on any of the lease offers.

As a result, Liberty’s offers for parcels 176 and 177 were withdrawn and were not included in the drawing. Roberts Affidavit at 1, ¶ 5, and 2, ¶ 7. According to BLM, the eight offers Liberty submitted for Parcel 129 were signed by hand by Norma Rose, Liberty’s agent. Roberts Affidavit at 2, ¶ 9; *id.* Attachment 3 (a copy of one of the lease offers for Parcel 129, showing Norma Rose’s handwritten signature on the line to the left of the words “Norma Rose, Agent”); *id.* Attachment 1 (“Winners” report from the drawing listing all lease offers, showing Liberty’s offers for Parcels 176 and 177 rejected as “not signed,” but those for Parcel 129 not rejected). Liberty’s offers for Parcel 129 thus were included in the drawing.

BLM conducted the drawing at the Wyoming State Office on October 14, 2008. BLM Brief at 4; Roberts Affidavit at 2, ¶ 7. John P. Strang (lease offer WYW-177530) won the drawing for Parcel 176, and Francis E. LeJeune, Jr. (lease offer WYW-177531) won the drawing for Parcel 177. Lane Lasrich won the drawing for Parcel 129. *See* case files for lease offers WYW-177530 and WYW-177531 and Case Recordation (MASS) Serial Register pages corresponding to those serial numbers; Roberts Affidavit Attachment 1.

BLM subsequently refunded all of the advance rentals that Liberty had paid in connection with all 11 of its lease offers for Parcels 176, 177, and 129. *See* CC [credit card] Credit statement in each of the files for lease offers WYW-177533 - WYW-177535; Roberts Affidavit at 2, ¶ 10; Klurfeld Declaration (attached to Liberty Reply), ¶ 5.

In its October 31, 2008, Decision, the BLM Wyoming State Office rejected Liberty’s three lease offers for Parcels 176 and 177, because “[a]ll copies of your offers did not contain signatures.” Decision at 1. The Decision quoted one sentence from 43 C.F.R. § 3110.4(a), the section specifying the requirements for a noncompetitive offer. That sentence reads: “The original and two copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office.” Decision at 1. The Decision stated that BLM had processed the refund of Liberty’s advance rental payments on the same day as the date of the Decision. *Id.*

Liberty appealed to this Board, filing its “Notice of Appeal, Statement of Reasons, and Petition for a Stay” (NOA/SOR) on December 8, 2008. Relying on 1 U.S.C. § 1 (2006), Liberty states that it “intended that the inscription of its name by its agent on the signature line of the offers constitute[s] its signature with all of the resultant legal consequences.” NOA/SOR at 1. Liberty cites this Board’s decision in

*American Energy Independence Royalty, LLC*, 165 IBLA 255 (2005), for the proposition that “the current regulations do not expressly or impliedly require that an offer be either ‘holographically’ or ‘manually’ signed.” NOA/SOR at 1. In the alternative, even if the offers are deemed defective, Liberty argues that BLM should not have rejected them because the defect is “technical or non-substantive” and there is no concern in these circumstances regarding the integrity of the offer, citing *Conway v. Watt*, 717 F.2d 512 (10th Cir. 1983). *Id.* at 2.

Liberty also petitioned for “a stay of the BLM’s decision pending appeal.” NOA/SOR at 1. On December 22, 2008, BLM filed a statement that it did not oppose the petition for stay. This Board granted the stay in an order dated March 18, 2009. Liberty asserted in its NOA/SOR that it would be harmed in the absence of a stay, because “absent a stay, the leases in question will be awarded to others.” NOA/SOR at 2. However, Liberty asked for a stay of the Decision that rejected its lease offers. It did not specifically ask the Board to stay (or retroactively nullify) the public drawing that had already been held almost two months previously. Nor did it specifically ask the Board to stay the issuance of leases to other parties whose applications were not rejected, although Liberty apparently believed that its requested stay would have that effect.

