

Appeal from decision of New Mexico State Office, Bureau of Land Management rejecting simultaneous oil and gas lease offer NM 29836.

Reversed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Where an oil and gas lease offer on a drawing entry card is signed by the offeror and lists the names of 10 other parties in interest, and is accompanied by a separate statement signed by each of the eleven parties in interest declaring (1) their respective addresses, (2) that they are American citizens, (3) that they had an oral agreement to participate in the lease, (4) that they would own equally, and (5) that they do not have direct or indirect interests in leases which exceed 246,000 in any one State, the requirements of 43 CFR 3102.7 have been satisfied and the lease may issue, all else being regular.

APPEARANCES: Walter L. Kantrowitz, Esq., Kantrowitz & Goldhamer, Spring Valley, New York, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal from a decision dated March 8, 1977, by the New Mexico State Office, Bureau of Land Management, which rejected appellants' oil and gas lease offer for failure to comply with 43 CFR Sec. 3102.7. 1/

1/ This regulations provides:

"§ 3102.7 Showing as to sole party in interest.

"A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set

Appellants' drawing entry card was drawn number one at a public drawing held in the State Office on February 8, 1977. With their drawing entry card, appellants submitted a statement containing the signatures, addresses, and social security numbers of eleven parties in interest and stating as follows: "We, the undersigned, are (1) American citizens, and (2) in oral agreement, owning equally, but less than 10 percent, (3) wish to participate in oil and gas leases, (4) we do not have direct or indirect interests in leases exceeding 246,000 acres in any one state."

The BLM rejected the offer because it could determine neither the nature of the agreement between the parties, nor whether the percentages of interest were of record title interest or some other interest in the proposed lease.

Appellants contend on appeal that their statement clearly shows that each party was to receive a 1/11th interest and that such interest would include but not be limited to record title interests, overriding royalty interest, working interests, operating rights or options, or any agreements covering such interests, as defined by 43 CFR 3100.0-5(b). 2/ Appellants argue that all the information required

fn. 1 (continued)

forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled."

2/ This regulation provides:

"Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for

by 43 CFR 3102.7 was provided without omission or uncertainty and that therefore the lease should issue to them.

[1] We believe that the statement submitted by appellants with their drawing entry card is sufficiently informative to meet the requirements of the regulations.

In rejecting this offer the BLM's New Mexico State Office relied exclusively on the decision of this Board in the appeal of Harry Reich, 27 IBLA 123 (1976). In Reich, two parties of the five who asserted an interest signed the drawing entry card, and the space for listing "other parties in interest" was left blank. A photocopy of a statement, dated 6 months before, accompanied the card. There was no reference on the card to the separate statement, there was no declaration as to whether the agreement between the parties was written or oral, and the parties described their relationship as "Partners in Interest." The appeal in the instant case correctly points out that this case can be distinguished from Reich in that:

- (1) The card in the instant case lists the names of all the parties.
- (2) There was attached to the card a statement signed by all of the parties setting forth the nature of the agreement among the parties.
- (3) The card was clearly marked with the words "see attachment," although it appears that this was done by BLM, rather than by the applicant.
- (4) There was a declaration that the agreement between them was oral.

fn. 2 (continued)

success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An 'interest' in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such 'interests.' Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an 'interest' in such leases."

It is clear from the card and the attachment that all of the required information was provided in this case. The information was not only provided on the card itself but, as suggested by this Board in *Reich*, supplemental information on an attachment was filed with the entry card.

The statement attached to the entry card clearly sets forth the nature of the agreement among the parties. The statement indicates that their agreement was oral and that their ownership was equal. For 11 individuals to sign a document saying that they were to participate and own "equally," cannot be interpreted in any other way than that each of the parties had a 1/11th share in whatever rights the number one drawee would be entitled to receive. There is no conceivable basis on which BLM could reasonably infer from this language that the signatories may have been alluding to some lesser, more particularized interest, such as an overriding royalty or the operating rights.

In *Reich, supra*, the Board rejected the card because the card itself did not list the names of the other parties, and the attachment (dated 6 months prior to the filing) failed to adequately set forth the nature of the agreement. In the instant case, the card does list the names of each of the participants and the attachment adequately sets forth the nature of their agreement. *Reich* was also subject to the objection that the parties did not indicate whether their agreement was written or oral. The statement attached to the appellant's card sets forth that the agreement of the interested parties, that each of the undersigned are "in oral agreement owing equally but less than 10%." That statement clearly sets forth the nature and extent of the interest of each of the parties. The regulation plainly states that a copy of any agreement between the parties is required only where such an agreement has been reduced to writing. In this case, the agreement was oral. There is no question that the card is complete and that the statement required was duly and timely filed. The only question raised by the BLM rejection is whether or not the "nature of the agreement among the parties" is clear and "if the percentages of interest are of record title interest or some other interest in the proposed lease."

The term "equal" has been defined by Black's Law Dictionary as follows: "Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights. *People v. Hoffman*, 116 Ill. 587, 5 N.E. 600, 56 Am. Rep. 793."

Similarly, "equal" has been defined to mean "the same in quantity, amount or extent." *Bessetti v. Roberts*, 183 P. 403 (Sup. Ct., N.M. 1919).

Accordingly, the description in the statement of the parties interests as "owning equally" can only be interpreted to mean that they are each on the same plane or level with respect to the rights obtained by being drawn number one at the drawing held on February 8, 1977. These equal rights apply to whatever rights the winning card is entitled to receive. As defined by regulation 43 CFR 3100.0-5(b) this interest would include but not be limited to "record title interests, over-riding royalty interest, working interests, operating rights or options, or any agreements covering such 'interest'."

There are no omissions or uncertainties in the offer and attachment. It is not necessary to rely upon any explanations, as the documents filed speak for themselves.

Accordingly, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case is remanded to the New Mexico State Office, BLM, for issuance of the lease if all else be regular.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON DISSENTING:

My disagreement with the majority opinion is over the interpretation of the regulatory requirement in 43 CFR 3102.7 that the separate statement signed by the offeror and the other parties interested in the offer set forth "the nature and extent of the interest of each in the offer" and "the nature of the agreement between them if oral." From the separate statement in this case we know that the agreement is oral with the parties "owning equally, but less than 10 percent." I cannot agree that this information adequately shows the nature of the interest in the offer and the nature of the agreement.

The basic question in this case concerns the meaning of the word "nature" as it is used concerning the interest of the parties and their oral agreement. I suggest that the word means more than the majority opinion implies. The word "nature" is not a word of art with a fixed meaning in all circumstances. However, as used in most legal contexts, as the cases set forth under "nature" in 28 WORDS AND PHRASES (1955) show, it generally means a kind, class, sort, type, order, species or character of a subject. While we know the percentage of the parties interest here by knowing they hold equally and the number of parties, we do not know which category of interest in the lease they hold. Under regulation 43 CFR 3100.0-5(b), quoted in full in footnote 2 of the majority decision, an "interest" in the lease includes record title interests, overriding royalty interests, working interests, operating rights or options, and agreements covering such "interests," but is not limited to such interests. Likewise, we do not know whether there are any conditions, limitations, or other terms in the parties' oral agreement not expressed, or the real character or legal type of holding they contemplate.

In short, I believe we must stretch to make assumptions and conclusions from this brief statement as to the real nature of the parties' interest and their agreement. This is inconsistent with our ruling in Harry Reich, 27 IBLA 123 (1976). Accordingly, I would affirm the Bureau's decision.

Joan B. Thompson
Administrative Judge

