

BRUCE T. CAMERON
CAROL HELLER

IBLA 76-575

Decided July 12, 1977

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting oil and gas drawing entry card ES 16020.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

Where the United States owns only fractional mineral interest in the land, an offer filed before September 30, 1976, for a simultaneous oil and gas lease drawing, must be rejected where it is not accompanied by a statement showing extent of offeror's ownership of operating rights in fractional mineral interest not owned by the United States.

APPEARANCES: Bruce T. Cameron, pro se, and Thomas Connell, Esq., New Orleans, Louisiana, for appellant; James W. McDade, Esq., McDade and Lee, Washington, D.C., for Carol Heller.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Bruce T. Cameron appeals from a March 10, 1976, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his entry card ES 16020, which had been chosen first in a simultaneous oil and gas drawing for a leasing parcel on acquired lands. 43 CFR Subpart 3112. The United States owned 75 percent of the mineral rights. On February 25, 1976, Carol Heller, whose card had been drawn second, submitted a protest against issuance of a lease to Cameron.

Heller has filed a motion to dismiss based on Cameron's failure to comply with the regulation, 43 CFR 4.413, on timely service of adverse parties with copies of the notice of appeal. The date of receipt of the notice of appeal by the Bureau of Land Management is not indicated by date stamp or otherwise on the notice included in the case file. For these reasons, it is more appropriate to rule upon the substantive issues than to dismiss on procedural grounds. The motion to dismiss is therefore denied. 1/

The BLM cited as the basis of its holding 43 CFR 3130.4-4, which 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. * * *

Cameron argues that the requirement for the statement in issue is immaterial and irrelevant for leasing purposes. He also contends, in effect, that he was not fairly notified of the statement requirement. Heller insists that Cameron "offers no substantial reason why the Decision of the Eastern States Office is in error or should be reversed."

[1] In Duncan Miller, 29 IBLA 1 (1977), the Board held:

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. * * * 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 [who filed before September 30, 1976] was 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

1/ Heller's motion to dismiss raises substantive arguments also, and with respect to such arguments, we have treated the document filed by Heller as her answer to appellant's statement of reasons.

(1976); Michael Shearn, 24 IBLA 259 (1976). [Emphasis added.]

The regulations governing fractional interest leases were amended at 41 FR 43149 (September 30, 1976), by deletion of the requirement for a statement by an offeror showing the extent of his ownership of the operating rights to the fractional mineral interest not owned by the United States. Despite such amendment, however, third party rights are involved and the Department is bound by the regulations in effect at the time involved. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Cameron's argument herein that he was not fairly on notice of the need to submit the statement in issue is without merit. The record contains a copy of the January 19, 1976 "Notice of Lands Available for Oil and Gas Leasing," which includes an explicit charge to offerors that:

Where the description of lands in a parcel listed in the notice indicates that the United States mineral interest in the lands offered is a fractional interest, an offer for that parcel 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. 43 CFR 3130.4-4.

The listing for Parcel No. 7, for which Cameron filed his offer, clearly reads "U.S. Interest 75%."

On July 5, 1977, appellant filed a Motion for Summary Granting of Appeal, alleging that Carol Heller is disqualified as "a participant in the syndicate * * * engaged in a multiple filing operation" involving unqualified applicants. Such matters should be considered by BLM before any lease is issued to Heller; however, in connection with this appeal the motion must be denied. 43 CFR 3112.5-1.

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:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge