

FRANCES M. KANOWSKY

IBLA 73-102

Decided May 8, 1973

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-36534.

Affirmed.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Land included within an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an application filed for such land must be rejected.

Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Lands Subject to

Land which is first posted on the list of lands open to leasing pursuant to the simultaneous filing regulation and then deleted from the list prior to the end of the simultaneous filing procedure does not thereafter become available for leasing in the usual manner as does posted land for which no offers are filed during the simultaneous filing period.

Oil and Gas Leases: Lands Subject to

In proper circumstances, the authorized officer may remove a tract from the list of lands posted as open to simultaneous filing.

APPEARANCES: Frances M. Kanowsky, pro se.

OPINION BY MR. RITVO

Frances M. Kanowsky has appealed from a decision of the Wyoming State Office of the Bureau of Land Management dated August 30, 1972, which rejected her oil and gas lease offer W-36534.

The evidence indicates that on February 22, 1972, the Bureau posted a notice of lands available for oil and gas filings in accordance with regulation 43 CFR 3112.1. Included on the list was parcel #333, W 0321360-A, which embraced the lands described as T. 21 N., R. 99 W., Sweetwater County. Sec. 6: lots 10, 12, SE 1/4 NW 1/4, SE 1/4; sec. 8: NW 1/4, SE 1/4, comprising 598.69 acres. The lands embraced in the oil and gas leases listed were available due to cancellation, relinquishment, termination or expiration of former oil and gas leases. The notice further stated that: "If no offers are received during the simultaneous filing period, the land will thereafter be subject to lease by the first qualified applicant."

On February 25, 1972, the Bureau issued a Public Notice deleting parcel #333 from the list posted on February 22, stating: "This parcel was erroneously posted."

On August 21, 1972, Mrs. Kanowsky filed an offer describing the land in parcel #333. The Bureau rejected her application "because the land rejected is embraced in oil and gas lease W 0321360-A * * *" issued January 1, 1966.

In her appeal, Mrs. Kanowsky alleges that parcel #333 was offered for lease on the February 1972 "Simultaneous List" and that it did not appear on the February 1972 results list. She contends that this denotes no bid offers were received. Therefore, she says her offer of August 21, 1972, should entitle her as the first qualified applicant to the lease.

The Bureau records show, and the appellant has not denied, that the land applied for is in an outstanding lease. She merely asserts that, having once been posted for simultaneous offering without an offer for it having been filed, the land was thereafter subject to leasing in the usual method. Her position is without merit for several reasons.

First, so long as land is within an outstanding lease, whether the lease is void, voidable, or valid, it is not available for other leasing and an application for such land must be rejected. Bertil A. Granberg, 7 IBLA 162 (1972). See State of Alaska, Kenneth D. Makepeace, 6 IBLA 58, 79 I.D. 391 (1972). For this reason alone the rejection of her offer was proper.

Next, posting land for simultaneous offering is not an irrevocable act. If, during the posting period, the authorized officer determines for some valid reason that the tract should not be leased, he may delete it from the list of available land. There is no

requirement that all land that has become available for filing must be posted for simultaneous offers. Union Oil Company of California, A-29904 (February 20, 1964). The mere posting of land does not make it available for leasing if, in fact, the land is not open to leasing. Further, the regulation 43 CFR 3112.1-1(b), opens to regular filing only lands which have been posted for the entire simultaneous filing period. Here the lands were deleted at the end of the third day. Thus the appellant has no right to a lease based on the mere fact that land applied for was posted temporarily as open to simultaneous filing.

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.

Martin Ritvo, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member.

