

**Editor's note: Reconsideration denied by order dated Nov. 22, 1972**

THOMAS CONNELL

IBLA 71-233

Decided September 26, 1972

Appeal from the decision of the Alaska state office, Bureau of Land Management, rejecting nine of appellant's offers to lease for oil and gas (F-4188 through 4192, F-4215, F-4218 through 4220).

Affirmed.

Oil and Gas Leases: Applications: Sole Party in Interest

Where oil and gas lease offer forms show that the offeror is not the sole party in interest, and the offers are each accompanied by machine reproductions of a document signed by the offeror and the other party which sets forth the nature and extent of the interest of each party but contains no evidence of the second party's qualifications to hold such lease or interests therein, and such a showing is not made within the 15 day period prescribed by regulation, the submission is inadequate to satisfy the mandatory requirement, and the offers are properly rejected.

Oil and Gas Leases: Applications: Reinstatement -- Oil and Gas Leases: Applications: Sole Party in Interest

Where oil and gas lease offers indicate that there is an additional party in interest, and the required statements of the other party's qualifications are not filed within the time allowed, the offers are properly rejected. If such offers were filed pursuant to the simultaneous filing system, the defect is incurable and the rejection must be affirmed with finality, but where such offers are filed "over the counter" and the required statement of the other party's qualifications to hold such interests are subsequently submitted, the offers may be reinstated and allowed to earn priority from the time of filing of the missing statements.

Oil and Gas Leases: Applications: Reinstatement -- Oil and Gas Leases: Applications: Sole Party in Interest

Where nine separate oil and gas lease offers are filed, each indicating that there is a separate party in interest, but

no statement of that party's qualifications to hold such an interest is filed, the defect will not be regarded as cured if, on appeal, a single copy of the statement of his qualifications is filed with the intent that it shall have blanket application to all of the several offers, and the Government will neither reproduce and distribute the necessary copies to the various case records, nor will it arbitrarily select one of the nine offers to be reinstated by the submission.

Oil and Gas Leases: Applications: Generally

Failure to submit the requisite number of signed copies of an offer to lease for oil and gas is a proper basis for rejection of the offer.

APPEARANCES: Thomas Connell, pro se.

#### OPINION BY MR. STUEBING

Thomas Connell has appealed from the decision dated February 11, 1971, by which the Alaska state office of the Bureau of Land Management rejected his nine offers to lease for oil and gas certain public lands.

It appears that the appellant contracted with one W. E. Swanson of Denver, Colorado, for the filing of these offers. The terms of their agreement were set forth in a letter, dated August 5, 1968, from Connell to Swanson. The letter authorized Swanson to file lease offers for lands on Alaska's north slope in appellant's name, and provided for an advance of money to cover Swanson's journey to Fairbanks for this purpose. The letter further provided, inter alia, that Swanson would receive 25 percent of all profit in bonuses or overriding royalty as might be obtained after deduction of rentals and expenses. The appellant signed the letter, which was also signed by Swanson under the notation "Approved."

The subject offers were then filed in appellant's name on forms bearing only his signature as lessee. On each form the check-block in item 6 was marked to indicate that the appellant was not the sole party in interest. Each of the offers was accompanied by a machine reproduction of the letter described above. Nothing further was filed by appellant or Swanson until this appeal was taken.

The offers were rejected for the reason that the letter filed with the offers failed to meet the requirements of 43 CFR 3102.7 (1972). That regulation requires that where the offeror is not the sole party in interest a separate statement must be signed by the offeror and the other parties in interest, setting forth the nature

and extent of the interest of each, together with a copy of the agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest.

Such separate statements and written agreements, if any, must be filed not later than 15 days after the filing of the lease offer by all interested parties.

These same requirements are reiterated in item 6 of the special instructions printed on the back of the offer forms, and reference thereto is made on the face of the forms.

The decision did not specify in what particular the copy of the letter failed to meet the requirements of the regulation, a rather serious ambiguity. It left the offeror and this Board the task of identifying the deficiency which served as the basis for the conclusion reached by the Alaska state office. However, the appellant construed the decision as referring to an obvious deficiency, *i.e.*, the failure to furnish any evidence of Swanson's qualifications to hold such lease interests, and he has addressed his appeal principally to that issue.

With his statement of reasons for appeal, appellant has submitted a single copy of a statement of Swanson's qualifications. The statement is signed by Swanson and shows that he is an individual, over 21 years of age, a citizen of the United States, and that his interests in oil and gas leases do not exceed the maximum allowable acreage.

