

DUNCAN MILLER

IBLA 71-246

Decided September 28, 1972

Appeal from decision (M 17787) by Montana land office, Bureau of Land Management, rejecting withdrawal of offer for oil and gas lease.

Reversed and remanded.

Oil and Gas Leases: Applications: Drawings

Under 43 CFR § 3110.1-6(b) a drawing to determine priorities for simultaneous oil and gas lease offers is to be held only where more than one simultaneous offer to lease a particular parcel is filed.

Regulations: Generally -- Regulations: Applicability -- Regulations: Interpretation

Where regulations do not clearly set forth the conditions under which a simultaneous offer for a single parcel, for which no other simultaneous offers were filed, may be withdrawn, the regulations will be construed favorably to the appellant and he will be permitted to withdraw his offer and to obtain return of his advance rental if he files his withdrawal prior to the time the lease has been signed on behalf of the United States.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MRS. LEWIS

Duncan Miller has filed an appeal from a decision of the Montana land office, Bureau of Land Management, dated March 11, 1971, rejecting his withdrawal of an offer for an oil and gas lease on a parcel of land. The decision states that under 43 CFR § 3110.1-4(b) a simultaneous offer drawing card may only be withdrawn prior to the drawing and indicates there was a drawing in this case. Appellant appeals on the ground that his was the only offer for the parcel involved.

The offer to lease, covering parcel 13 in Petroleum County, Montana, was made by the appellant pursuant to 43 CFR Subpart 3112 - Simultaneous Offers. No other offer for lease of this parcel was received. The record shows that the offer was filed on February 22, 1971. Appellant's telegram requesting the withdrawal of his offer for parcel 13 was received by the land office on March 2, 1971. A lease for the parcel was signed on behalf of the United States on March 11, 1971.

Duncan Miller, 5 IBLA 35 (1972), is identical with the instant case in that the offer to lease for oil and gas pursuant to the simultaneous offer procedure was the only offer for the particular parcel; therefore there was no necessity for a drawing, and the withdrawal of the offer was received after the drawing had been held but prior to the signing of a lease. This Board held that the offer should be deemed to have been timely withdrawn and the rentals for the first year refunded. The decision pointed out that under the applicable regulations, offers involved in regular filings may be withdrawn at any time prior to the execution of the lease by the United States and offers involved in simultaneous filings may be withdrawn at any time prior to the drawing 1/. It further states the simultaneous procedure contemplates that more than one offer must be filed in order to have a drawing 2/, and that there is a hiatus in the regulations as to the period in which the only entry card for a particular parcel may be withdrawn, as no drawing is involved in the establishment of its priority. In the light of the gap in the regulations, the doubts were resolved in favor of the appellant.

Since the facts in the instant case are essentially on all fours with those in the above cited decision, it is controlling.

Accordingly, we find that appellant's offer was timely withdrawn and the rentals for the first year shall be refunded to him.

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.

1/ 43 CFR § 3110.1-4(a) and (b), respectively.

2/ 43 CFR § 3110.1-6(b).

12081), the decision appealed from is reversed, the lease is canceled and the case remanded to the Montana state office for further appropriate action.

Anne Poindexter Lewis
Member

We concur:

Frederick Fishman
Member

Edward W. Stuebing
Member