Because disposition of this appeal may affect Strang’s and LeJeune’s interests, we issued an order on May 20, 2009, requiring BLM to serve upon Strang and LeJeune a copy of the order and of Liberty’s NOA/SOR so as to afford them an opportunity to intervene. In addition, although the time for BLM to file an answer had passed, the order invited BLM to submit a response addressing (1) whether a purely typewritten signature on a noncompetitive lease offer is sufficient to comply with 43 C.F.R. §§ 3110.4(a) and 3102.4(a); (2) whether this case should be distinguished from *American Energy Independence Royalty, LLC*; and (3) whether, if the typewritten signatures were not sufficient under 43 C.F.R. §§ 3110.4(a) and 3102.4(a), Liberty should be given an opportunity to cure the defective signatures under *Conway v. Watt*, 717 F.2d 512 (10th Cir. 1983), and prior decisions of this Board that have applied that case. May 20, 2009 Order at 4. Subsequently, BLM filed its brief and Strang entered an appearance and filed an answer.

Although the case files for Strang’s and LeJeune’s winning lease offers are stamped “Lease Issued,” and publicly available on-line BLM records show these parcels as subject to non-producing leases,<sup>2</sup> BLM explains that leases have not yet been issued to either Strang or LeJeune. The apparent reasons are the Board’s grant of Liberty’s requested stay and unresolved protests apparently filed by other parties on September 22, 2008, before the lease sale was conducted. See BLM Brief at 4-5;

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<sup>2</sup> See <http://www.geocommunicator.gov/blmMap/Map.jsp?MAP=Land for T. 49 N., R. 93 W., Sixth Principal Meridian>.

Roberts Affidavit at 3, ¶ 15; Case Recordation (MASS) Serial Register pages for serial numbers WYW-177530 and WYW-177531 (showing the case disposition as “pending” and indicating the date of protest filing).

In its brief, in addition to addressing the issues the Board invited it to address in the May 20 Order, BLM asserts that Liberty lacks standing to pursue the appeal in view of the refund of its advance rental payments. BLM Brief at 12-13. Lejeune submitted a one-page letter in response to the May 20 Order. Liberty filed a reply to BLM’s brief and Strang’s answer.

### ANALYSIS

#### I. *Liberty Has Standing to Maintain Its Appeal.*

[1] To pursue an appeal from a BLM decision, an appellant must have “standing” under 43 C.F.R. § 4.410. Section 4.410(a) requires an appellant to demonstrate that it is both a “party to a case” within the meaning of paragraph (b) of that section, and “adversely affected” by the decision within the meaning of paragraph (d). *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-86 (2005), and cases cited. An appeal must be dismissed if either element is lacking. *E.g.*, *Colorado Environmental Coalition*, 173 IBLA 362, 367 (2008); *Southern Utah Wilderness Alliance*, 140 IBLA 341, 346 (1997), and cases cited. Here, there is no question that Liberty is a party to the case.

A party is “adversely affected” under 43 C.F.R. § 4.410(d) “when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” In its brief, BLM argues:

Liberty requested and obtained a full refund of its lease offers and no longer has a legally cognizable interest in the decision on appeal. BLM’s decision to reject Liberty’s bid offers cannot be the source of injury, either in the past or in the future, because Liberty has been made whole by the BLM’s return of Liberty’s lease offer amounts. Liberty requested a refund, and once it was returned, Liberty’s injury became hypothetical.

BLM Brief at 13.

We find BLM’s reasoning to be unsound. Liberty did not appeal any alleged failure to refund money that BLM owed to it. (As noted previously, it received a refund of all its advance rental payments on the same day as the BLM Wyoming State Office issued the Decision.) Advance rental for the first lease year must be paid with the lease offer under 43 C.F.R. § 3103.2-1(a). BLM will refund the advance rental

payments made by all unsuccessful offerors for noncompetitive leases under the authority of 43 U.S.C. § 1734(c) (2006) as a matter of course, even without a specific request to do so. *See BLM Handbook H-3110* at 61, 67, 73, 88. That does not mean that an unsuccessful offeror may not challenge the conduct of the drawing or an alleged improper awarding of a lease to another party.

