

Editor's note: 85 LD. 408; Errata noted in 85 LD. p IV; Appealed – aff'd in part, rev'd only to retroactive effect, sub nom. Runnells v. Andrus, Civ. No. C-77-0268 (D. Utah Dec. 19, 1980), 484 F.Supp. 1234

D. E. PACK (ON RECONSIDERATION)

IBLA 77-76 Decided November 9, 1978

Reconsideration of the Board's decision styled D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), at the direction of the Secretary of the Interior.

Sustained.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

2. Administrative Practice—Appeals—Oil and Gas Leases: Applications: Generally—Regulations: Applicability

A final Departmental appellate decision construing a regulation will be given immediate

effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

APPEARANCES: D. E. Pack, pro se; Philip W. Buchen, Esq., James W. McDade, Esq., Craig R. Carver, Esq., for Stewart Capital Corporation and John S. Runnells; John W. Carver, Esq., for J. G. Fritzinger, Jr.; Lawrence G. McBride, Esq., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This Board, in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), held essentially that the signature of an offeror on a drawing entry card (DEC) in the simultaneous oil and gas leasing procedures of the Bureau of Land Management (BLM) may be affixed by a rubber stamp if it is the intention of the offeror that the impressed facsimile be his or her signature, but if the signature was impressed by an agent of the offeror, the requirements of 43 CFR 3102.6-1(a)(2) apply, and if the separate statements of authority and disclosure of interest by both the offeror and the agent have not been filed, the DEC will be rejected.

Pack arose from a drawing in the BLM Utah State Office for Parcel UT 1408 in the August 1976 notice of lands available for simultaneous

filing for oil and gas lease offers. The DEC of John S. Runnells was drawn with first priority for this parcel. D. E. Pack, alleging that he had filed a DEC for this parcel, but not one drawn among the three cards given priority of consideration, protested the bona fides of the Runnells DEC. Inquiry by BLM disclosed that Stewart Capital Corporation (Stewart), acting on authority granted to it by John S. Runnells, and on Runnells' behalf, did select the land for which the DEC lease offer was made, did apply Runnells' facsimile signature to the DEC, did file the DEC with BLM, and did advance payment of the first year's rental for the lease to be issued in response to the winning priority given to Runnells' DEC. The explanation by Runnells satisfied BLM and it dismissed Pack's protest. Pack appealed to this Board. The Board reversed, holding, as pointed out above, that the absence of separate statements by Stewart and Runnells required rejection of Runnells' DEC.

On or about June 19, 1977, Stewart petitioned the Secretary of the Interior to exercise his supervisory powers and take original jurisdiction over a number of appeals pending before this Board. Petitioner alleged that Pack sets new policy contrary to prior Departmental practice, court decisions and government interests, and has applied such policy retroactively in violation of the due process rights of oil and gas lease offerors who have utilized the services of Stewart in participating in the BLM simultaneous oil and gas leasing program.

A similar petition to the Secretary was filed July 19, 1977, on behalf of J. G. Fritzinger, Jr., a client of Stewart.

A brief in opposition to the petition of Stewart was filed with the Secretary on behalf of Collins C. Diboll. Diboll had filed several DEC's in the BLM Wyoming State Office, two of which had been drawn with second priority to DEC's filed by Stewart in behalf of certain of its clients named in the petition to the Secretary.

The Secretary, by memorandum of October 5, 1977, advised the Chief Administrative Judge, Board of Land Appeals, that he had declined to exercise his jurisdiction over the petitions of Stewart and of Fritzinger, but he directed the Board to reconsider Pack, affording affected parties in this matter an opportunity to be heard. The Secretary stated that the Office of the Solicitor would appear on behalf of BLM, presenting a brief in support (of the position) of BLM's position in this matter.

On August 16, 1977, Civil Action C-77-0268, Runnells v. Andrus, was filed in the United States District Court for the District of Utah, seeking judicial review of Pack. The action was filed pursuant to section 42, Mineral Leasing Act, 30 U.S.C. § 226-2 (1976), which provides that no action contesting a decision of the Secretary involving an oil and gas lease shall be maintained unless the action is commenced within 90 days after the final decision of the Secretary relating to such matter. Pack was issued May 19, 1977.

A similar suit, McDonald v. Andrus, Civil No. S 77-0333(C), was brought September 30, 1977, in the United States District Court for the Southern District of Mississippi. This case sought review of the Board's decision, Ray H. Thames, 31 IBLA 167 (July 5, 1977), in which Thames, whose DEC was drawn with second priority protested the number one DEC filed by Stewart for its clients, Maude E. McDonald and Harriet H. Walsh. BLM dismissed the protest, but on appeal, this Board reversed BLM, and otherwise held in accord with Pack.

Following the Secretary's directive to reconsider Pack, the Department of Justice was requested to seek Consent Orders in the pending litigations to permit reconsideration of Pack by this Board. Such Consent Orders were obtained, McDonald on December 19, 1977, and Runnells on March 8, 1978.

Thereafter the Board ordered Oral Argument on Pack, to be heard June 14, 1978, with the argument limited to this issue:

Whether the formulator/amanuensis test applied by the Board in Pack is appropriate to determine the applicability of 43 CFR 3102.6-1(a)(2) (1976), when someone other than the offeror both completes the drawing entry card and, with the consent of the offeror affixes the offeror's signature to the card.

Prior to the time for the oral argument, briefs were submitted to this Board from Counsel for Stewart and Runnells, and for BLM. An amicus brief was received from counsel for Diboll.

On June 14, 1978, the Board, sitting en banc (but excepting Judges Lewis and Burski, who had recused themselves), heard the oral argument from Philip W. Buchen, Esq., on behalf of Stewart and Runnells; from John W. Carver, Esq., on behalf of J. G. Fritzinger, Jr.; from Lawrence G. McBride, Esq., on behalf of BLM; and from D. E. Pack, on behalf of himself.

[1] There is no dispute as to the facts. Stewart acts as a service agency to assist clients in participating in the BLM simultaneous oil and gas leasing programs. Under contract, each client pays Stewart a stipulated fee, for which Stewart selects parcels which in Stewart's opinion have superior value from the monthly lists of available lands issued by BLM; prepares appropriate DEC's by inserting the name of the offeror, Stewart's address, the parcel number, the facsimile signature of the offeror, and the date; and then files the DEC's in the proper BLM office. For any DEC of its clients, Stewart advances the first year's rental if the DEC is drawn with first priority; the client repays the advanced rental when billed. Stewart does not deny that it acts as the agent of its clients, with full authorization of each such client.

Stewart's argument is predicated, in part, on the holding by this Board in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), that under the present regulation, a printed or stamped facsimile signature of an oil and gas lease offeror is just as efficacious as a signature which is written manually, provided that the offeror intends

the facsimile to constitute his/her signature and to be bound thereby. Stewart maintains that under the Board's holding in Arata, then, when the authorized agent of the offeror applies a facsimile signature of the offeror, that signature should be effective, and nothing further should be required.

That argument is fallacious. Arata is distinguishable from Pack in several respects. First, there was no question of agency presented in Arata, as the offeror in that case gave her affidavit that she herself had applied her own facsimile signature to her DEC, and that the facsimile stamp had never left her possession for use by any other person. Second, the issue in Pack is not whether the stamped or printed facsimile signature of Runnells is effective if applied by his agent, Stewart. We have assumed that, under the rule in Arata, Runnells' facsimile signature can be just as valid as the one in Arata. This satisfies the requirement in 43 CFR 3112.2-1(a) that the DEC be "signed * * * by the applicant or his duly authorized agent in his behalf." See Robert C. Leary, 27 IBLA 296, 301 (1976). But that is not the issue here. We are here concerned with the question of whether separate statements of the offeror and the agent must be filed in accordance with 43 CFR 3102.6-1(a)(2) when the agent, on behalf of the offeror, writes, stamps, prints or otherwise applies the offeror's signature to the DEC.

We have previously held that where the offeror's signature was affixed by another person acting (for that purpose) purely as an

amanuensis (scribe or scrivener), there was no agency, and thus no requirement under the regulation for the filing of separate statements. Rebecca J. Waters, 28 IBLA 381 (1977). As noted in the Pack decision now being reconsidered, there is a line of Departmental decisions holding that where a leasing service holds and exercises discretionary authority to act for its client in the selection of lands, the preparation and filing of offers, the advancement of funds, etc., the leasing service is the agent of the client/offeree.

Thus, where an offeror's signature has been "signed" by another on behalf of the offeror, the test to determine whether compliance with 43 CFR 3102.6-1(a)(2) was required has been to ascertain whether the person who actually applied the signature was the offeror's agent or attorney-in-fact, or merely an amanuensis. This was the test in Pack, and it is the propriety of this test which is now at issue upon reconsideration.

The Bureau of Land Management, by counsel from the Office of the Solicitor, maintained at oral argument that anyone who signs an offer for another is exercising some degree of agency, and that therefore separate statements in compliance with 43 CFR 3102.6-1(a)(2) are always required in such cases. BLM, then, maintains that the formulator/amanuensis test is improper because it allows those who utilize the service of an amanuensis to sign their names for them to avoid compliance with the regulation, on the theory that even an amanuensis

is a species of agent. On this premise it was the hypothetical position of BLM that where the offeror was a double amputee who had no hands and requested a friend to sign the offeror's name to a DEC in his presence and at his direction, both the offeror and the friend would be obliged

to file the statements. Or, again hypothetically, where an offeror who planned to file 1000 DEC's in the coming year took a block of 1000 cards to an independent printer with a signature "cut" and had his signature printed on all the cards, BLM would require the offeror and the printer to file their own separate statements with each of the 1000 cards. Thus, BLM apparently would have this Board overrule its decision in Rebecca J. Waters, supra, wherein, due to advanced age (85 years) and infirmity, the offeror sometimes found it impossible to write her name, and had her son write it for her. In that case we held that the son was merely an amanuensis, and not the agent of his mother, and that the failure to file separate statements was not cause for rejection. The distinction between an "agent" and an "amanuensis" is explored in Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976), inter alia. While acknowledging that an employee or servant is "an agent in the broadest sense of that term," the opinion cites authority for distinguishing between an employee who is authorized to exercise discretion and one who is not.

Stewart, on the other hand, opposes the formulator/amanuensis test on the ground that it results in too broad an invocation of the regulation, in that agents who write, stamp or print the names of

their principals should not be obliged to file separate statements together with those of the offerors on whose behalf they are acting.

The six participating administrative judges of this Board are in unanimous agreement that the formulator/amanuensis test applied by the Board in Pack is appropriate to determine the applicability of 43 CFR 3102.6-1(a)(2) when someone other than the offeror affixes the offeror's signature to the oil and gas lease offer (including a drawing entry card), with the consent of the offeror.

Moreover, we are in full agreement that if the formulator/amanuensis test shows that the person who affixes the offeror's signature is the agent or attorney-in-fact of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements by both the offeror and the agent must be filed regardless of whether he signs his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Petitioners exhibited a letter on White House stationery which bore the signature of the President of the United States. The letter was a courteous acknowledgement, with appreciation, of a service performed by one of the lawyers present. The recipient opined that his letter probably was not personally signed by the President's own hand but, rather, by the operator of a signature machine at the direction

of someone who had been delegated with the discretionary authority to affix the President's signature to appropriate documents. If this assumption were correct, it was argued, the signature was nonetheless that of the President, and the documents on which such signatures are inscribed are just as valid as those which the President signed with his own hand.

This Board does not disagree. However, to our knowledge, there is no requirement that where an agent of the President inscribes the President's signature on a White House document, there be separate disclosures by the President and his agent in order to validate the instrument. Carrying the analogy a bit further, if the President's agent, fully authorized, and acting at his own discretion, filed an oil and gas lease offer in the President's name with the BLM, and inscribed the President's signature on the offer, that would trigger the need to accompany the offer with the separate statements of the President and his agent.

Petitioners further noted that there is a requirement under 43 CFR 3102.7 that every offeror declare whether he is the sole party in interest in that offer, and to disclose the identities of any other interested parties, in which event the offeror and each of the other interested parties and the offeror must file separate statements declaring the nature and extent of their respective interests. It was argued, in effect, that since Runnells (acting through Stewart's agent) had made a declaration that he was the sole party

in interest, the requirements of 43 CFR 3102.6-1(a)(2) are unnecessary, duplicative, redundant, or superfluous. That argument was presented and disposed in 1964 in the case of Union Oil of California, 71 I.D. 287 (1964), where the Department, construing the regulation (since recodified and amended), said at 292:

* * * It is true that an offeror's statement that it is the sole party in interest in the offer and lease, if issued, would be indicated by an attorney in fact's statement that neither he nor any other person has a present interest in the offer or a present agreement or understanding to acquire an interest in the lease issued in response to the offer. But this does not mean that the sole party in interest statement satisfies the necessity for the attorney's statement that there is no agreement or understanding which will permit him or another person to acquire an interest in the offer or the lease, if issued, or in royalties or an operating agreement at some time in the future.

* * * It could be argued that, if the offeror states that there is no agreement, any statement by the attorney in fact to the same effect would merely be duplicative. But the regulation nonetheless requires both to submit statements so as to insure as far as possible that a full and truthful disclosure will be made, and it does not permit the offeror to answer for the attorney in fact. By the same token, when the attorney in fact speaks for the offeror in making the sole party in interest statement, he cannot by that act speak for himself in satisfying the requirement of [the regulation].

The minority opinion implies that because the foregoing from Union Oil was written prior to the amendment of the regulation, it is no longer appropos. To the contrary, if the regulation was not duplicative in its more onerous original form, it certainly is not duplicative in its modified, less comprehensive, present form, and

the holding in Union Oil on this point was strengthened – not vitiated – by the amendment.

The minority opinion quotes from A. M. Shaffer, 73 I.D. 293, 300 (1966). The final sentence of that quotation addresses a circumstance which was not at issue in that case and therefore was not briefed or argued by any party. Thus, as acknowledged by the minority, it is pure obiter dictum, and represents little more than the conjectural musing of the author of that opinion.

The minority opinion also declares that there is no material difference between the case of Evelyn Chambers, 31 IBLA 381 (1977) (where the offerors personally affixed their signatures), and this case (where the agent affixed the signature of the offeror). This is best answered by the regulation itself, which was deliberately amended so as to draw the crucial distinction between those circumstances, and to trigger the requirement only when the agent or attorney-in-fact signs the offer. To contend that there are no material differences in the two situations, or to assert that the regulation is redundant, is to deny that when the regulation was amended, it was done purposefully with a definite object in view. That argument assumes that those involved in the amendment of the regulation, acting in ignorance of 43 CFR 3102.7 (as recodified), did a vain and useless thing. But the minority opinion also says that the original regulation "was redundant and, thus, simply not necessary." Of

course, that statement contradicts Union of California, supra, which held that the original regulation was not duplicative.

Nevertheless, even if that were the reason for amendment of the regulation, would the Department have replaced one redundant requirement with another? And even if one thought so, would that excuse him from compliance?

It is obvious that in amending the regulation in 1964, the Department desired to modify it so as to obviate the need for separate statements in every case where there was any agency involvement, and to make such filings mandatory only where the agent actually signed the offer on behalf of the offeror.

Thus, the Board adheres to its decision in Pack.

[2] Counsel for petitioners argued that if the Board adhered to its holding in Pack that separate statements must be filed where an agent affixes the facsimile signature of the offeror to the DEC, such holding should be applied only prospectively. This argument is based on the contention that Runnells' and many other lease offers were filed by DEC's with the offerors' facsimile signatures affixed by Stewart. Stewart, it is said, relied in good faith on the BLM practice of accepting such offers without requiring that they be accompanied by the separate statements of the agent and the offeror. Counsel for BLM did not oppose this request, finding support for

such prospective application of the ruling in the case of Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962).

A minority of the members of this Board would apply the Pack decision with prospective effect only, thereby allowing Runnells and others to receive the oil and gas leases notwithstanding their acknowledged failure to comply with 43 CFR 3102.6-1(a)(1). The minority would hold that the provisions of 43 CFR 3102.6-1(a)(2) should not be applied to Runnells' offer because it was filed in good faith and in reliance on BLM's practice of verifying only that the offeror intended the facsimile to be his own, and on BLM's failure to raise the question of whether agency statements were required. It is an effort to reach an equitable result, and is apparently premised on the minority's sub silentio assumption that the Government should be estopped from enforcing the rule with immediate effect. However, the elements of equitable estoppel are not present.

The minority apparently bases its opinion that Runnells' lack of compliance should be waived on BLM's failure to point out the existence of this requirement prior to the filing of Runnells' offer. But the regulations provide that the authority of the United States to enforce a public right, including the right to enforce the regulations by which it is bound (McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955)), is not vitiated or lost by the failure of its officers or agents to notify a party of the existence of regulatory

requirements. 43 CFR 1810.3(a). BLM should not be faulted for a failure to anticipate and warn prospective offerors against every pitfall in the regulations which might affect them, and its failure to warn of the existence of regulatory requirements does not excuse the party's failure to comply with these requirements. Moss v. Andrus, Civ. No. 78-1050 (10th Cir., filed Sept. 20, 1978); Burglin v. Morton, 527 F.2d 486, 490 (9th Cir. 1976); Belton E. Hall, 33 IBLA 349, 352 (1978); Charles House, 33 IBLA 308, 310 (1978); Mary Nan Spear, 25 IBLA 34, 35 (1976); James H. Scott, 18 IBLA 55, 57 (1974); see Mark W. Boone, 33 IBLA 32, 34 (1977); Arthur W. Boone, 32 IBLA 305, 308 (1977); Foster Mining and Engineering Co., 7 IBLA 299, 312, 79 I.D. 599, 605 (1972). In particular, the failure of BLM to give notice of the requirement for filing separate interest statements provides no basis for granting a lease in contravention of the oil and gas regulations. Mary Nan Spear, *supra* at 35 (1976); James H. Scott, *supra* at 57 (1974). Moreover, it is simply not true that Stewart received no notice of the existence of the agency-statement requirement. The drawing entry card itself contains a caveat expressly reminding all offerors that the terms of 43 CFR 3102 must be complied with. As the 10th Circuit observed in Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1069 (10th Cir. 1976), "[t]his is sufficient notification of the need to comply." See Verner A. Sorenson, 32 IBLA 341, 343 (1977); Leon M. Flanagan, 25 IBLA 269, 270 (1976); Ross I. Gallen, 15 IBLA 86, 87 (1974). In any event, all persons dealing with the Government are presumed to have knowledge of

duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1970); Moss v. Andrus, *supra*; Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-5 (1947).

Nor may Runnells' lack of compliance be waived because BLM allegedly failed to enforce the provisions of 43 CFR 3102.6-1(a)(2) in the past. The Department remains obligated to enforce its regulations even where, in the past, its officers may have acquiesced in forbidden conduct by erroneously failing to apply a regulation. 43 CFR 1810.3(a); Energy Reserves Group, Inc., 36 IBLA 57, 58 (1978); Tina A. Regan, 33 IBLA 213, 215 (1977); Verner A. Sorenson, *supra* at 343-4; Leon M. Flanagan, *supra* at 271; Mary Nan Spear, *supra* at 35-36; Tenneco Oil Co., 8 IBLA 282, 284 (1972). The requirements of 43 CFR 3102.6-1(a) "are mandatory and where they are not followed an offer must be rejected, regardless of any contrary action alleged to have occurred on previous occasions." Energy Reserves Group, Inc., *supra* at 57.

In Mary Nan Spear, *supra*, this Board considered a case closely analogous to the present dispute. In that case, a noncompetitive acquired lands oil and gas lease offer had been rejected because the offeror had failed to file with the offer a statement showing the extent of her ownership of the operating rights to a fractional mineral interest in the lands applied for which was not owned by the United States, as then required by 43 CFR 3130.4-4. This Board held that appellant's offer was properly rejected because she had failed

to file this statement with her offer, as required, even though BLM had not enforced this requirement previously, saying: "Nor is the requirement for a statement vitiated by appellant's assertion that the Eastern States Office [of BLM] had disregarded the regulation in the past. Such assertion, even if established by irrefragable evidence, would not serve as a valid predicate for further disregard of the regulation." Id. at 35-36.

In Tenneco Oil Co., supra, in rejecting a similar argument where the Department had admittedly erroneously issued oil and gas leases and permits in the past, the Board held as follows: "[The Department's former action] we believe to have been error. But we cannot let a desire for consistency in action blind us to the errors of past practice. It is enough that at this point in time we recognize former mistakes in the treatment of the subject land and act accordingly." Id. at 284.

In Tina A. Regan, supra, we held, "The failure of*** [an] offeror*** is not excused, and the Department is not estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease in acceptance of an offer which was deficient for the same reason." (Syllabus).

"Strict compliance with the Department's regulations may not be waived to favor an applicant who pleads good faith, ignorance of the

law, or inexperience in oil and gas leasing." W. D. Girard, 13 IBLA 112 (1973).

This has been the stated policy of the Department from the inception of this Board. "Even if appellant was able to demonstrate conclusively that prospecting permits were wrongly issued in the past, this would not militate in favor of re-enacting the wrong in this case." George Brennan, Jr., 1 IBLA 4, 6 (1970).

As Justice Jackson stated in United States v. Bryan, 339 U.S. 323, 346 (1950), "Of course, it is embarrassing to confess a blunder; it may prove more embarrassing to adhere to it."

On reconsideration, Stewart Capital Corporation and Runnells (petitioners) assert that 43 CFR 3102.6-1(a)(2) requires agency statements only where an offeror's agent signs the card in his own name. The minority opinion, while rejecting this interpretation, would waive their failure to comply with the agency statement requirement. Apparently, the minority feels that Runnells is entitled to be excused from the operation of this requirement because Stewart believed, in good faith, that the regulation did not apply. However, we do not believe that Stewart's alleged good faith protects it here. Where the regulations referred to on the drawing entry card clearly prescribe the requirements for being qualified as an applicant under

43 U.S.C. § 226(c) (1970), an offer which fails to meet these requirements is properly rejected. Moss v. Andrus, *supra*; Verner F. Sorenson, *supra* at 343; Leon M. Flanagan, *supra* at 271; Margaret Hughey Hugus, 22 IBLA 146, 147 (1975); Ross I. Gallen, *supra* at 87. The regulation is, from any reasonable interpretation, clear on its face. The ambiguity in it alleged by Stewart and Runnells stems only from their own bizarre, unreasonable, and sophistical interpretation of its language. This Board must not grant cognizance to the subjective opinions of an affected party, particularly when unreasonable, as a basis for determining whether regulatory language is properly applied to it.

The gravamen of petitioners' entire case is rooted in their contention that 43 CFR 3102.6-1(a)(2) is ambiguous, and that therefore their reasonable interpretation of its intended meaning, even if erroneous, should not be held to have deprived them of a statutory right. The principle relied on by petitioners has long been recognized by the Department and we have applied it in appropriate circumstances. See, e.g., Wallace S. Bingham, 21 IBLA 266, 82 I.D. 377 (1975). But that principle has no application to this case, because the alleged ambiguity in the regulation simply does not exist. The regulation clearly and plainly declares, "If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements * * *." Petitioners have contrived to infuse ambiguity into this easily understood mandate by giving it an interpretation

which is so bizarre and unreasonable, and so destructive of the purpose of the regulation that we simply are unable to accept it. Petitioners maintain that if an agent signs his own name to the offer and indicates that he is acting as agent for another, then compliance with the regulation is required; but if the agent writes or stamps his principal's name on the offer, compliance with the regulation is not required. This is so, petitioners contend, because when an agent writes or imprints his principal's name on the form, the agent is not "signing" the form, as it is not the agent's signature which he is writing. Therefore, runs the argument, when the signature is that of the principal, the writing of the signature by the agent is really a "signing" by the principal, not the agent, even though the principal is totally unaware of it, takes no part in it, and is not informed by his agent of its existence until after the drawing.

The purpose of the regulation is, of course, to obtain the assurance of the named offeror and the agent that the person in whose name the offer is filed is the actual offeror, and that any outstanding interest of the agent is fully disclosed. Otherwise, an unscrupulous "agent," wielding a collection of rubber-stamp facsimile signatures and listing only his own address, could file an infinite number of "dummy" offers in names taken from tombstones or telephone books, or simply invented. Alternatively, he could file offers in the name of actual principals with whom he had contracted for an interest in the lease, if issued, and the Government would have only the assurance of

the agent that no such deal had been made. ^{1/} Clearly, petitioners' completely specious interpretation of the regulation would defeat the salutary purpose of the regulation, and for that reason alone, petitioners' interpretation is unreasonable.

In the administration of the laws relating to the crime of forgery the Courts have had no reluctance to use the verb "sign" to describe the action of a person who writes the signature of another person. For example, in Greathouse v. United States, 170 F.2d 512 (4th Cir. 1948), the Court used the verb "to sign," or derivatives thereof, repeatedly in that context; e.g., "to sign the name of another * * * to sign a note in the name of a fictitious firm * * * signed by the defendant under a pretense that he has been authorized by an existing person to sign his name * * * signed the names of the makers * * *, etc." (Emphasis added.) Similarly, in Milton v. United States, 110 F.2d 556, 560-61 (D.C. Cir. 1940), the Court said, "It is well settled that the signing of a fictitious name, with fraudulent intent, is as much a forgery as if the name used was that of an existing person." (Emphasis added.) In United States v. Metcalf, 388 F.2d 440, 442 (4th Cir. 1968), the Court said "one who signs a check or other paper with a fictitious name * * *." (Emphasis added.) In United States v. Bales, 244 F. Supp. 166, 168 (D. Tenn. 1965),

^{1/} Of course, under petitioners' theory of the case, even this limited assurance would be unverified, since the agent would not be "signing" the declaration, and his principal—if he existed—would be unaware of it.

was said, "[T]he Court is inclined to the view that when [defendant] signed the phony name * * *." (Emphasis added.) This opinion also quotes from an annotation at 49 A.L.R. 2d 852: "[T]he name signed to the instrument must purport to be the signature of some person other than the one actually signing it. Thus, under the broad definition, forgery may be committed by signing the name of a fictitious person * * *." (Emphasis added.)

There is a vast abundance of other cases employing the verb "sign" to describe the act of affixing a signature other than one's own. Thus, the mandate of the regulation for separate disclosures "[i]f the offer is signed by an attorney in fact or agent" cannot be avoided by the semantical contention that the offer is not "signed" by the agent if the signature he affixes thereto is that of another.

Having rejected the contention that the regulation expresses an ambiguity, we must reject the notion that petitioners' failure to comply may be waived because they allege they misunderstood it.

In support of its contention that the agency-statement requirement should not apply to Runnells' offer, petitioners cite Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962), affg Franco Western Oil Company (Supplemental), 65 I.D. 427 (1958). The present situation is entirely different. In the first Franco Western Oil Company, 65 I.D. 316 (1958),

a statutory interpretation announced in Associate Solicitor's Opinion, M-36443 (June 4, 1957), was expressly overruled in favor of the opposite interpretation. Between June 4, 1957, and August 11, 1958, leases were issued based on the policy formally announced and published in M-36443. After August 11, 1958, these leaseholders, and others, became concerned about the status of these leases, in view of the different policy set out in the Franco Western decision of August 11, 1958. In response to challenges against the continued validity of these leases, the Department held in Franco Western (Supplemental), supra, that it is not "the practice of the Department to give its decisions retroactive effect so as to disturb actions taken in other cases based on an overruled interpretation of the law." Id. at 428. In the first Franco Western, supra, the Department had reversed a formal, written Solicitor's opinion (M-36443) announcing its holding on a point of law, which it then applied to several cases. In Franco Western (Supplemental), supra, the Department simply recognized that parties who were granted rights by BLM pursuant to a policy, set out in a formal, written decision by the Department's official decisionmaker at the time, were entitled not to have these rights disturbed. On appeal before the D.C. Circuit, the court approved the rule set out in Franco Western (Supplemental), supra, saying:

Where the Department of the Interior has decided that a statute should be given a different interpretation than that reflected by its earlier decisions and that such

decisions should be overruled, it has been a rule in the Department since at least as far back as 1917 not to give its later decisions retroactive effect, especially when to do so would adversely affect actions taken and rights and interests acquired by private persons on the faith of the earlier decisions and would inure to the benefit of other private persons. [Emphasis supplied.]

Safarik v. Udall, supra at 949. The court held that the revised interpretation would be given prospective application only, and that rights given to persons by BLM in following the previous official statement of the interpretation would not be disturbed. However, the prospective-operation rule is expressly limited to situations in which the Department "hands down a decision placing a different construction on a statute or regulation from that laid down in an earlier decision or regulation." Id. at 950 (emphasis supplied); see also Brandt v. Hickey, 427 F.2d 53, 57 (9th Cir. 1970), allowing relief only "where the erroneous advice was in the form of a crucial misstatement in an official decision." (Emphasis supplied.)

The instant case is quite different. Here, we have overruled no previous holding concerning the agency-statement requirement on which Stewart and Runnells relied or on which parties had previously received oil and gas lease rights. There had been no official decision announcing the Department's position on this question published prior to Stewart's filing of the Runnells offer. In such circumstances, the doctrines set out in Safarik v. Udall, supra, and Brandt

v. Hickel, supra, do not apply, and we are not prevented from applying the effect of the regulation in the present case. See Leon M. Flanagan, supra at 271.

To the contrary, it is clear that we may, and should, apply this decision to the case before us, and not just prospectively. In Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 203 (1947), 2/ a landmark in judicial review of administrative procedures, the Supreme Court held as follows:

* * * That [agency] action might have a retroactive effect [is] not necessarily fatal to its validity. Every case of first impression has a retroactive effect, whether the new principle is announced by the court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal or equitable principles. If that mischief is greater than the ill effect

2/ In Chenery, supra, the Supreme Court allowed the retroactive application of a rule even though the ill effects of doing so were much greater than in the instant case. There, the SEC had ordered the parties to surrender stock purchased by them, at original cost, plus interest, despite the total absence of any previous decision by SEC by which they could have known that they were violating SEC restrictions on securities trading by purchasing the stock. Thus, the SEC's order barred the shareholders from realizing a profit on the shares in question. This totally unexpected and unforeseeable financial loss was clearly a severe "ill effect." Nevertheless, the Supreme court did not disturb SEC's conclusion that the ill effect of voiding the purchases was outweighed by the adverse effect on securities regulation which might result from allowing the sales to stand. In the instant case, the rejection of Runnells' offer was reasonably foreseeable, had Stewart heeded the requirements of the regulations, and, therefore, the ill effect is much less onerous than that recognized as acceptable by the Supreme Court in Chenery.

of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.

The instant case is, effectively, a case of first impression before the Department. The Board had previously announced in Robert C. Leary, *supra*; Evelyn Chambers, 27 IBLA 317 (1976); William J. Sparks, 27 IBLA 330, 83 I.D. 538 (1976); and Rebecca J. Waters, 28 IBLA 381 (1977), that the plain meaning of 43 CFR 3102.6-1(a)(2) applied and that, accordingly, agency statements were due where agents, such as Stewart, affixed facsimiles of offerors' signatures on the drawing entry cards on their behalf. However, Stewart had not received notice of these decisions at the time it filed Runnells' offer.

Applying the Supreme Court's analysis here, it is clear that the "ill effect" of applying the agency-statement rule to Runnells' offer is far less than the "mischief" to the oil and gas simultaneous offer system, especially the "mischief" to other qualified oil and gas offerors who would otherwise be entitled to obtain the leases affected.

The only "ill effect" of applying the rule in this case would be that Runnells (and others who would benefit from its prospective application) will not receive a lease. On the other hand, prospective application would allow each such unqualified offeror to receive an oil and gas lease in place of another offeror who has complied

with all the regulations applicable to oil and gas lease offers, and thus has statutory priority.

Such a result would be "contrary to a statutory design," in that, under 30 U.S.C. § 226(c) (1970), only "the person first making application for the lease who is qualified to hold a lease" is entitled to receive it. This section "is mandatory in directing that a lease be issued to the person (a) who first makes application and (b) who is qualified under certain other sections of the Act to hold a lease." McKay v. Wahlenmaier, supra at 39 (emphasis supplied). The instant case concerns the former requirement, i.e. whether Runnells' application "was in such form and was filed in such circumstances that he was entitled to have it entered in the drawing. In other words, was he properly qualified as an applicant?" Ibid. The standards for determining whether one is "qualified as an applicant" are set by the Secretary through rules and regulations adopted for this purpose. 30 U.S.C. § 189 (1970); Thor-Westcliffe Development v. Udall, 314 F.2d 257, 259-60 (D.C. Cir. 1963), cert. denied 373 U.S. 951 (1963); McKay v. Wahlenmaier, supra at 42-43; Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27 (1974), aff'd Ballard E. Spencer Trust v. Morton, supra. Unless arbitrary or capricious, each of these regulations has "the force of law" and must be met in order for an offeror to be considered to have filed a valid application. Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621, 629 (1950); Thor-Westcliffe Development Co. v. Udall, supra at 259-60; McKay v. Wahlenmaier, supra at 43.

The Board has held that Runnells did not meet one of these regulatory requirements. He did not submit a valid application, and, therefore, was not qualified as an applicant. A holding to the contrary would work the mischief of ignoring this statutory mandate at the expense of another offeror for parcel UT 1408 in the August 1976 drawing in the Utah State Office, BLM, who met all the qualifications of the regulations, and who is therefore the person to whom this lease must be awarded. Allowing an unqualified first-drawn entrant to receive a lease would infringe on the rights of the second-drawn qualified offeror. See Ballard E. Spencer Trust, Inc. v. Morton, *supra* at 1070. See also Boesche v. Udall, 373 U.S. 472, 485 (1963); Moss v. Andrus, *supra*; Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 654 (10th Cir. 1966). Moreover, to do so would be irreconcilably at odds with the Department's obligation to follow its own regulations. McKay v. Wahlenmaier, *supra*. This statutory mandate and the judicially directed obligation of the Department to recognize only interests of the true qualified offeror require that Runnells' offer be rejected. 3/

3/ As the D.C. Circuit observed in Thor-Westcliffe Development v. Udall, *supra*, although the Department is given permission by the Act to take certain discretionary acts, "it is [not] permitted to grant a lease to one other than 'the person first making application.'" *Id.* at 259. It is only by compliance with the Department's implementing regulations that one may qualify as an applicant. *Id.* at 259-60. As we observed in Ballard E. Spencer Trust, Inc., *supra* at 27, *aff'd Ballard E. Spencer Trust, Inc. v. Morton*, *supra*:

"[I]f the first drawn offer is not acceptable by reason of some failure to comply with the regulation it cannot be afforded a priority as of the time it was officially filed. The next drawn offer in-

The closely correlative case of Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965), dealt with an oil and gas applicant's failure to comply with the requirements of this same regulation (since somewhat amended) to disclose an agency interest and an agency relationship. The Court held that the discovery of this defect, upon subsequent investigation, rendered the mineral lease offers ineffective, saying, at 198:

[3] Appellants contend that there is some evidence of a departmental practice in the past to apply the agency regulation only in those cases where the lease offer purports on its face to be signed by an agent and where the agent is shown to have made the selection of the lands. In this latter respect, it is claimed that there has been no opportunity to show that appellants did in fact select their own lands. But the regulation does not, in our reading of it, say or fairly imply that these conditions attach; and, whatever may have been their recognition within the Department on other occasions, we do not think that the Secretary was disabled from applying the regulation in this instance in what clearly appears to have been not only its letter but its spirit. * * * [Emphasis in original.]

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

fn. 3 (continued)

acceptable forms earns priority as of the date and time of the simultaneous filing, and that offeror is first qualified as a matter of law to receive the lease. See 43 CFR 3112.2-1(a)(3); 43 CFR 3112.4-1; McKay v. Wahlenmaiers, [supra]; Duncan Miller, 17 IBLA 267, 268 (1974)."

decision styled D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), on reconsideration, is hereby affirmed and sustained.

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge

Joseph W. Goss (Concurring separately)
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

While the case has been well argued and briefed, I feel that 43 CFR 3102.6-1(a)(2) is sufficiently clear. Robertson v. Udall, 349 F.2d 195, 198 (D.C. Cir. 1965), cert. denied sub nom. Miller v. Udall, 385 U.S. 929 (1966). Accordingly, the Department must focus its concern not only on John S. Runnells, the No. 1 drawee, but also on the interests of Scott A. Harris and Judith S. Bolander, whose cards were drawn second and third. Further, the Department must also keep in mind the interests of the second and third drawees in such cases as Robert C. Leary, 27 IBLA 296 (1976), decided prior to Pack. ^{1/} Priority is earned not only by an offeror's card being first drawn but also by his timely filing of the required documents. 43 CFR 3112.4-1.

The dictum in A. M. Shaffer, 73 I.D. 293 at 300 (1966), is contrary to the view of the Circuit Court in Robertson, supra. In Pack, the second and third drawees Harris and Bolander had of course no opportunity to present their views during the Shaffer deliberations in 1966. Their interests should not now be prejudiced by application of an incorrect statement in 1966 dictum.

^{1/} The several appeals consolidated in Leary are again before the Board as IBLA 77-245 et al.

The penalty for noncompliance with the regulation is also sufficiently clear, despite the recodification of 1970. The penalty was previously expressly set out in the various codes. E.g., 43 CFR 192.42(g) (1964); 43 CFR 3123.3(b) (1965), (1969), (1970); Union Oil Company of California, 71 I.D. 287, 292 (1964), sustained in Union Oil Company of California v. Udall, Civ. No. 2595-64 (D.D.C. filed December 27, 1965). In the revisions of May 12, 1970, section 3123.3(b) was transferred to section 3111.1-2(a)(4), which pertains to regular offers rather than simultaneous filings. It now appears as section 3111.1-2(d). The 1970 recodification, however, contains the following statement: "It is the Department's intent in this revision to make no substantive changes in the regulations." 35 FR 9502 (1970).

In Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976), the Tenth Circuit ruled in effect that the former consequences continued to obtain for failure to file the corporate information required by 43 CFR 3102.4-1, although the 1970 recodification was not discussed. The same approach has been followed by the Department in the numerous decisions cited by majority, supra. It is of course most logical for a similar approach to be applied for the determination of priority in all noncompetitive leasing, whether the offer be "regular" or "simultaneous."

Here the regulation does afford a corroboration as to the matters required. In McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955), the Circuit Court held that in the determination of priority the Secretary must give effect even to those regulations of lesser significance:

It is argued that, since the Secretary devised the regulation, he alone has the right to say what the consequences of violating it shall be. Whether that is so, we need not decide. The Secretary is bound by his own regulation so long as it remains in effect. * * * He is also bound, we think, to treat alike all violators of his regulation. He may not justify, simply by saying the violation is unimportant, his departure in a single case from an otherwise consistent policy of rejecting applications which do not conform to the regulation. [Footnote omitted.]

Joseph W. Goss
Administrative Judge

CHIEF ADMINISTRATIVE JUDGE FRISHBERG DISSENTING IN PART:

The specific issue that confronts us is whether Stewart knew or should have known when it affixed Runnells' signature that the "offer [was being] signed by an attorney in fact or agent." If it knew or should have known, as the majority holds, then its (and Runnells') failure to file the statements required by 43 CFR 3102.6-1(a)(2) compels rejection of the offer. If not, Runnells should not be deprived of his statutory preference right to a lease. A. M. Shaffer, 73 I.D. 293 (1966).

Whether Stewart knew or should have known depends upon the applicable statutes, regulations and case precedents, if any, at the time it affixed the stamp. There is nothing helpful in the statutes. Since this offer was submitted in August 1976, and since Robert C. Leary, 27 IBLA 296 (1976), the first case in which this Board announced its interpretation of 43 CFR 3102.6-1(a)(2) as applicable to those, such as Stewart, who affixed offerors' signature stamps, was not decided until October 26, 1976, there were no prior holdings in point. Thus, Stewart and Runnells were left with the regulation itself and whatever prior decisions which shed some light on the subject, however indirectly.

I am persuaded that the language of 43 CFR 3102.6-1(a)(2), its history, its purpose, and its prior application, coupled with a

reasonable interpretation of A. M. Shaffer, supra, and Mary I. Arata,

4 IBLA 201, 78 I.D. 397 (1971), result as reasonably in petitioners' interpretation as in the majority's. Indeed, BLM, the Secretary's delegate in administering the Mineral Leasing Act, interpreted it as did petitioners. 1/

Prior to April 1964, 43 CFR 3102.6-1(a)(2), then 43 CFR 192.42(e)(4)(i), provided in pertinent part:

(e) Each offer, when first filed, shall be accompanied by:

* * * * *

(4)(i) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person * * * by which the attorney in fact or agent or such other person is to receive any interest in the lease when issued, * * * giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State * * *. The statement by the principal

1/ This case arose from approval by BLM of the Runnells offer. As stated in the Bureau's brief and by Mr. McBride of the Office of the Solicitor in oral argument (Tr. pp. 40, 52-3, 55-6, 85, 88-9), it was the position of BLM since Arata that Stewart's practice of affixing offerors' signatures without filing an initial statement did not violate the agency regulation.

(offeror) may be filed within 15 days after the filing of the offer. [Emphasis added.]

On April 1, 1964, the regulation was amended (and renumbered as 43 CFR 3123.2(d)(1)) by deleting the underlined portion, thus beginning as follows:

(d)(1) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror * * *.

The remaining language of the regulation is essentially identical to that of its predecessor, as is the present regulation, 43 CFR 3102.6-1(a)(2). The citizenship and acreage limitation requirements remain, as does the 15-day allowance for filing a statement by the offeror.

The judicial precedents interpreting the pre-1964 regulation were discussed in A. M. Shaffer, supra at 299:

The regulation requiring the showing as to evidence of authority of the agent and the statement of interest by the agent formerly required the statement not only where the offer was signed by an attorney in fact or agent (as the regulation now provides) but also where the attorney in fact or agent had been authorized to act on behalf of the offeror with respect to the offer or lease, 43 CFR 192.42(3)(4) (1954 ed.). In applying this regulation, the United States Court of Appeals for the 10th Circuit found that where an offer in the name of a principal had been signed by the principal himself, but an agent had authority to act in his behalf as to the lease both before and after

the offer to lease was filed, the agent was properly required to furnish the statement and the offer was defective in the absence of such a statement. Pan American Petroleum Corp. v. Udall, 352 F.2d 32 (10th Cir. 1965), upholding Charles B. Gonsales et al., 69 I.D. 236 (1962), and distinguishing, upon the basis of a difference in showing as to the agent's continuing authority, Foster v. Udall, 335 F.2d 828 (10th Cir. 1964), which reversed Eugenia Bate, 69 I.D. 230 (1962). The Court in Pan American and also a Court in another case applying the same regulation, Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965), emphasized that the type of work performed by the undisclosed agent in preparing the forms, in some instances selecting the lands, and negotiating for the sale of the leases was the very type of agency relationship contemplated by the regulations. In the Robertson case, supra, indeed, some of those actions were not performed by the agents, yet the agency relationship and the applicability of the regulation as determined in the Departmental decision, Evelyn R. Robertson et al., A-29251 (March 21, 1963), was upheld.

In those cases, the name of the agent and his relationship to the principal and interest in the offer were not disclosed when the offer was filed. * * * [Emphasis added.]

Not only did the filing in Robertson offend the pre-1964 requirement to provide a statement by an undisclosed agent, but it was also found that the agent held a major interest in every filing made by each principal. In Pan American the only defect was failure to disclose the agency relationship.

In light of the elimination of the regulatory requirement to submit a statement by an undisclosed agent, neither case remains authority on that issue. Indeed, contrary to the holdings in both cases, we have recently held that where an entry card is signed by the offeror but completed by an agent, the separate statement by the

agent required by 43 CFR 3102.6-1(a)(2) need not be filed. Virginia A. Rapozo, 33 IBLA 344 (1978); D. E. Pack, 31 IBLA 283 (1977).

What, then, does 43 CFR 3102.6-1(a)(2) require? The majority bases its interpretation of the regulation on its purpose, i.e., in order to insure fairness to all offerors in a drawing, it is necessary to obtain the assurance of the named offeror and the agent that the person in whose name the offer is filed is the actual offeror, and that any outstanding interest of the agent is fully disclosed. But, if this is so, why did the Department eliminate the requirement of a statement by an undisclosed agent?

