

DUNCAN MILLER

IBLA 77-3

Decided February 7, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM-A 28345 Oklahoma.

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 oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before September 30, 1976, must have been 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. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Duncan Miller appeals from the September 1, 1976, decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer NM-A 28345 Oklahoma. Appellant's offer was drawn first in a drawing of simultaneously filed offers for the subject parcel on June 9, 1976. Two other offers were drawn second and third for that parcel. The list

of land available for leasing which had included the subject parcel indicated that the United States held only a 50 percent interest in the oil and gas rights and that each applicant was required to submit a statement indicating the extent of any interest held in the non-federally owned fraction. The statement was required by 43 CFR 3130.4-4 (1975), amended, 41 F.R. 43149 (September 30, 1976) 1/ which provided as follows:

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.]

Appellant's offer was rejected for failure to include the required statement. Appellant has provided no evidence showing that such a statement has been filed. He merely vaguely contends BLM may have made some oversight because they overlooked some stipulations in another case. However, without anything more than a suggestion of possible error on the part of BLM rather than by him in this case, we do not give credence to this purported excuse for failing to file the statement.

[1] If a drawing entry card offer must be deemed disqualified under regulations in effect on the date of the drawing, the offer must be rejected notwithstanding any future change in the regulations, because an oil and gas lease may only be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1970); 43 CFR 3112.4-1. No curative subsequent action can change the loss of priority in view of conflicting offers and the special procedures established for the simultaneous filing drawing. Frank G. Wells, 28 IBLA 113 (1976). This Board has repeatedly emphasized that the requirement in 43 CFR 3130.4-4 (1975) was mandatory. Where the United States owns only fractional mineral interest in the land, the offeror was

1/ Amendments of the regulations governing fractional interest leases, including 43 CFR 3130.4-4, were published on September 30, 1976, 41 F.R. 43149. The new provision makes no express requirement for a statement of interest in the ownership of the non-federally owned fraction.

required to 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. Frank G. Wells, supra; Grady Argenbright, 27 IBLA 24 (1976); Michael Shearn, 24 IBLA 259 (1976).

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.

Joan B. Thompson

Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

