

Editor's note: Reconsideration denied by order dated Feb. 16, 1978

W. J. LANGLEY

IBLA 76-579

Decided September 12, 1977

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting simultaneously filed noncompetitive acquired lands oil and gas lease offer ES 16019.

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 regulation, 43 CFR 3130.4-4 (1975), in effect at the time of filing, required that an oil and gas lease offer for acquired land 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, a simultaneously filed oil and gas lease offer which is not accompanied by the required statement must be rejected.

2. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases--Evidence: Presumptions

Where a regulation requires that an acquired lands oil and gas lease offer be accompanied by a separate statement as to the offeror's ownership of operating rights to the fractional mineral interest not owned by the United States, and the offer is rejected for noncompliance therewith, the offeror's bald assertion that he filed such statement is

insufficient to prove such a fact without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: W. J. Langley, Dallas, Texas, pro se. Kenneth D. McPeters, Hobbs, New Mexico, adverse party.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On January 16, 1976, certain acquired lands in Blackwater River State Forest, Florida, were posted as available for the simultaneous filing of oil and gas lease offers. The notice of sale indicated that the United States mineral interest in the lands in question, designated Parcel 6, was a fractional interest of 75 percent.

A drawing was held on February 9, 1976, in the Eastern States Office, Bureau of Land Management (BLM), Silver Spring, Maryland. W. J. Langley's drawing entry card was first drawn. Kenneth D. McPeters and Marilyn S. Madden had their cards drawn second and third, respectively. BLM discovered that W. J. Langley's entry card was not accompanied by the mandatory statement required by 43 CFR 3130.4-4 (1975). ^{1/} Such regulation requires that an offer for a fractional interest noncompetitive lease must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interests not owned by the United States in each tract covered by the offer to lease.

BLM rejected W. J. Langley's offer by decision dated March 10, 1976, for failure to comply with 43 CFR 3130.4-4.

On appeal appellant asserts that his offer conformed to the regulations and that the required fractional mineral interest statement accompanied the offer "and if separated from the card-offer was done so by Eastern States office staff when opening the envelope and stamping the card." Appellant recalled that his statement read: "Offeror owns none of the operating rights to the fractional mineral interest not owned by the U.S."

Appellant concluded that, therefore, his card was submitted "exactly as required."

^{1/} Pursuant to Circular 2406, published at 41 F.R. 43149 (September 30, 1976), the regulation has been amended to delete the requirement of a showing of the offeror's ownership in the operating rights.

[1, 2] The present case is governed by the rationale in the Board's recent decision, David F. Owen, 31 IBLA 24 (1977). In Owen the appellant's offer was rejected for failure to provide the statement required by 43 CFR 3130.4-4 (1975) showing his ownership of operating rights to the fractional mineral interest not owned by the United States. Owen asserted that he had enclosed the required statement and BLM admitted that it was Owen's usual business practice to do so. The Board stated, Id. at 27-8:

The Bureau of Land Management has been unable to locate the statement which Owen alleges he filed with this card, and it has not conceded any blame for its absence. Appellant merely alleges that he submitted it and that it must have been lost by the Bureau. This, and the showing of appellant's past "business practice" in this regard, is deemed by the dissent to be a sufficient basis for reversal of the Bureau's rejection of the offer. We do not agree.

In this case all we know for certain is that appellant has made it a practice to file the statement when required to do so, in the manner described. We do not know that he always does so or the number or percentage of the times he has failed to do so, if ever. Even if it were possible for him to prove a perfect record of past compliance, this would not prove that he had not failed to comply this time through simple inadvertence, oversight or neglect.

There is a legal presumption of regularity which supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 15-16 (1926). [Footnote omitted.]

Herein, there is even less evidence of compliance than in Owen. Appellant merely states that he submitted the statement. There is no evidence of an established business practice to file such statements. BLM maintains that it has no record of having received the required statement. Appellant has presented no evidence to support his contention. As set forth in Owen, the presumption of regularity favors the BLM posture and the absence of the required statement in the record impels the conclusion that the statement was not filed and the offer was properly rejected.

Accordingly, 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.

Frederick Fishman
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Appellant states the required information as to operating rights accompanied his offer when filed.

The majority gives a conclusive effect to the presumption that public officers have properly performed their official duties. If such were always the case then no appeals would be sustained by the Board.

Appellant's statement herein was filed subject to the sanctions set forth in 18 U.S.C. § 1001 (1970):

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Evidence given by a party in interest is most frequently the basis for executive and judicial decisions, and it should be accorded appropriate weight. Here, the record contains no information from the person who processed the filing, stating whether the information was submitted with the filing. Neither is there a statement as to the customary business practice of the Eastern States Office. I concur with the dissenting analysis in David F. Owen, 31 IBLA 24, 31-38 (1977), and would follow such cases as Louis J. Boland, 30 IBLA 237 (1977). There, the Board accepted the offeror's statement and did not require further evidence of business practice. I submit that the decision herein should be reversed, a finding made that the required statement had been filed, and the case remanded for further proceedings. This approach seems particularly appropriate since the statement of ownership of operating rights is no longer required, although if there were no evidence of filing of the statement it would of course be necessary to reject appellant's offer.

Joseph W. Goss
Administrative Judge