The answer is contained in the regulations and their interpretation by the Court in Pan American, supra, and by the Department in Shaffer, supra. The requirement was redundant and, thus, simply not necessary. ^{2/} To insure against one person having an interest in more than one offer in a drawing, 43 CFR 3102.7 (formerly 3123.2(c)(3), formerly 192.42(e)(3)(iii)) 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 forth the names of the other interested

^{2/} The majority invokes Union Oil of California, 71 I.D. 287 (1964), to answer this argument. But that case was governed by the pre-1964 regulation. More important, its rationale was implicitly modified by the distinction subsequently made in Shaffer between the purpose of 3102.6 and that of 3102.7.

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.

The requirements and limitations of each regulation, 43 CFR 3102.6-1(a)(2) and 3102.7, are clearly delineated in

Shaffer, supra at 300:

The agency provisions make a clear distinction between the agent and the offeror. They also clearly refer to signing of the offer by the agent in behalf of the offeror. They should be read then to apply only to those offers where the principal is named as the offeror and the agent signs in his behalf as his agent. [Footnote omitted.] As previously pointed out, under the former wording of the regulation a statement was required even though the agent did not actually sign the offer in behalf of the offeror. The Court in the Pan American case, supra, noted (at 35) that the regulation had been replaced "by an apparently more sensible one requiring directly the disclosure of all outstanding interests in offers to lease." ^{3/} From the discussion in that case it would appear that the situation it involved would be considered covered now by 43 CFR 3123.2(c)(3), the sole party in interest regulation [now

^{3/} The Court was inaccurate in stating that the agency regulation had been replaced by one requiring direct disclosure. As pointed out above, both regulations were in existence in 1964, when the undisclosed agent requirement was deleted from the agency regulation.

43 CFR 3102.7] and that the agency regulation [now 43 CFR 3102.6-1(a)(2)] could, not unreasonably, be interpreted by offerors as covering only situations where the principal is named as the offeror and the agent signs the offer expressly as his agent. [Emphasis added.]

While the discussion quoted is dictum, it is, to my knowledge, the only interpretation of the amended regulation published by the Department before Stewart submitted the Runnells offer.

The above-quoted distinction between the agency regulation, 3102.6-1(a)(2), and the interest regulation, 3102.7, is supported by subsection (b) of 43 CFR 3100.0-5, "Definitions":

(b) 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 to lease 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 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. * * * [Emphasis added.]

The "sole party in interest" definition and its purposes are keyed to section 3102.7, entitled "Showing as to sole party in interest," rather than to the subsections of 3102.6, which section is entitled

"Attorney-in-fact." As summarized in Shaffer, supra at 300: "In short, the purpose of disclosure underlying the agency provisions is satisfied by compliance with the real party in interest provision."

Thus, the purpose ascribed to 3102.6-1(a)(2) by the majority, i.e., assurance of fairness to all offerors by disclosure of all interests in each offer, is, rather, the express purpose of 3102.7. This comports with the interpretation of 3102.7 by the court in Pan American and the Department in Shaffer.

True, 3102.6-1(a)(2) requires a statement by an agent as to whether or not there is an agreement between him and the offeror by which the agent has or is to receive any interest in the lease and, if so, the citizenship and acreage interests of the agent. Since the statement of interest is also required by 43 CFR 3102.7, and since an undisclosed agent need not file a statement pursuant to Rapozo, supra, and Pack, supra, 3102.6 can only be read as a complement to 3102.7, a safety device. That is, when the offer is signed by an agent as an agent, the Department is put on notice that a person other than the named offeror is not only involved in preparing or submitting the offer, but may have an interest in the offer. Accordingly, when that person signs as an agent he must divulge evidence of his authority to bind the offeror (3102.6-1(a)(1)) and of any agreement giving him an interest in the offer. 3102.6-1(a)(2). But, since 3102.7 always requires all interests in the lease

offer to be divulged, the 3102.6 requirement is only triggered where "the principal is named as the offeror and the agent signs the offer expressly as his agent." Shaffer, supra.

In this case Stewart affixed the signature stamp of Runnells with the latter's consent. The stamp was a reproduction of Runnells' written signature. In Mary I. Arata, supra, we held that a stamped signature on a simultaneous oil and gas lease offer was acceptable, "provided it was the applicant's intention that the stamp be his signature." Id. at 4 IBLA 203-4. ^{4/} And, as held by at least one case cited in Arata and others, the stamp need not be affixed by or in the presence of the person whose signature it purports to be. Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir. 1951), cert. denied, 342 U.S. 820 (1951); Kadota Fig Ass'n of Producers v. Case-Swayne Co., 73 C.A. 2d 815, 167 P.2d 523 (1946). In State v. Liberty National Bank and Trust Co.,

414 P.2d 281, 286-7 (Okla. 1966), the Supreme Court of Oklahoma held it to be

the fundamental rule that when an agent, acting within the scope of his authority, affixes the name of his principal to a writing, it is, in law, equivalent to an actual signing by the principal. Elliott v. Mutual Life Ins. Co., 185 Okl. 289, 91 P.2d 746; 3 Am. Jur. 2d Agency, Section 261. In the instant case, the defendant, by its

^{4/} Prior to Arata, BLM had consistently rejected oil and gas lease offers having a stamped signature.

stamped endorsement, guaranteed to the plaintiff that the payee's signature upon each warrant was genuine and it is.

Even though affixed by Stewart, it was obviously Runnells' intent that the stamp be his signature, and it was, as he so indicated in an affidavit dated October 26, 1976. At that time the BLM State office dismissed the protest of Pack and was prepared to issue an oil and gas lease to Runnells.

If Runnells had personally affixed the stamp to a blank card and Stewart had acted identically in selecting the parcel, preparing the card, etc., the Board would have held that no statement by Stewart was required by 43 CFR 3102.6-1(a)(2). Evelyn Chambers, 31 IBLA 381 (1977). 5/ There is no material difference between that case and the factual situation before us. In both Stewart is an undisclosed agent with discretion to select the parcel, submit the card, etc. 6/ In both cases Runnells intended the stamped signature to be his signature. In both cases Runnells is the sole party in interest. 7/

Moreover,

5/ Although in Robert C. Leary, supra, and subsequent cases we held that since a facsimile signature does not raise a presumption that it was affixed with the intent of the offeror, it is proper for BLM to require the offeror to supply a statement of the circumstances under which the stamp was imprinted and the offers formulated. If, on the other hand, the offeror's signature is holographic, then it matters not whether the card was blank when signed and an undisclosed agent designated the parcel, submitted the offer, etc. Such an offer has been held to be perfectly proper on its face. Virginia Rapozo, supra.

6/ Unlike the situation in Ballard E. Spencer Trust, Inc., 544 F.2d 1067 (9th Cir. 1976), where 43 CFR 3102.4-1 clearly requires a corporate offeror to submit evidence of its corporate qualifications.

