

DUNCAN MILLER

IBLA 76-616

Decided February 16, 1977

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer NM-A 27661 (Texas).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands--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 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. When an offeror submits, on appeal, a copy of such statement but the date on the statement differs from the date on the card, and offeror does not allege he filed the statement simultaneously with the offer, such offer must be rejected for failure to comply with a mandatory regulation.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Duncan Miller appeals from an April 12, 1976, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer NM-A 27661 (Texas) dated January 20, 1976, filed as a drawing entry card for Parcel 474, which was posted as available for simultaneous

filing of oil and gas lease offers on January 19, 1976. The basis for the decision was that the United States owns only a fractional mineral interest in the oil and gas in the parcel and the offeror failed to provide a statement required by 43 CFR 3130.4-4 showing his ownership of operating rights to the fractional mineral interest not owned by the United States.

In his statement of reasons appellant contends that he did file the required statement. Subsequently, he sent the Board a copy of the statement which purportedly had been sent to the New Mexico State Office. The statement reads as follows:

Offeror's statement as to those oil and gas lease parcels in which the United States does not own a 100 percent of mineral interest:

In said parcels, the offeror does not own any of the mineral interests and-or operating rights in which the United States owns less than 100% mineral interest.

The Board sent a letter to the New Mexico State Office inquiring about its procedures in the simultaneous drawing entry card filings. C. R. Durnell, Chief, Division of Management Services, responded as follows:

When an entry card is accompanied with an attachment we stamp the entry card with a rubber stamp that reads "See Attachment." On the attachment we indicate the individual's name, social security number, or taxpayer's number and the parcel number indicated on the entry card. Attachments are dated. We use the closing date of the filing period as the official date. We do not maintain a log or other record of the attachments.

When we are finished processing all the simultaneous entry cards, these attachments are delivered to the Adjudication Section in an envelope with the month written on the face of the envelope. If the attachments are qualifications of corporations, associations, etc., they are then processed and filed in an alphabetical order for future reference. If they concern individual interests in the entry, they are destroyed if the applicant is an unsuccessful entryman.

If an attachment relates to more than one drawing entry card, we note the individual's name, social security number, etc., and all the parcel numbers involved on the attachment.

Mr. Durnell added that he cannot state positively that such a statement did or did not accompany appellant's entry card. It is noted that Miller does not claim that his statement accompanied his drawing entry card; it is also noted that the statement does not refer to any particular parcel of land or offer.

[1] The fact that the entry card is dated January 20, 1976, and the copy of the statement is dated January 19, 1976, gives us reason to believe that this statement was not transmitted with the offer. On the pertinent dates, 43 CFR 3130.4-4 provided:

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. * * * [Emphasis added.]

Since the date on the entry card differed from the date on the copy of the statement, we constrained to doubt that the statement did "accompany" the entry card as required by 43 CFR 3130.4-4. And as stated above, appellant has not argued to the contrary. This Board has repeatedly emphasized that the requirement in 43 CFR 3130.4-4 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. Susan R. Smith, 28 IBLA 173 (1976); Grady Argenbright, 27 IBLA 24 (1976); Michael Shearn, 24 IBLA 259 (1976).

Although 43 CFR 3130.4-4 was amended by Circular 2406, 41 F.R. 43149, September 30, 1976, by deletion of the requirement for a statement concerning offeror's ownership of operating rights in the nonfederal mineral interests, Miller may not be permitted to take advantage of the amendment in this case because to do so could adversely affect the rights of third parties who participated in the same simultaneous filing procedure. Cf. Henry Offe, 64 I.D. 52 (1957).

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.

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Douglas E. Henriques

Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

I agree with the conclusion of the majority opinion that appellant has not demonstrated his compliance with a then mandatory regulation, 43 CFR 3130.4-4, i.e., he failed to establish that he had accompanied his card with a showing of his ownership of operating rights to the fractional mineral interest not owned by the United States. But I would like to add to the rationale of the decision.

The majority opinion holds that since the entry card is dated January 20, 1976, and the asserted copy of the statement of holdings forwarded with the statement of reasons, is dated January 19, 1976, the majority concludes that the statement did not accompany the entry card as required by 43 CFR 3130.4-4. It is not inconceivable, or indeed not unreasonable, that appellant may have executed the statement on January 19, 1976, and the card on January 20, 1976. Miller has not alleged that the documents were filed simultaneously.

However, in view of the recitation of the State Office's procedures in handling attachments to cards, and appellant's failure to contend that, and offer, convincing evidence that the two documents were transmitted together, his appeal must fail. This Board has held that one seeking public land interests has the burden of establishing his right thereto. Tibor W. Fejer and Robert B. McClurkin, 11 IBLA 166 (June 15, 1973); see Faydrex, Inc., 14 IBLA 195, 198 (1974); Gas Producing Enterprises, Inc., 15 IBLA 266, 268 (1974); Apache Oro Co., 16 IBLA 281, 283 (1974).

I would therefore affirm the action below on the basis that appellant, as an applicant assenting a claim to receive the benefits of an Act of Congress, has failed on his burden of establishing his entitlement to such benefits.

Frederick Fishman
Administrative Judge

