

DAVID A. PROVINSE

IBLA 77-333

Decided May 26, 1978

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands oil and gas lease offer, M 35516(ND).

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Reinstatement

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Lands Subject to

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

3. Administrative Practice -- Oil and Gas Leases: Applications: Generally -- Mistakes:

Generally -- Regulations: Generally -- Regulations: Waiver

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

APPEARANCES: David A. Provinse, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offer, M 35516(ND), for acquired lands belonging to the United States. Appellant contends that the lands were available for oil and gas leasing at the time that he filed his offer on October 19, 1976, and that, hence, a lease should have issued to him as the first-qualified applicant therefor.

The BLM in its decision below cited two reasons for rejection of appellant's lease offer. Appellant's lease offer was rejected as to certain of the land because such land is covered by an oil and gas lease, M 31026(ND), issued effective March 1, 1975. Subsequently, as to the land embraced in appellant's offer, that lease was declared null and void by decision of the BLM dated September 13, 1976. The BLM action was based on a Field Solicitor's title opinion of October 25, 1972, which indicated that the United States had no title to the minerals in the subject land and that, hence, no lease should have issued therefor. Subsequently, on the basis of material alleged to have been furnished by appellant, BLM requested a further opinion. Following receipt of a revised title opinion of February 2, 1977, indicating that the United States does hold title to the minerals in the land, BLM reinstated lease M 31026(ND) by decision of March 15, 1977.

BLM also held that the balance of the lands embraced in appellant's offer was only available for leasing pursuant to the simultaneous filing procedures established by 43 CFR Subpart 3112 because these lands were formerly embraced in an oil and gas lease which had expired at the end of its term. These lands, formerly a part of oil and gas lease M 071486(ND) which expired on March 31, 1976, had not previously been placed on the list of lands available for the simultaneous filing of oil and gas lease offers because of the 1972 title opinion stating that the United States did not own the minerals. The subsequent title opinion, supra, concluded that the United States did have title to the minerals and that they were available for leasing.

Appellant asserts that at the time his offer was filed the BLM oil and gas plat showed the tract to be acquired land owned by the

United States which was neither under lease nor the subject of any pending oil and gas lease offers. Appellant further alleges that the lessee of lease M 31026(ND) lost any rights which it may have had by its failure to appeal the BLM decision of September 13, 1976, which had declared the lease null and void. Hence, appellant argues that the BLM decision to reinstate lease M 31026(ND) was in error because the intervening offer by appellant gave him the right to any noncompetitive lease which might issue for the land as the first-qualified applicant therefor.

Appellant argues that the discovery the United States holds title to the minerals in the subject lands cannot retroactively invalidate the actions taken on the basis of the earlier title opinion. Appellant contends that the land is not subject to the simultaneous oil and gas lease offer filing procedures under 43 CFR Subpart 3112 because land "withdrawn from leasing" is specifically excluded therefrom. 43 CFR 3112.1-1. It is appellant's contention that the lands were "withdrawn" from leasing following the expiration of the prior oil and gas lease on the basis of the earlier title opinion indicating that the United States had no interest in the oil and gas.

[1, 2, 3] The first issue on appeal is whether the filing of an over-the-counter oil and gas lease offer gives rise to a preference right to an oil and gas lease for lands formerly embraced in an oil and gas lease which was erroneously canceled. By filing his offer, appellant gained no preference right to a lease. Land formerly included in an oil and gas lease which has been canceled or which has expired by operation of law at the end of its term is subject to the filing of new lease offers only in accordance with the simultaneous filing procedures. 43 CFR 3112.1-1. An over-the-counter lease offer filed for such lands is invalid and must be rejected. Thor-Westcliffe Development, Inc. v. Udall, 314 F.2d 257 (D.C. Cir. 1963), cert. denied, 373 U.S. 951; Robert S. Bickel, 31 IBLA 201 (1977); John F. Brown, 22 IBLA 133 (1975). Thus, appellant's lease offer was properly rejected as to the land formerly embraced in canceled lease M 31026(ND).

Appellant objects that his offer was not adjudicated before the Amerada Hess lease was reinstated. If appellant's noncompetitive over-the-counter oil and gas lease offer constituted an intervening right, then BLM would have been precluded from reinstating the Amerada Hess lease as to the land for which it was canceled, no appeal having been taken from the erroneous cancellation. C. T. Hegwer, 62 I.D. 77, 80-81 (1955). At the time of the Hegwer case, however, lands in canceled oil and gas leases became subject to the filing of noncompetitive oil and gas lease offers as soon as the cancellation was noted on the records -- there was no 43 CFR Subpart 3112 requirement that such lands be placed in a drawing of simultaneously filed oil and gas lease offers. As noted above, appellant herein has not been able to show that he has a legally recognizable intervening right.

The appeal also concerns whether lands within a former oil and gas lease which expired at the end of its term are available for leasing thereafter by the first-qualified offeror filing over the counter rather than by means of the simultaneous filing procedure.

Appellant's lease offer was properly rejected as to the land formerly embraced in lease M 071486(ND) which had expired at the end of its term. This land was also subject to the filing of new lease offers only in accordance with the simultaneous filing procedures and rejection of appellant's over-the-counter lease offer was required. 43 CFR 3112.1-1; Thor-Westcliffe Development, Inc. v. Udall, *supra*; Robert S. Bickel, *supra*; John F. Brown, *supra*.

Appellant argues that in at least one other case this procedure was not followed, and the regulations in effect violated. The Department has repeatedly ruled that an incorrect application of the law in prior instances is no authorization for failing to follow the regulations in subsequent situations. E.g., Mary Nan Spear, 25 IBLA 34 (1976).

Appellant's contention that 43 CFR Subpart 3112 does not apply because the subject land was withdrawn from leasing is without merit. The omission of the subject lands from any list of lands available for the filing of simultaneous oil and gas lease offers because of a question of title is not the same as a withdrawal of the land from mineral leasing. At any rate, if the subject lands were withdrawn from leasing, all offers to lease the land, including that of appellant, would have to be rejected. See Kenneth E. Sites, 13 IBLA 276 (1973); Donald Burnett, 10 IBLA 76 (1973); Tenneco Oil Company, 8 IBLA 282 (1972).

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 as modified.

Joseph W. Goss
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