7/ Unlike the facts in Robertson, supra, and McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Dir. 1955), both cited by the majority in support of its

in both cases this Board regards the stamped signature as that of Runnells. Finally, in both situations opportunities for mischief exist. ^{8/}

Clearly, 43 CFR 3102.6-1(a)(2) is at best ambiguous as to the need for Stewart to have filed the separate agency statements required therein. Moreover, there is ample authority that Stewart's and Runnells' interpretation of that regulation, in light of Arata, the other applicable regulations and case precedents, both Departmental and judicial, is the correct one. This was also BLM's interpretation and guided the practice of most of its officials administering oil and gas lease offers for 5 years, between December 30, 1971 (Arata), and October 26, 1976 (Leary). Under comparable circumstances the Department has stated that lease offers drawn first in a simultaneous filing would not be rejected, even though the applicants had not complied with Departmental regulations. A. M. Shaffer, *supra*. The effect of ambiguity in the regulations and the Department's holding in Shaffer are summarized by the following excerpts from the decision:

In considering whether regulations should be interpreted to the detriment of persons seeking oil and gas

fn. 7 (continued)

position. In those cases the agent had an undisclosed interest in the lease offers.

^{8/} The possibility of the manufacture and use of fictitious signature stamps based upon voting lists, cemetery registers, etc., is not appreciably increased where only the offeror can affix the stamp. Even where the offeror must physically sign the cards, similar possibilities of forgery and chicanery exist.

leases who would have a statutory preference to a lease, * * * the regulations should be so clear that there is no basis for the applicants' noncompliance, and if there is doubt as to their meaning and intent such doubt should be resolved favorably to the applicants. See William S. Kilroy et al., 70 I.D. 520 (1963); Donald C. Ingersoll, 63 I.D. 397 (1956).

73 I.D. at 298.

It is true that the Shaffer offers did not comply with the agency provisions when filed since they were not accompanied by evidence of the authority of the agent to sign in behalf of the offerors nor was there submitted with them the statement required of an agent concerning his arrangements with his principal. However, it is our conclusion that the agency provisions are not so clearly applicable that appellants should be held in compliance with them.

Id. at 299-300.

* * * The interests of both the agent and principal have been revealed so neither of them could obtain any advantage in a drawing of simultaneously filed offers. The qualifications of both to hold a lease have been set forth so there is no question in that respect. In short, the purpose of disclosure underlying the agency provisions is satisfied by compliance with the real party in interest provision [i.e., now 43 CFR 3102.7].

Since neither the letter nor the spirit of the agency regulation has been clearly violated in these circumstances, we believe that any doubt as to the application and interpretation of the regulation should be resolved in the appellants' favor and that they should not be penalized for failing to comply with provisions of the regulation whose applicability is far from certain.

Id. at 300.

The majority makes much of the proposition that because Runnells is not a qualified offeror, he cannot defeat the statutory preference rights of qualified offerors drawn second and third, citing McKay v. Wahlenmaier, *supra*; Robertson, *supra*; Ballard E. Spencer Trust, Inc., *supra*, and other cases. But this begs the question. As pointed out in footnotes 5 and 6, the offerors in these cases either had interests in other leases or did not comply with the requirements of other regulations. Here, as in Shaffer, the only defect was the lack of an accompanying statement of the agent's interest. As in Shaffer, neither Runnells nor Stewart violated the substantive requirements of 43 CFR 3102.6 or 3102.7. And, as in Shaffer, the "agency provisions are not so clearly applicable that [petitioners] should be held in compliance with them."

Accordingly, although I concurred in the decision we are reconsidering, D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), I would vacate that decision and affirm the decision of BLM awarding the lease to Runnells. However, because I agree with the majority that 43 CFR 3102.6-1(a)(2) should properly be interpreted as requiring submission of the separate statements by agent and offeror where the agent affixes the signature of the offeror, I would hold that such interpretation and the requirements that flow therefrom be applied prospectively. See Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962).

This leaves the question of the date from which the requirements were or should be required. The earliest date would be that of dissemination of the first decision in which we so interpreted the regulation, Robert C. Leary, supra; its date was October 26, 1976. Since dissemination of that decision took some time, a reasonable date would be January 1, 1977.

Since Leary, Stewart and its offeror clients have been attempting to comply with that holding and its interpretation of the requirements of 3102.6 by submitting statements of interest by agent and offeror. The latter's signature is affixed - presumably by Stewart - by the same signature stamp as that on the offer. This practice has been condoned by many officials of BLM. When the problem reaches us, as it inevitably must, application of the majority rationale would compel the conclusion that the offerors' statements must be signed by the offeror personally. The question that follows is whether the offeror may affix his signature by stamp or must sign by hand. In fairness to BLM, petitioners and the public, and since the practice germinated from our decision in Leary, I feel that we can and should rule on that question now, for it flows directly from the issue before us, coupling that ruling with our holding in this case.

Therefore, I would hold that this decision, requiring the submission of the statements required by 43 CFR 3102.6, be prospective

and take effect January 1, 1979. This would provide sufficient time for its dissemination. In addition, it is my opinion that the past practice of signing such statements by affixing the stamp of the offeror was not clearly in violation of 3102.6, regardless of by whom affixed. Thus, those offerors whose signatures were so affixed "should not be penalized for failing to comply with provisions of the regulations whose applicability is far from certain." Shaffer, supra. However, I would hold that from January 1, 1979, such statements must be signed by the offeror in ink and by hand.

Unfortunately, 43 CFR 3102.6-1(a)(2) remains ambiguous, as does 43 CFR 3112.2-1(a), requiring offers to lease to be "signed and fully executed by the applicant or his duly authorized agent in his behalf," which led to our holding in Arata. Nor has this Board been a model of clarity. While Mary Arata submitted an affidavit that she stamped the card with the intention of it being her signature, the Board never stated that the stamp need be affixed by the offeror. On the contrary, our language was quite broad, and, in conjunction with the cases cited, implied that the offeror's intent should govern, not who stamped the card.

I feel the Board was correct in its holding on the narrow issue confronting it in Arata. However, it was obvious to us and should have been obvious to the Department that in order to resolve one ambiguity we raised others. I seriously question

Department intended to provide in 43 CFR 3112.2-1(a) that simultaneous offers could be signed with a stamp - by the offeror, agent, attorney-in-fact, or anyone else. I doubt that the Department contemplated use of a stamp when it decided Shaffer. But our function is the interpretation and application of existing law and policy, not their formulation. Granted, interpretation and formulation are not always capable of separation. Nevertheless, judicial restraint is imposed upon us in a very real sense and we must be wary of rulemaking by adjudication. Thus, we hoped the Department would resolve the regulatory ambiguities that lead to and flowed from Arata by rulemaking. Unfortunately, it never did. The public, BLM, and the Board were left to grapple with the ensuing problems on an ad hoc basis.

In his memorandum of December 19, 1977, directing the Board to reconsider its earlier decision herein, the Secretary stated as follows:

The issue intended to be covered * * * [is]

Whether the formulator/amanuensis test applied by the Board in Pack is appropriate to determine the applicability of 43 CFR 3102.6-1(a)(2) (1976) when someone other than the offeror both completes the drawing entry card and, with the consent of the offeror, affixes the offeror's signature to the card?

The Board, of course, may exercise its discretion and consider other issues presented by that case.

In addition, the Board may consolidate the reconsideration of Pack with other cases presenting similar issues. * * *

The Board in its Order of March 31, 1978, granting reconsideration and scheduling a pre-briefing conference, limited the proceeding to the formulator/amanuensis issue defined by the Secretary.

Therefore, although I would be tempted to overrule Arata, with prospective effect, and interpret 3112.2-1(a) as requiring holographic signatures, such holding would be manifestly unfair to all parties before us. However, I urge the Department to consider such an amendment, as well as others, in order to clarify its intentions regarding the simultaneous filing procedures.

Newton Frishberg
Chief Administrative Judge

I concur.

Douglas B. Henriques
Administrative Judge

