

KATHRYN J. ECKLES, HARLEY L. WILLIAMSON

IBLA 77-82 Decided February 4, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer NM 29006.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

A successful simultaneously filed oil and gas lease entry card is not to be rejected because the card is signed prior to the date of the beginning of the simultaneous filing period unless it is dated more than 10 days prior to the date it is filed.

APPEARANCES: Kathryn J. Eckles and Harley L. Williamson, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Kathryn J. Eckles and Harley L. Williamson have appealed from a decision dated November 19, 1976, of the New Mexico State Office, Bureau of Land Management, rejecting their oil and gas lease offer NM 29006. Their offer, made on a drawing entry card for Parcel NM 1049 of the September 1976 list of lands available for simultaneous oil and gas filing, was drawn number one at the drawing held on October 6, 1976. It was rejected for the following reason:

The filing period for September was from September 20 through September 27, 1976. The list was dated September 20, 1976. The entry card submitted by Kathryn J. Eckles and Harley L. Williamson is dated September 13, 1976. The back dating of this entry card voided Kathryn J. Eckles and

and Harley L. Williamson's statement as to their "sole parties in interest" statement in connection with Parcel NM 1049.

On appeal, appellants contend that (1) because they use a filing service they must sign the card 10 to 15 days prior to the final list so that it will get to New York and then Santa Fe on time, (2) they believe the signature on the entry card should be dated the day it is signed, (3) there is nothing in the regulation or on the entry card prohibiting pre-dating, and (4) the form listing reasons for return of a drawing entry card does not list pre-dating as a reason for return of a drawing entry card.

[1] Their objection to the ground relied upon by the State Office is well taken. As they point out, there is no specific requirement that an over-the-counter offer or an entry card, which is an offer in a simultaneous filing, must be dated as of the day it is filed. Indeed in the ordinary noncompetitive over-the-counter filing an offer submitted by mail will practically always have to be dated prior to the date on which it is filed. So far as I am aware the existence of such an interval has never been a cause for rejection of an offer. While there is a theoretical exactness in requiring the entry card to speak as of the day it is filed, it is not administratively feasible to insist on it.

The necessity for allowing some time span between preparing an application and filing it has long been recognized by the Department. The issue was fully considered in a case involving an application for a homestead entry filed 3 months after the papers were executed. While the land applied for was open to entry when the application was filed, it had not been when the papers were executed. After discussing past Departmental practice, the First Assistant Secretary held the application good, stating:

* * * It seems to be a very common practice for applicants to submit their applications by mail, accompanied by a relinquishment of a former entry embracing the land applied for. The Department knows of no recent case where such application has been for that reason denied. This seems to be a matter to be viewed largely from an administrative standpoint. The affidavits are required for the information of the Government with reference to the character and status of the land and the qualifications of the applicant. This applies to all forms of applications to make entry under the public land laws. Application papers have no force until filed in the local land office. The nearer the date of execution of the affidavits approaches the date of filing, the greater the probative force of such affidavits.

If all affidavits were executed before the officials at the local land offices, it would be possible for the execution of such affidavits to coincide with the filing. But the law permits such affidavits to be executed before certain other officers more or less remote from the local offices. Therefore, it is not practicable in all cases to require the affidavits to cover the time up to the very moment of filing. The most that can be required is that the execution of the affidavits in support of the application be reasonably near the date of the filing. It is difficult to see the importance of the fact that at the time of the execution of the application papers, including the affidavits, the land to be applied for may be embraced in an uncanceled entry or is not at the time open to entry, if in fact it is about to be released from the prior entry or is about to be opened under Government instructions. The thing of importance is to have the affidavits bear a date as near as practicable to the date of filing.

In view of the confusion which seems to exist, it appears advisable to fix an arbitrary rule marking the limit of the period to be considered by the Department as a reasonable time for filing after the execution of the application papers. It is believed that ten days will afford ample time for the transmission of mail of any such application, with liberal allowance for ordinary delays. It is accordingly directed with reference to applications filed on and after October 1, 1914, that the affidavits in support thereof shall have been executed within 10 days prior to the filing of such application in the local land office. The Commissioner will prepare appropriate instructions to this effect and submit the same for departmental consideration.

The decision appealed from is reversed.

Race v. Larsen, 48 L.D. 313 (1914).

Shortly thereafter a circular was issued directing that the rule in Race v. Larsen, be applied to all applications to make entry. Circular, September 8, 1914, 43 L.D. 378 (1914). It has been part of the Department's regulation ever since and it now appears as 43 CFR 1821.2(2).

The authorized officer will reject all applications to make entry which are executed 10 days prior to filing.

The comment in Race v. Larsen that "it is not practicable to require an affidavit to cover up to the very moment of filing," is equally applicable to oil and gas filings. That decision and the current regulation fix 10 days as a reasonable period allowing for transmission by mail, as the time within which a supporting affidavit must have been executed. So here a statement made on an oil and gas offer, if made within 10 days of filing is to be deemed acceptable.

Since the entry card was dated September 13, 1976, it would have had to be filed on or before September 23, 1976. The card is stamped 10:00 a.m., September 27, 1976, but that is the end of the simultaneous filing period, not an actual time of receipt. That is, all cards received in the simultaneous filing period are stamped as of the end of the period. If there is no other evidence fixing the actual time of filing, the entry card will be considered to have been filed within the 10-day period after execution.

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 New Mexico State Office is set aside and the case remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

