

GEORGE H. ISBELL, JR.

IBLA 75-324

Decided May 30, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands oil and gas lease offer ES 12959 (Mississippi).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interests Leases

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

APPEARANCES: George H. Isbell, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

George H. Isbell, Jr. has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated December 31, 1974, rejecting his noncompetitive acquired lands oil and gas lease offer ES 12959 (Mississippi).

Appellant's offer for parcel 17 was drawn first at a simultaneous oil and gas lease drawing held pursuant to pertinent regulation 43 CFR Subpart 3112. The United States mineral interest in

part of the lands included within Parcel 17 was 50%. The offer was rejected because the offeror did not file an accompanying statement showing the extent of his ownership of the operating rights to the fractional mineral interest not owned by the United States.

The pertinent regulation 43 CFR 3103.4-4 states:

Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

[1] The requirement that an applicant for a noncompetitive oil and gas lease where the United States owns only a fractional mineral interest in the land accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States is mandatory. Where there is no such accompanying statement the offer must be rejected. James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 139, 80 I.D. 395 (1973).

The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., *supra*. Thus the fact that appellant was notified that he was the successful drawee and thereafter submitted the first year's rental cannot cure the defect in his offer. The regulation is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*. That the offeror himself does not own any of the operating rights does not relieve him of the obligation to file the required statement. James H. Scott, *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 of the Eastern States Office, Bureau of Land Management is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