Here, Liberty's asserted injury is not that the Government has improperly retained money, but that its lease offers for Parcels 176 and 177 were rejected and were not included in the drawing held on October 14, 2008, thus depriving Liberty of an opportunity to be the winning offeror on either of those parcels. Roberts' affidavit acknowledges that if Liberty were to prevail in its appeal, the drawing would have to be conducted again. Roberts Affidavit at 3, ¶ 15. Were that to occur, Liberty could simply resubmit its advance rental payment. We therefore conclude that Liberty has been adversely affected by the Decision and has standing to maintain the appeal.

*II. An Intent for a Purely Typewritten Name to Meet the Regulatory Requirement that a Noncompetitive Oil and Gas Lease Offer Be "Signed in Ink" Cannot Be Inferred Where the Offeror's Representative Signed by Hand Most of the Noncompetitive Lease Offers it Submitted at One Time.*

[2] The requirements for a noncompetitive lease offer are prescribed in 43 C.F.R. § 3110.4. Paragraph (a) of that section provides in relevant part:

An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. . . . Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer must be typed or printed plainly in ink, *signed in ink* and dated by the offeror or an authorized agent, and must include payment of the first year's rental and the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter. The original and 2 copies of each offer to lease, *with each copy showing that the original has been signed*, shall be filed in the proper BLM office. [Emphasis added.]

Paragraph (d) of the same section provides: "Compliance with subpart 3102 shall be required."

Section 3110.4 was promulgated in June 1988 as part of the revision of the onshore oil and gas leasing rules following enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Pub. L. No. 100-203, Title V, 101 Stat. 1330-256, which amended the MLA. 53 Fed. Reg. 22814, 22841 (June 17, 1988). Subpart 3110 replaced the former Subparts 3111 and 3112 governing over-the-counter

noncompetitive offers and simultaneous filings, respectively, which were removed in the same rulemaking. 53 Fed. Reg. at 22843. The former 43 C.F.R. § 3111.1-1(a) (1987), part of the requirements for over-the-counter noncompetitive lease offers, was the predecessor to the current section 3110.4(a) and its language was similar to the current rule. However, after the provisions regarding use of the current BLM lease form and copies of the form, the fourth sentence of the former section 3111.1(a) provided: “The original copy of each offer shall be filled in by typewriter or printed plainly in ink, *manually* signed in ink and dated by the offeror or the offeror’s duly authorized agent or attorney-in-fact . . . .” (Emphasis added.)<sup>3</sup> The adverb “manually” was omitted in the proposed rule (proposed section 3110.7(a), 53 Fed. Reg. 9214, 9226 (Mar. 27, 1988)), which continued into the final rule (section 3110.4(a)).<sup>4</sup>

Subpart 3102 addresses qualifications of Federal oil and gas lessees. Section 3102.4(a) provides: “The *original* of an offer or bid *shall be signed in ink* and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.” (Emphasis added.) Before amendments promulgated in May 1988, this section provided in relevant part:

*All applications, the original of offers, competitive bids, assignments and requests for approval of an assignment shall be holographically (manually) signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee . . . . Machine or rubber stamped signatures shall not be used.*

43 C.F.R. § 3102.4 (1987) (emphasis added). On June 12, 1987, BLM proposed to amend this section. 52 Fed. Reg. 22592. The relevant language in the first sentence of proposed paragraph (a) was functionally identical to the 1987 rule language just quoted. Proposed paragraph (f) continued the prohibition against machine or stamped signatures. 52 Fed. Reg. at 22605. The preamble mentioned that the proposed rule would clarify that “only an original instrument needs to be manually executed for offers, competitive bids and applications made under Parts 3100, 3110 and 3120.” 52 Fed. Reg. at 22593.

When BLM promulgated the final rule, paragraph (a) was changed to read as it now reads, *i.e.*, that the original of an offer “shall be signed in ink.” The language

<sup>3</sup> Paragraph (d) of the former section 3111.1 provided, as does the current rule: “Compliance with Subpart 3102 shall be required.”

