

ROBERT G. LYNN

IBLA 76-541

Decided January 14, 1977

Appeal from decision of California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA 2623.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications: Filing—Oil and Gas Leases: Noncompetitive Leases

Regardless of whether offeror is described as "unqualified" or "disqualified," 43 CFR 3112.5-1 requires that upon successful drawees' failure to pay first year's rental, the lands shall be listed subsequently under the simultaneous drawing procedure rather than leased under the regular over-the-counter procedure in 43 CFR Subpart 3111.

APPEARANCES: Robert G. Lynn, Sacramento, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Robert G. Lynn appeals from a February 19, 1976, decision of the California State Office, Bureau of Land Management (BLM), rejecting his regular over-the-counter noncompetitive oil and gas lease offer 1/ CA 2623, filed January 13, 1975.

The State Office rejected the offer because:

These lands were included in the July 15, 1974, simultaneous oil and gas drawing list as Parcel No. 1.

1/ The offer was filed under 43 CFR Subpart 3111 - Regular Offers.

The successful drawees for this parcel were unqualified to receive the lease. Therefore, these lands shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure 2/ in accordance with 43 CFR 3112.5-1. 3/

The record indicates that all three of the 1974 successful drawees failed to timely submit the first year's rental, which led to the rejections of their offers under said section.

Appellant objects to the State Office's refusal to accept his regular noncompetitive offer, contending that section 3112.5-1 "is in conflict with the wording and intent of other applicable sections of the regulations" and that the inconsistency should be removed by amendment of the regulation to delete the requirement that lands be held aside for relisting in a future simultaneous drawing when a successful drawee fails to timely submit the first year's rental.

Appellant urges that the inconsistency arises out of the distinction between an unqualified applicant and a disqualified applicant, as referred to in the regulations. 4/ Appellant urges that a successful drawee who fails to submit the first year's rental timely becomes disqualified for the lease, but does not thereby become an unqualified drawee. The crux of appellant's argument is that those employees of the Department responsible for amending 43 CFR 3112.5-1 erroneously expanded the definition of "unqualified" to include those failing to timely send the rental, and that this was in contradiction of the "larger purpose of the several 1973 amendments." 5/ Appellant asserts that the apparent purpose of the amendments was to eliminate the necessity for relisting lands

2/ The simultaneous drawing regulations are at 43 CFR Subpart 3112.

3/ 43 CFR 3112.5-1 reads:

"If the successful drawees for a particular leasing unit are unqualified to receive the lease for any reason, including timely payment of the first year's rental, the lands in the numbered leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure." (Emphasis added.)

4/ Whereas 43 CFR 3112.5-1 refers to unqualified successful drawees, 43 CFR 3112.4-1 states that the "*** drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease ***." (Emphasis added.)

5/ These amendments are set forth in 38 F.R. 22230, August 17, 1973.

and having another drawing when the lone unsuccessful drawee failed to qualify for the lease. 6/

In support of his position, appellant has submitted an April 4, 1973, letter from the Chief, Division of Upland Minerals, California State Office, which in part states:

With respect to your comment concerning relisting of lands where a lease does not issue to the successful drawee, we direct your attention to the pertinent regulations as set forth in 43 CFR 3112.5. As you will note, there is no requirement in the regulations for relisting lands where the entry or offer is rejected, except in those instances where the offeror is unqualified to receive a lease (Sec. 3112.5-1). An offeror cannot be said to be unqualified to receive a lease if he fails or refuses to accept special stipulations which were imposed as a condition precedent to issuance of the lease after the SOG list was posted. * * *

[1] The meaning of 43 CFR 3112.5-1 is plain and unambiguous in prescribing that if the successful drawees in a simultaneous drawing proceeding fail to submit the first year's rental timely, the land shall be listed subsequently under the simultaneous drawing procedure. While words used to describe such drawees in 43 CFR 3112.4-1 and 3112.5-1 are not identical, the meaning of the latter section is clear. Leasing of such lands to appellant under the regular offers provisions in 43 CFR Subpart 3111 would be improper. See Edward M. Digneo, 22 IBLA 4 (1975).

The State Office letter to Lynn was written prior to the 1973 amendments. At that time the regulation used only the word "unqualified" and did not explicitly refer to failure to submit the first year's rental timely.

Appellant's assertions as to the larger purpose of the 1973 amendments are not persuasive. We see no conflict between amended section 3112.5-1 and 43 CFR 3112.2-1(3), which provides that three entry cards be drawn at each simultaneous drawing.

As for appellant's contentions with respect to what procedure would be in the public interest, this Board is not authorized to amend the regulations as written. 200 DM 1.5.

6/ Prior to the 1973 amendments, 43 CFR 3112.2-1(3) provided that only one entry card be drawn for each numbered leasing unit. 34 F.R. 9692, June 13, 1970.

Appellant has also stated that section 3112.5-1 "is partly inconsistent with the intent of the Mineral Leasing Act of 1920, as amended * * *." He has not given any basis for his assertion, nor is any inconsistency apparent to the Board.

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.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

