

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 36385.

Reversed and remanded.

1. Notice: Generally -- Rules of Practice: Generally

Service of a BLM decision may be made by sending the document by registered or certified mail, return receipt requested, to an applicant's address of record in the Bureau, and it is irrelevant who there actually receives and signs for it.

2. Oaths -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Words and Phrases

"Certified." Under 43 CFR 1821.3-1(a), additional information submitted by an oil and gas offeror pursuant to a request by BLM need not be in affidavit form. A request for a "certified" copy of an unrecorded document in the possession of its owner connotes the intention that the owner attach an affidavit attesting to its authenticity.

3. Oil and Gas Leases: Applications: Generally

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by BLM to submit a copy of any agreement she may have with another person concerning

the lease offer, submits a copy of an agreement which incorporates by reference a brochure issued by the leasing service with which she had an agreement, but not a copy of the brochure, she has not fully complied with the directive, but may be granted an opportunity to submit the brochure where no specific request for it had previously been made by BLM and the need to include it may not have been apparent.

APPEARANCES: Don M. Frederic, Esq., Hunker-Frederic, P.A., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Martha P. Merrill has appealed from a decision of the New Mexico State Office of the Bureau of Land Management (BLM), rejecting offer NM 36385 to lease for parcel No. NM 556 oil and gas. In the public drawing, No. 1 priority for parcel NM 556 was awarded to appellant. As a result of appellant having an address common with other applicants, BLM required, by certified mail, that she submit within 30 days additional information concerning the common address, a personally signed statement describing the circumstances of her filing, and a "certified" copy of the contract or agreement between herself and her lease agent, association, or corporation by which the filings were made. The BLM decision so requiring, although marked "restricted delivery," was accepted by an M. E. Emans at the common address. In the interim, No. 3 priority holder, Frank Getscher, filed a protest of the No. 1 priority standing of appellant. Within the allotted time period, appellant submitted to BLM the information requested, albeit the copy of the contract between appellant and the filing service was not "certified," and the document that it incorporates by reference was not included.

The New Mexico State Bureau of Land Management office rejected appellant's offer for the following reasons:

- a. The BLM decision requiring additional information, made to appellant, was signed for by M. E. Emans at the appellant's address of record. BLM has no evidence on file to show that M. E. Emans is authorized to sign for appellant (citing 43 CFR 3102.6-1).
- b. The service agreement between appellant and the filing service was submitted uncertified.
- c. The service agreement, by reference, incorporates a brochure entitled "FEC's Federal Oil Land Acquisition Program," which was not filed with the BLM.

Appellant filed an appeal within the requisite time period in accordance with 43 CFR 4.400-402 and 4.411-414, naming priority holders Nos. 2 and 3, R. P. Berrier and Frank Getscher, respectively, as adverse parties. They were served with copies of the notice of appeal, but neither responded.

[1] The fact that the decision requesting additional information was signed for by an agent does not violate 43 CFR 3102.6-1, as was indicated by the BLM decision. That section deals with lease offers signed by agents or attorneys-in-fact. The issue here is the signing of the postal receipt by an agent at appellant's address of record with BLM.

The controlling regulation, 43 CFR 1810.2, states in part:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

The fact that the document was received there by a person who had no authorization of record at BLM to sign on behalf of appellant was irrelevant. The determining factor is that the documents were sent to appellant's address of record with BLM.

The signature on a Post Office return receipt by an agent of a party to whom registered or certified mail is sent at the party's address of record in the Bureau is sufficient evidence of service. * * * in any event, the question as to the signature of the certified return receipt card is irrelevant to the merits of [the applicant] being the number one drawee.

Lillian Sweet, 37 IBLA 25 (1978). See also Edgar C. Bennington, Jr. (On Reconsideration), 28 IBLA 355 (1977), where the recipient was the applicant's wife, and Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. March 25, 1975), where the recipient was the applicant's daughter.

[2] The BLM request for a "certified" copy of the contract or agreement between appellant and the individual, association, or corporation, under which such filing services are authorized to be performed on behalf of appellant, was not completely complied with by appellant. The copy she submitted was not "certified." ^{1/} Appellant does, however, recognize the right of BLM to require additional information from her to establish her qualifications as an offeror. Evelyn Chambers, 31 IBLA 3 (1977); Ricky L. Gifford, 34 IBLA 160 (1978). In Gifford, supra, the Board fully addresses the issue of "certification":

However, we are doubtful that the requirement for a "certified copy" of a document held by private persons adds to the trust that can be placed on the copy. As the State Office pointed out in its decision demanding "a certified copy," Title 18 U.S.C. § 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false fictitious or fraudulent statement or representations as to any matter within its jurisdiction. We also note that by regulation the Department has eliminated the requirement for oaths in most matters relating to public lands under its jurisdiction. 18 CFR 1821.3-1. This regulation also calls attention to 18 U.S.C. § 1001 and provides that an application may be rejected if a false statement as to a material fact is made. These provisions of the statute and regulation would seem to provide whatever sanctions are deemed necessary to insure honest compliance with a request for a copy of an agreement. Therefore we conclude that the submission of a copy of an agreement with the statement that it is a copy of the agreement satisfies the requirement for a "certified copy" of a privately held document.

Further, 43 CFR 1821.3-1(a) states: "Written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require * * *."

^{1/} The Board is uncertain as to precisely what BLM expected by way of a "certified" copy. Where an instrument is recorded the certification may be by the custodian of the record, but it would seem that the only verification which could be made of an unrecorded document in the possession of its owner would be for the owner to attach an affidavit attesting to its authenticity.

Thus, the uncertified copy submitted by appellant was sufficient to fulfill the request made by BLM for a copy of the agreement between appellant and her filing service. Therefore, appellant's offer should not have been rejected as a result of submission of the uncertified copy.

[3] The third and final reason for rejection of appellant's offer was that the agreement submitted by appellant incorporated by reference a brochure entitled "FEC's Federal Land Acquisition Program" and that document was not filed with BLM. Since the BLM request expressly sought only the agreement between appellant and the filing service, it is reasonable that appellant would submit that and no more. The Gifford case, supra, presents a similar situation, and the Board held:

Indeed, the full purport of the agreement cannot be grasped unless the brochure is examined. In D. E. Pack, supra, for example, an agreement with a leasing service referred, in almost the same terms as here, to a brochure that described the leasing service's program. As here, the brochure was made part of the agreement and an examination of the brochure was necessary to determine whether the leasing service had an improper interest in the offers its clients filed.

So here, the scope of the agreement cannot be ascertained without the brochure. Having failed to file it, appellant has not complied with the requirement of the State Office for submission of a copy of his agreement with the leasing service.

However, since the necessity to submit a copy of the brochure may not have been readily apparent to appellant, he is given 30 days from the date hereof to submit a copy to the State Office. The State Office may then adjudicate the offer. If the brochure is not submitted within the time allowed, the offer will be rejected.

The appellant in this case should have been allowed the same opportunity. Since, however, she has now submitted all three brochures published by her leasing service, there is no need to afford her additional time, and BLM may proceed with its adjudication on remand.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is reversed and the case remanded for further proceedings consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge

