

BEATRICE E. MARCHAND

IBLA 76-572

Decided August 9, 1976

Appeal from a decision of Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 16065.

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 Interest Leases

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

APPEARANCES: Beatrice E. Marchand, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Beatrice E. Marchand has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated April 1, 1976, which rejected her noncompetitive acquired lands oil and gas lease offer ES 16065 filed as a drawing entry card for parcel No. 19, List No. 76-2, in response to a posting of lands available for filing of simultaneous oil and gas lease offers on February 17, 1976.

Appellant's offer was drawn third in a drawing held on March 2, 1976. The United States owns a 50-percent mineral interest in these lands, a fact clearly indicated on notice of availability. Her offer was rejected because she did not file an accompanying statement

required by 43 CFR 3103.4-4 showing the extent of her ownership of the operating rights to the fractional mineral interest not owned by the United States. Offers 1 and 2 were rejected for the same reason. No appeal has been filed by offerors 1 and 2.

The pertinent regulation, 43 CFR 3130.4-4, 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. [Emphasis supplied.]

[1] We have repeatedly emphasized that this regulatory requirement is mandatory. Where the United States owns only a fractional mineral interest in the land, the offeror must 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. Where there is no such accompanying statement the offer must be rejected. Robert L. Williams, 24 IBLA 311 (1976); Michael Shearn, 24 IBLA 259 (1976); Margaret Hughey Hugus, 22 IBLA 146 (1975); George H. Isbell, Jr., 20 IBLA 312 (1975); James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 138, 80 I.D. 395 (1973). The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., *supra*. It is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*.

Appellant states only that her filing agent handled the matter for her and that as a result she had no way of getting the forms. First, there are no forms required, merely a statement setting out the information the regulation asks for. Second, even if the fault lies with her agent, the agent is hers and she must bear the consequences of his action or lack of action.

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 is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

