

CHARLOTTE L. THORNTON  
WILLIAM M. WEAVER, JR.  
ROBERT L. SMITH

IBLA 77-27  
IBLA 77-28  
IBLA 77-29

Decided June 15, 1977

Appeals from three separate decisions of the New Mexico State Office, Bureau of Land Management, requiring additional evidence of appellants' qualifications to hold oil and gas leases prior to taking further action on their lease offers, NM 28616, NM-A 28650, and NM 28618.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents --Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First Qualified Applicant

Where an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent and separate statements by the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. The same requirement applies where the offeror's facsimile signature is affixed on the offer by an agent. An offer must be rejected where this information is not filed.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents --Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First Qualified Applicant

The Bureau of Land Management (BLM) has a responsibility to issue noncompetitive oil

and gas leases only to the first qualified offeror. A rubber-stamped or other form of facsimile signature, unlike a handwritten signature, does not give rise to a presumption that it was personally executed by the offeror. The BLM may inquire of the circumstances under which the signature was stamped on the offer to determine whether compliance with 43 CFR 3102.6-1 was required.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Where the facsimile signature on an oil and gas lease offer is not affixed to the offer by the offeror himself, the circumstances under which the signature is imprinted by a third party are determinative of whether he was acting as an agent. It becomes important to know who actually formulated the offer -- whether the offeror knew that he was applying for a lease of the specific lands described in the offer.

APPEARANCES: James W. McDade, Esq., McDade and Lee, Washington, D.C., for

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Charlotte L. Thornton brings an appeal (IBLA 77-27) from a decision of the New Mexico State Office, Bureau of Land Management (BLM), requiring additional evidence of her qualifications as an offeror prior to taking further action on her oil and gas lease offer (NM 28616). Appellant's noncompetitive oil and gas lease offer received first priority in a drawing of simultaneously-filed oil and gas lease offers for parcel number NM 894 in the July 19, 1976, listing of available lands.

The decision below noted that the signature on the lease offer was a mechanically produced facsimile signature rather than a handwritten signature. Accordingly, the BLM required appellant to submit an affidavit stating whether appellant intended that the facsimile signature serve as her signature, whether appellant personally imprinted the signature, and, if not, whether the signature was affixed to the card in appellant's presence.

William M. Weaver, Jr., has filed an appeal (IBLA 77-28) from a similar decision of the BLM regarding his lease offer (NM-A 28650)

which received first priority in a drawing for parcel NM 928 on the same list of available lands. Similarly, Robert L. Smith has brought an appeal (IBLA 77-29) from a decision of the BLM regarding his first-drawn lease offer (NM 28618) for parcel number NM 896 on the July list of available lands. These cases have been consolidated for the purposes of this appeal because the material facts are similar in each of the cases and the cases present common legal issues.

Counsel for appellants contends in the statement of reasons for appeal that a facsimile signature made by a rubber stamp is a legally valid signature. Further, it is averred that use of such a stamp meets the requirements of 43 CFR 3112.2-1(a), which requires that drawing entry cards be "signed and fully executed" by the applicant. Counsel cites the case of Mary I. Arata, 78 I.D. 397 (1971), as authority for this conclusion. Counsel also presents copies of several letters from various BLM officials indicating that such a signature would be in compliance with the requirements of this regulation.

Appellants' counsel further alleges that the decisions of the BLM in these cases constitute, in effect, an attempt to amend the regulations governing simultaneously-filed noncompetitive oil and gas lease offers. Counsel points out that there is an appropriate procedure for amending regulations and this has not been followed here. Finally, it is asserted that if the additional evidence required by the BLM is indeed authorized by the regulations, then the regulations are unclear and, therefore, should not be applied retroactively to deny appellants' statutory preference rights to leases.