<sup>4</sup> Neither the preamble to the proposed rule (53 Fed. Reg. at 9217) nor the preamble to the final rule (53 Fed. Reg. at 22825) discussed the deletion of the adverb “manually.”

requiring a holographic (manual) signature on the original of a lease offer was eliminated. Proposed paragraph (f), the prohibition against machine or stamped signatures, was also eliminated. 53 Fed. Reg. 17340, 17353 (May 16, 1988). The preamble to the final rule did not discuss these changes. This rule preceded by one month the elimination of the requirement in the former 43 C.F.R. § 3111.1(a) to “manually” sign the original of an offer when that section was replaced by the current 43 C.F.R. § 3110.4, as discussed above.

The Board previously rejected typewritten names as signatures on simultaneous oil and gas lease applications in *Betty J. Thomas*, 56 IBLA 323 (1981), and *Fred E. Forster III*, 65 IBLA 38 (1982). However, the rule governing such applications in force at the time of those cases, former 43 C.F.R. § 3112.2-1(b) (1980-1982), specifically required (like the former 43 C.F.R. § 3102.4) that a simultaneous oil and gas lease application be “holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant.”

In *Fred E. Forster III*, we observed that one of the purposes of enforcing strict compliance with the rule was “to protect the rights of the second and third drawn qualified offerors.” 65 IBLA at 39 (citing *Ballard E. Spencer Trust, Inc.*, 18 IBLA 25 (1974), *aff’d*, *Ballard E. Spencer Trust, Inc. v. Morton*, 544 F.2d 1067 (10th Cir. 1976)). The preamble to the May 23, 1980, final rule adopting the holographic or manual signature requirement<sup>5</sup> also noted that “[p]ersonal signatures help to eliminate fraud against the United States and those who participate in the leasing system through agents.” 45 Fed. Reg. 35156, 35157 (May 23, 1980).

Removal of the requirement for a holographic or manual signature in 1988 permits rubber-stamped signatures by persons authorized to apply the stamp. In *American Energy Independence Royalty*, 165 IBLA 255 (2005), we held:

Regulation 43 CFR 3102.4(a) does not expressly require that an offer be either “holographically” or “manually” signed. Indeed, the regulation was amended to its current form in 1988, specifically deleting the former language requiring that an offer be “holographically (manually) signed,” and precluding the use of “[m]achine or rubber stamped signatures[.]” 43 CFR 3102.4 (1987). In addition, the requirement of a holographic or manual signature is not necessarily implied by the term “signed.” The verb “sign” does not necessarily signify that a person engages in the physical act of writing his or her

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<sup>5</sup> This requirement was part of the former 43 C.F.R. § 3102.2-1 (1980-1982). It was carried over into the former 43 C.F.R. § 3102.4 (1983-1987) (quoted above) in August 1983, 48 Fed. Reg. 33648, 33667 (July 22, 1983).

name, since its definition is, in relevant part: “a : to affix a signature to[.]” (Webster’s Third New International Dictionary 2115 (1966).) Thus, the word clearly may encompass the act, undertaken by one person, of writing or affixing the name of a different person. See *D.E. Pack (On Reconsideration)*, 38 IBLA 23, 44-45, 85 I.D. 408, 419 (1978), *rev’d in part on other grounds sub nom., Runnells v. Andrus*, 484 F. Supp. 1234 (D. Utah 1980).

165 IBLA at 260. We then concluded:

Since it is undisputed that McGary affixed Feldman’s signature to the offers at issue, using a rubber-stamp facsimile of the signature and ink, and Feldman intended to execute the offers on behalf of appellant, we conclude, applying the Board’s holdings in [*Mary I.] Arata* [4 IBLA 201, 204, 78 I.D. 397, 398 (1971)] and *Pack (On Reconsideration)*, that the offers complied with the requirement of 43 CFR 3102.4(a) that offers be “signed in ink \* \* \* by the \* \* \* potential lessee or by anyone authorized to sign on behalf of the \* \* \* potential lessee.” (Emphasis added.)