Appellant contends that since the letter-agreement filed with the offers made Swanson's interests in the offers and any leases issued pursuant thereto contingent upon certain happenings, a showing of Swanson's qualifications would only be necessary upon occurrence of such contingencies, when Swanson became entitled to an interest.

We must reject this argument. First, appellant declared on the offer forms that he was not the sole party in interest, which made mandatory his compliance with the regulation, a fact carefully explained by the form itself. Moreover, while the agreement made the realization of pecuniary benefit to Swanson dependent upon certain contingencies (the receipt of payments from bonuses from overriding royalties in amounts in excess of rentals and expenses), Swanson's right to receive such benefits had already vested by virtue of the agreement and the filing of the offers. This was sufficient to invest Swanson with a definite interest in the offers and any leases issued pursuant thereto, a fact which confirmed appellant's declaration that he was not the sole party in interest. An "interest" in a lease includes, but is not limited

to, overriding royalty interests. Any claim or other prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease. 43 CFR 3100.0-5 (1972).

Under the circumstances the failure to file adequate statements in full compliance with the regulation was a proper ground for the rejection of the offers. Eugene Prato, 5 IBLA 87 (1972).

However, for many years the Department has distinguished between offers filed pursuant to the simultaneous filing procedure and "regular" offers filed "over the counter", where the offeror has failed to state whether he was the sole party in interest or has indicated that he was not the sole party in interest and failed to make the necessary showings within the prescribed 15 days period, as in this instance. Simultaneously-filed offers are rejected with finality. Eugene Prato, *supra*; J. S. Enterprises Ltd., 2 IBLA 9 (1971); Gill Oil Co., 2 IBLA 18 (1971); Leonard V. Chew, 2 IBLA 232 (1971); Richard Hubbard, 78 I.D. 270 (1971); E. S. Lippert, A-31173 (May 14, 1970); Lorraine Lafiner, A-31002 (May 16, 1969); Charles D. Landre, et al., A-30837 (September 15, 1967); Richard C. Cook, 73 I.D. 145 (1966).

On the other hand, offerors who filed their offers "over the counter" have been allowed to cure such deficiencies and earn priority from the date such curative material was received. R. C. Bailey et al., 7 IBLA 266 (1972); William E. Collins, 4 IBLA 8 (1971); T. E. Atkins, A-31164 (June 17, 1969); A. M. Shaffer et al., Betty B. Shaffer, 73 I.D. 293 (1966); Timothy G. Lowry, A-30487 (March 16, 1966); Laurie B. Webb, A-30458 (November 30, 1965); Arthur H. Coates, A-30426 (August 16, 1965); Andrew Cherpak, A-30323 (May 12, 1965).

As the offers at issue here were filed "over the counter," they might be treated as having earned priority as of the date the curative material was filed. However, only a single copy of Swanson's statement of qualifications was filed for nine separate offers. Each offer to lease for oil and gas is adjudicated separately on the basis of the material contained in the individual jacket file which comprises the record of that case, and for that reason each offer must be accompanied by all of the necessary supportive material. Except where specifically prescribed by regulation, single submissions will not serve to cover groups of individual offers. Were we to hold otherwise, we would impose upon the Government the obligation to use its manpower, facilities and funds to make and distribute the requisite

copies for the benefit of individual offerors, and relieve the offerors of the responsibility for perfecting their own offers. Not only would this add to the administrative burden, but it would be manifestly unfair to those who properly file conflicting offers for the same lands.

We have, therefore, the problem of deciding whether to select one of the nine offers and treat the Swanson statement as having been filed in connection with that offer so that it might earn priority from the date the statement was filed. We conclude that such a selection could only be accomplished in the most arbitrary fashion. We have no knowledge of which offer of the nine appellant would most like to preserve, nor have we examined the current status of the conflicting offers to ascertain which of appellant's offers would stand the best chance of success if we selected it. Finally, the propriety of our making such a selection would be subject to challenge by a junior offeror for the same land whose offer was rejected because we had arbitrarily acted in the appellant's interest to reinstate that offer rather than some other offer. We hold, therefore, that since the Swanson statement was not filed in connection with any particular offer, it cures none of them. Finally, we note that the state office decision rejected appellant's offer F-4191 for the additional reason that only four of the five offer forms were signed. Our inspection confirms this. Rejection of this offer would be required for that reason alone. 43 CFR 3111.1-1(a). Duncan Miller, 7 IBLA 169 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing  
Member

We concur:

Newton Frishberg  
Chairman

Anne Poindexter Lewis  
Member