There is no dispute regarding appellants' contention that the offeror's signature on a simultaneously-filed oil and gas lease drawing entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that such be his signature and that this does not violate the "signed and fully executed" requirement of 43 CFR 3112.2-1(a). Evelyn Chambers, 27 IBLA 317 (1976); Robert C. Leary, 27 IBLA 296 (1976); Mary I. Arata, 78 I.D. 397 (1971). However, the issue raised by these appeals is whether the BLM may make an inquiry as to the qualifications of the offeror, specifically whether the offer was signed by an agent on behalf of the applicant, where a noncompetitive oil and gas lease offer contains a facsimile signature of the offeror.

[1] If an oil and gas lease offer is signed by an agent on behalf of the offeror, the regulations with respect to qualifications of lessees require evidence of the authority of the agent to sign the lease offer and separate statements over the signatures

of the offeror and the agent regarding the nature and extent of any interest the agent has in the lease. 43 CFR 3102.6-1. The offer must be rejected if this information is not filed. Evelyn Chambers, supra at 323. The same requirement applies where a facsimile signature is affixed on the offer by an agent or attorney-in-fact. D. E. Pack, 30 IBLA 166, 171, 84 I.D. 192 (1977); Evelyn Chambers, supra at 323; Robert C. Leary, supra at 299.

[2] The BLM has a responsibility to issue noncompetitive oil and gas leases (for lands not within a known geological structure of any producing oil and gas field) only to the first qualified offeror. Evelyn Chambers, supra at 322; 30 U.S.C. § 226(c) (1970). A rubber-stamped signature, or other form of facsimile signature, unlike a handwritten signature, does not create the presumption that it was personally executed by the offeror. D. E. Pack, supra at 169; Evelyn Chambers, supra at 323; Robert C. Leary, supra at 299. Therefore, the BLM may take appropriate action to establish the circumstances under which the signature was stamped on the entry card in order to determine whether compliance with 43 CFR 3102.6-1 was required. Evelyn Chambers, supra at 323.

[3] If the offeror did not affix the facsimile signature to the entry card personally, the circumstances under which the facsimile signature was imprinted by a third party are critical to determining whether he was acting as an agent. It becomes important to know whether the offeror himself (as opposed to the third party) actually formulated the offer -- whether the offeror knew that he was applying for an oil and gas lease for the specific lands described in his offer. D. E. Pack, supra at 171-172; Robert C. Leary, supra at 301.

Where an employee affixing a facsimile signature acts in a strictly mechanical capacity as an "amanuensis" with no authority to exercise discretion regarding the offer or lease, there is ordinarily no question of the authority of the employee to act on behalf of the offeror or of the sharing of an interest in the lease. 1/ The term "agent" does not include an "amanuensis" even when the offeror is not physically present at the time of signing. Evelyn Chambers, supra at 326-327.

Where the judgment and discretion involved in the making of a lease offer are exercised by the offeror himself, the third

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1/ If the "employee" does hold any interest in the offer or lease, then this is required to be disclosed on the offer form and the required additional evidence must be filed. 43 CFR 3102.7.

party affixing the offeror's facsimile signature at his direction is not an agent within the meaning of 43 CFR 3102.6-1 even though the signature is not affixed in the presence of the offeror. See Evelyn Chambers, supra at 325-327. Accordingly, on remand of these cases the BLM should not limit its inquiry, if it is determined that the facsimile signature was affixed by a third party, to determining whether the offeror was physically present at the signing. The BLM should allow the offeror to state the facts regarding the formulation and signing of the offer from which it may draw its own conclusion whether the party affixing the stamp was acting as an agent within the meaning of 43 CFR 3102.6-1. Evelyn Chambers, supra at 327.

The requirement of this evidence regarding qualifications of the offeror is neither a departure from the holding of Mary I. Arata, supra, nor an amendment of the regulations. Robert C. Leary, supra at 301. Rather, it is a procedure designed to insure compliance with the existing regulation, 43 CFR 3102.6-1, with respect to evidence of qualifications where an offer is signed by an agent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for further action consistent with this opinion.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Joseph W. Goss  
Administrative Judge