165 IBLA at 261 (emphasis in original).<sup>6</sup>

The situation in this case is very similar to that in *Duncan Miller*, 10 IBLA 208 (1973). There, the appellant had submitted a noncompetitive oil and gas lease offer under the former 43 C.F.R. § 3123.1(b) and (d) (1969), the relevant provisions of which were subsequently recodified as part of 43 C.F.R. § 3111.1-1(a) (1970-1982). The rule required the offeror to file five copies of the offer on the BLM-approved lease form in the proper office. It provided: “Each offer must be filled in by typewriter or printed plainly in ink and *signed in ink* by the offeror or the offeror’s duly authorized attorney-in-fact or agent.” (Emphasis added.) This language is substantively indistinguishable from the relevant language in the present 43 C.F.R. § 3110.4

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<sup>6</sup> Similarly, removal of the requirement for a holographic or manual signature permits signatures transmitted by facsimile of the type rejected in *Reed Gilmore (On Reconsideration)*, 107 IBLA 37, 42 (1989), *aff’d, Gilmore v. Lujan*, Civil No. N-89-234-BRT (D. Nev. Sept. 14, 1989), *aff’d*, 947 F.2d 1409 (10th Cir. 1991). It would also permit mechanical signatures applied by someone authorized to use a signature machine to affix the signature of another person who is the signatory to a lease offer, as well as signatures transmitted or affixed by photocopy, electronic transmission, or other methods. Although the requirement for an original holograph or manual signature has been removed from the rules, the requirement to sign in ink still serves the purposes of protecting the Government from fraud, certifying to the qualifications of the offeror to hold the lease, and protecting the rights of other offerors.

involved in the instant case.<sup>7</sup> In *Duncan Miller*, the original and three of the carbon copies of the lease offer bore a handwritten signature in ink, but the fourth carbon copy had only a typewritten name below the space for signature, and no signature. In an *en banc* decision, the Board upheld BLM's rejection of the offer:

It is axiomatic that a lease must be signed by both parties. This brings to the fore the question whether the typewritten name of the appellant constitutes a signature in the case at bar where the original and three copies were actually signed.

A typewritten name may constitute a signature, if made with that intent. *Mary I. Arata*, 4 IBLA 201, 78 I.D. 397 (1971). However, in view of the variation between the signature on the original and three copies on one hand, and the inscription on the fourth copy on the other, it seems clear that the latter "copy" cannot be construed as embodying a signature of appellant. See *Mary Adele Monson*, *supra* [71 I.D. 269, 271 (1964)]; *Senemex, Inc.*, A-29271 (March 15, 1963). It seems obvious the failure to sign the last copy of the offer was an inadvertence. However, this factor affords no basis for relief.

10 IBLA at 211. The same principle applies with greater force here, where Rose signed the eight offers for Parcel 129 but did not sign the offers for Parcels 176 and 177.

In *Mary I. Arata*, 4 IBLA 201, 78 I.D. 397 (1971), cited in *Duncan Miller*, the Board upheld use of a rubber-stamped signature on a simultaneous oil and gas lease application (formerly a drawing entry card) under the former 43 C.F.R. § 3112.2-1(a) (1971).<sup>8</sup> That rule provided that an application must be "signed and fully executed." In *Arata*, the Board said:

There is an abundance of legal authority discussing and interpreting the terms "sign" and "signatures." Many state and federal cases hold that the terms include any memorandum, mark, or sign, written or placed on any instrument or writing with intent to execute or authenticate such instrument. It may be written by hand, printed,

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<sup>7</sup> The former 43 C.F.R. § 3111.1-1(a) was amended in 1983 to require that the original copy of each offer shall be "*manually signed in ink*," consistently with the 1980 changes to the other regulations discussed above. 43 Fed. Reg. 33648, 33676 (July 22, 1983) (emphasis added).

