

KENNETH D. KIRKLAND

IBLA 75-107

Decided January 14, 1975

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring oil and gas lease A-8190 null and void ab initio.

Reversed.

1. Oil and Gas Leases: Applications: 640-acre Limitation

The Department of the Interior will issue an oil and gas lease for less than 640 acres if the amount by which the lease offer is under 640 acres is less than the amount that the inclusion of the smallest adjoining subdivision available for leasing would put it in excess of 640 acres.

APPEARANCES: James D. Voorhees, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On July 29, 1974, the Arizona State Office, Bureau of Land Management (BLM), declared oil and gas lease A-8190 null and void ab initio because it was issued in violation of 43 CFR 3110.1-3. That regulation states, in part, that no oil and gas lease offer of less than 640 acres will be accepted unless the surrounding land is not available for filing. Oil and gas lease A-8190 included only 631.98 acres.

Appellant asserts that the Department will issue a lease for less than 640 acres if "the amount by which it is under 640 acres is less than the amount that the inclusion of the smallest of the adjoining legal subdivisions available for leasing would put it in excess of 640 acres. Natalie Z. Shell, 62 I.D. 417, 422 (1955). Appellant states that no legal

subdivision adjoining any parcel in the offer contains less than 16.05 acres, and that under the rule of approximation quoted above, he is entitled to the lease. We agree.

In Shell, the Department concluded that it was consistent with the oil and gas lease offer form and the regulations to apply the administrative "rule of approximation" to oil and gas lease offers containing less than 640 acres. Although the Department has changed the applicable regulations several times since Shell, the changes have not been substantive. 1/ The lease offer form, in pertinent part, remains unchanged. Because of the sound policy reasons expressed in Natalie Z. Shell, supra, we adhere to the rule in that case. Union Oil Co., A-29725 (September 17, 1963).

[1] The oil and gas plat for the two townships involved in this appeal 2/ shows that the smallest legal subdivision available for leasing adjoining any parcel included in appellant's offer is 31.92 acres. Applying the rule of approximation, the amount by which lease offer A-8190 is under 640 acres is less than the amount that the inclusion of the 31.92 acre subdivision would put the offer in excess of 640 acres. BLM's original issuance of the lease was proper for this reason. Natalie Z. Shell, supra at 422; Union Oil Co., supra.

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 reversed and remanded for action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ Regulation 43 CFR 192.42(g) in Shell is now 43 CFR 3111.1-1(d) (1974). Regulation 43 CFR 192.42(d) is now 43 CFR 3110.1-3(a) (1974).

2/ T. 40 N., Rs. 9 and 10 W., G.S.R.M.

