

CLAUDE C. KENNEDY

IBLA 73-161

Decided July 11, 1973

Appeal from decision (NM 16389) of New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease.

Affirmed.

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

Land, formerly included in a terminated or canceled oil and gas lease, is not subject to "over-the-counter" filing, but may be leased only in compliance with the drawing procedure embodied in 43 CFR 3112.

Oil and Gas Leases: Cancellation

Where an oil and gas lease has been issued in violation of regulations, and there is no junior offeror having intervening rights, the lease ordinarily will be permitted to stand. However, where the land is not subject to "over-the-counter" filings, a lease issued pursuant to such a filing is properly canceled.

APPEARANCES: Claude C. Kennedy pro se.

OPINION BY MR. FISHMAN

Claude C. Kennedy has appealed from a decision of September 25, 1972, rendered by the New Mexico State Office, Bureau of Land Management, canceling his oil and gas lease NM 16389.

The decision recited that oil and gas lease NM 086939, which formerly affected the land, expired by operation of law on March 31, 1972. The decision further stated that the land "is not available for leasing until it has been posted on the bulletin board pursuant to the regulations in 43 CFR 3112."

Appellant filed an "over-the-counter" offer June 2, 1972. The lease was approved by the authorized officer on August 25, 1972, effective September 1, 1972.

The decision properly stated that in view of the termination of the prior lease, the land was available for oil and gas filings only under the procedures set forth in 43 CFR 3112. Jack E. Griffin, 7 IBLA 155 (1972).

However, the case at bar involved an issued lease, not an oil and gas offer. There is no junior offeror who has intervening rights. See Arthur E. Meinhart, 6 IBLA 39 (1972).

The Department has held repeatedly that an oil and gas lease, although improvidently issued in violation of regulations, ordinarily will be permitted to stand, in the absence of intervening rights. Mrs. Laurel D. Barry, A-30341 (December 17, 1965); Stephen P. Dillon, 66 I.D. 148 (1959); D. Miller, 63 I.D. 257 (1956); Columbian Carbon Company, 63 I.D. 166 (1956). See Hugh E. Pipkin, 71 I.D. 89 (1964). Cf. W. H. Bird, 72 I.D. 287 (1965), where appellant was involved in a plan designed to give others associated with him an unfair advantage.

However, those cases are addressed to situations where the offer was deficient. The case at bar involves the non-availability of the land for oil and gas filings. In such a case, the lease must be cancelled. R. B. Whitaker, 63 I.D. 124 (1956). Whitaker, at 127-128, makes clear that when land is unavailable for leasing, by reason of a regulatory deficiency, such land is virtually in the status of withdrawn land.

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.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Joseph W. Goss, Member