<sup>8</sup> This regulation was the predecessor to the 1980 rule requiring a holographic or manual signature. See 45 Fed. Reg. 35156, 35164 (May 23, 1980).

stamped, typewritten, or engraved. It is immaterial with what kind of instrument a signature is made. . . . [Citations omitted.] The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written in the person's own handwriting. *Roberts v. Johnson*, 212 F.2d 672 (10th Cir. 1954).

4 IBLA at 203; 78 I.D. at 398. As noted above, at issue in that case was a signature affixed by rubber stamp, not a purely typewritten name. Liberty suggests:

As the BLM acknowledges, with the repeal of the requirement for a holographic signature, the holding in *Mary [I.] Arata* was revived to allow signatures affixed by rubber stamps. In the same way, the dictum in *Mary [I.] Arata* should be revived to allow typewritten signatures if, as stated in the dictum and is true in the present case, they are affixed with the intent to execute the instrument.

Liberty Reply at unpaginated 2. However, the removal of the requirement for an original holograph or manual signature in 1988 did not reinstate the pre-1980 rule language. As explained previously, the 1988 rule retained the requirement that a noncompetitive lease offer be “signed in ink”—the language we interpret here.<sup>9</sup>

We agree with Strang, Strang Answer at 8, that Norma Rose's actual signature on the eight offers Liberty submitted for Parcel 129 demonstrate that Liberty knew how to comply with the “signed in ink” requirement. Those signatures also show Liberty's intent regarding compliance with that requirement. The fact that her signature appears on eight forms but not on three other forms undermines Liberty's argument that the typewritten name standing alone was intended as a signature. Liberty's authorized agent intended to sign and did sign the offers for Parcel 129. Clearly, there was no intent on Liberty's part that Rose's typewritten name would meet the regulatory requirement that the offer be “signed in ink.”

The reasons why Rose did not sign the offers for Parcels 176 and 177 are unknown. The failure to sign may have been inadvertent. Liberty's argument implies that her signature on the offers for Parcel 129 was completely superfluous, a

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<sup>9</sup> Additionally, the same Board member who wrote the *Arata* decision was the author of *Duncan Miller* approximately 16 months later. The Board did not view the decision in *Duncan Miller*, decided under the “signed in ink” language of the pre-1983 version of 43 C.F.R. § 3111.1-1(a), as inconsistent with *Arata*.

proposition with which we do not agree. Nor can we infer that Liberty intended her actual signature on the offers for Parcel 129 to be superfluous.<sup>10</sup>

As noted above, Liberty relies on 1 U.S.C. § 1 (2006). NOA/SOR at 1; Liberty Reply at unpaginated 1-2. That statute provides in relevant part: “In determining the meaning of *any Act of Congress*, unless the context indicates otherwise— . . . . ‘signature’ or ‘subscription’ includes a mark when the person making the same intended it as such . . . .” (Emphasis added.) Liberty’s reliance on this provision is misplaced for at least three reasons. First, the quoted language carries no implication regarding purely typewritten “signatures.” Second, this provision by its terms applies to construing “any Act of Congress.” It does not apply to construing executive regulations, and therefore is inapposite here. Third, even if it did apply to regulations, it is clear under the circumstances of this case that Rose did not intend the typewritten name to be her signature because, as pointed out above, her actual signature appears on the offers for Parcel 129.

For all of these reasons, we conclude on the facts of this case that the offers for Parcels 176 and 177 do not meet the requirement of 43 C.F.R. §§ 3102.4(a) and 3110.4 that a noncompetitive lease offer be “signed in ink.”

