

HENRY A. ALKER

IBLA 77-537

Decided March 8, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, dismissing a protest against the return of a simultaneous oil and gas lease drawing entry card and the retention of the filing fee. M-37822.

Affirmed.

1. Accounts: Refunds—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Applications: Drawings
A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

APPEARANCES: Henry A. Alker, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Henry A. Alker appeals from the August 5, 1977, decision of the Montana State Office, Bureau of Land Management (BLM), dismissing his protest (M-37822) against the return of his simultaneous oil and gas lease drawing entry card and the retention of his \$10 filing fee. Appellant filed the card pursuant to the July 18, 1977, Notice of Lands Available for Oil and Gas Filings issued by the Montana State Office. The card was returned because it contained an incorrect parcel number.

The July 18 notice contains the standard simultaneous instructions and the descriptions of parcels MT 1276 to MT 1308. In addition, it includes descriptions for parcels MT 1309 and MT 1310 available in the "Little Missouri Grasslands" of the Custer National Forest and the special stipulations required for leases in that area. The parcel descriptions were preceded by a page explaining

the footnote system used to indicate which stipulations were required for each parcel. This explanation page included a parcel description "as an example." The example parcel is designated "# 000," for lease "M 29000." The description sets out certain land, acreage and footnotes. The next paragraph explains the listing. Appellant filled in the parcel number spaces on his entry card with the number "MT 000" and noted underneath "No # given (M 29000)." Obviously there was no such parcel on the list of available lands and appellant's offer was defective in describing lands not available.

In his statement of reasons, appellant no longer argues that he should be issued a lease. However, he argues that the example parcel was highly misleading in that it was not designated "hypothetical" and the coordinates used were actual land. He states he had no time to clarify the confusion because of the filing deadline. He then requested a refund of his \$10 filing fee.

[1] The regulations require a \$10 filing fee for the filing of an oil and gas lease offer, including one filed pursuant to the simultaneous procedures set forth in 43 CFR Subpart 3112. 43 CFR 3103.1-3 and 3112.2-1(a)(1). As 43 CFR 3103.1-3 provides, the filing fee is to be retained as a service charge even though the offer should be rejected. In implementing these regulations, the Bureau of Land Management has advised, in BLM Instruction Memorandum 75-194 and on Form 3112-2 which appellant received when his defective entry card was returned, that refunds are allowed only when the remittance is unacceptable, when the filing is premature or late, or when the parcel has been deleted from the drawing list. See James H. Scott, 25 IBLA 384 (1976). The memorandum specifically states that cards on which the offeror did not indicate a parcel number on the current drawing list will be rejected and the filing fee retained. The Secretary of the Interior is authorized to charge reasonable filing fees. 43 U.S.C. § 1371 (1970). The fact that the filing was defective does not require BLM to return the filing fee. The burden is on the offeror to file a correct entry card. BLM is entitled to retain the filing fee for an entry card containing a parcel number not on the current drawing list. See Grace M. Williams, 26 IBLA 232 (1976); Ishmael Guerra, 26 IBLA 116 (1976); Albert E. Mitchell III, 20 IBLA 302 (1975).

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.

Joan B. Thompson
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