*III. BLM Properly Rejected Liberty’s Unsigned Noncompetitive Lease Offers Without an Opportunity to Correct.*

Liberty argues in the alternative that even if its three lease offers are defective for lack of signature, BLM should not have rejected the offers because the defect is “technical or non-substantive.” NOA/SOR at 2. Liberty relies on *Conway v. Watt*, 717 F.2d 512 (10th Cir. 1983). In that case, Conway had filed 147 simultaneous oil and gas drawing entry cards (DECs) under the former 43 C.F.R. Part 3112. Conway properly dated 146 of the 147 cards. One was left undated, but was properly signed. The undated card was drawn with first priority for a lease parcel. BLM rejected the drawn card because it was not dated as required by former 43 C.F.R. § 3112.2-1(c) (1980). This Board affirmed BLM in *Joe Conway*, 59 IBLA 314 (1981). The United States District Court for the District of Wyoming upheld that decision on judicial review. *Conway v. Watt*, No. C82-0029 (D. Wyo. July 12, 1982). In reversing the District Court and holding that the absence of the date did not make the drawing card *per se* defective, the Tenth Circuit explained:

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<sup>10</sup> We need not decide in this case whether there are other circumstances in which a purely typewritten name can satisfy the requirement that an offer be “signed in ink.” We note that we have found no prior case in which the Board has actually held that a purely typewritten name was acceptable as a valid signature on a lease offer or application.

The overwhelming weight of judicial authority belies the Secretary's assertion that a date is essential to his task of assessing the qualifications of lease applicants. The courts, on the few occasions they have addressed the question, have typically held that absence of a date is a trivial defect and that a date is not an essential term. See *Ahrens v. Andrus*, 690 F.2d 805, 808 (10th Cir. 1982) (dicta) (“[a] signature date requirement serves no important purpose, the only material date is the one on which the DEC itself is filed with the Department”) . . . [further citations omitted].

717 F.2d at 516. The Tenth Circuit further reasoned:

Finally, although offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that non-substantive errors are inappropriate grounds for finding DEC applications defective. *Ahrens v. Andrus*, *supra*, at 808; *Winkler v. Andrus*, 594 F.2d 775, 777-78 (10th Cir. 1979). This is in accord with the principle *de minimis non curat lex*, the law does not concern itself about trifles.

*Id.* (citations omitted). Finally, in rejecting BLM's argument that the date limited the possibility of fraud and collusion, the court noted:

When a date inadvertently is omitted and if the Secretary is concerned that that omission is fraudulent, he may require an applicant to produce proof that his or her signature was made on a qualifying date and that all other qualifications were satisfied as of that date. Such subsequent verification of qualifying status provides an adequate basis for the Secretary to proceed against an applicant on the basis of fraud.

*Id.* at 517.

*Conway* has been applied to allow correction of certain defects in oil and gas lease applications. Examples include an undated simultaneous oil and gas lease application<sup>11</sup>; a simultaneous oil and gas lease application filed in January 1983

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<sup>11</sup> *Satellite 8305136*, 85 IBLA 190 (1985); *Richard W. Renwick (On Reconsideration)*, 78 IBLA 360 (1984).

inadvertently mis-dated January 1982;<sup>12</sup> and a simultaneous oil and gas lease application signed in pencil rather than ink.<sup>13</sup>

However, cases since *Conway* involving signatures or lack of signatures have not allowed subsequent correction. In *Satellite 8309220*, 87 IBLA 93 (1985), we rejected the argument based on *Conway* that the failure to sign a simultaneous oil and gas lease application was a *de minimus* or non-substantive error, and held that it properly resulted in the *per se* disqualification of the applicant. The Board explained:

In *Carey D. McDaniel*, 80 IBLA 393, 394 (1984), the Board stated the rationale for requiring a signature as follows:

The Department has consistently required a signature on the application form used in simultaneous oil and gas lease drawings, and has uniformly enforced that requirement. Similarly, appellant's argument that the Secretary may not reasonably require a signature is without merit. The Board has frequently held the signature is the applicant's (or offeror's) certification of all other statements made on the face of the application (or offer), and is essential to the Department's ability to police the system as only the signature brings into play the provisions of 18 U.S.C. § 1001 (1982). When an applicant fails to sign the application, he has also failed to certify to his qualifications to hold an oil and gas lease. And, because he has failed to do so, his application cannot be accepted. *Thomas Buckman*, 23 IBLA 21 (1975).

In addition, in *Satellite 8305136*, 85 IBLA 190-92 (1985), the Board discussed the *Conway* case, stating:

It is important, however, to recognize that the *Conway* court did not hold that the Secretary could not establish *per se* rules. On the contrary, the court clearly held that the requirement that the DEC [drawing entry card] or application form be signed within the filing

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<sup>12</sup> *Walter W. Hush, Sr.*, 78 IBLA 363 (1984).

<sup>13</sup> *Jack Williams*, 91 IBLA 335, 93 I.D. 186 (1986). The *Jack Williams* decision discusses other examples. See 91 IBLA at 339.

period was properly enforced against all applicants as a substantive rule. [Emphasis in original.]

After quoting from the *Conway* case, the Board concluded:

Thus, the *Conway* court explicitly held that the failure to sign within the filing period was a fatal defect, while the failure to supply a date that would show this fact was not necessarily a disqualifying omission.

In a recent decision, *KVK Partnership v. Hodel*, No. 84-1256 (10th Cir. Apr. 19, 1985) [759 F.2d 814], the U.S. Court of Appeals for the Tenth Circuit explained its *Conway* decision as follows: “[W]e did not hold that the agency may never adopt *per se* requirements. Read in light of its facts, *Conway* holds only that a BLM regulation may not be *per se* grounds for disqualification if it does not further a statutory purpose.” The signature requirement furthers a statutory purpose. BLM properly found appellant’s application to be unacceptable.

87 IBLA at 94-95.

In *Reed Gilmore (On Reconsideration)*, 107 IBLA at 43-44, we found the former holographic/manual signature requirement on a lease offer to be substantive. We rejected the appellant’s reliance on *Conway* on the ground that requiring BLM to consider the lease offer (with a telefaxed signature rather than an original manual signature) would have been contrary to both the language of the rule and the reason BLM revised the rule to require a holographic signature.<sup>14</sup>

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<sup>14</sup> Strang relies in part on the only judicial decision that cites (and distinguishes) *Conway*, namely, *KVK Partnership v. Hodel*, 759 F.2d 814 (10th Cir. 1985), quoted in *Satellite 8309220*, *supra*. Strang Answer at 9. In that case, a partnership applicant for an oil and gas lease drawing had failed to submit required information demonstrating the partnership’s qualifications. In addition, then-applicable regulations (former 43 C.F.R. § 3102.2-4(a)(3) (1981)) required a partnership to execute a statement identifying those authorized to act on its behalf. Absent such a statement, each partner would have to sign the application. (The application was signed by only one of the partners.) The Tenth Circuit held that these requirements, unlike the missing date involved in *Conway*, were substantive and justified BLM’s rejection of the partnership’s application. The focus of *KVK Partnership* is the failure to submit necessary information rather than lack of signature. However, the *KVK Partnership* decision is consistent with our resolution of the instant case.

The reasoning of *Gilmore* and *Satellite 8309220* applies in the instant situation. To hold that BLM must consider Liberty's lease offers notwithstanding the failure to "sign in ink" would be contrary to language of the rule as well as the purpose of retaining the requirement that the offer be signed in ink. The absence of a signature on a noncompetitive lease offer still implies a failure on the part of the offeror to certify to his qualifications to hold an oil and gas lease. The signature is the attestation that the prospective lessee meets the qualifications. In addition, even though an original holograph is no longer required since the rule was amended, the continuation of the requirement that the noncompetitive lease offer be signed in ink still serves the purposes discussed above.<sup>15</sup> The lack of any signature (whether holographic, stamped, copied, or other form of unique mark) is as much a substantive defect in a lease offer as is the lack of an original holographic signature on all forms.

For all of these reasons, we reject Liberty's argument based on *Conway* that it should be allowed to correct the defective lease offers.

#### CONCLUSION

Therefore, 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 affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey Heath  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge

<sup>15</sup> Moreover, when a lease offer is signed but undated, the submitted form still will bear the stamped date on which it was received by the Department. There is no equivalent evidence in the case of a missing signature.