

LELAND A. HODGES, TRUSTEE

IBLA 80-117, 80-190

Decided July 21, 1980

Appeal from separate decisions of the Montana State Office, Bureau of Land Management, rejecting drawing entry card leases M 44839, 44862, 44901, and 45108.

Reversed.

1. Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Applications: Drawings

In deciding a case where the name of the offeror trustee is affixed to the oil and gas drawing entry card in the wrong order, instead of being inserted in the appropriate spaces of the card in the order last name, first name, middle initial, the Board will conform to the Court of Appeals' decision in Brick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980), and reverse the rejection of the lease offer for this reason.

APPEARANCES: Don M. Fedric, Esq., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Leland A. Hodges, Trustee, has appealed from separate decisions of the Montana State Office, Bureau of Land Management (BLM), dated October 24, 1979, and November 16, 1979, rescinded November 21, 1979, which rejected drawing entry cards (DEC) M 44862, M 44901, and M 45108, successfully drawn for parcels MT 1069, MT 1092, and MT 1131, and MT 31 in the September 1977 and October 1979 simultaneous oil and gas filings. <sup>1/</sup> The BLM decision dated October 24, 1979, stated that:

---

<sup>1/</sup> On January 7, 1980, motion to consolidate IBLA 80-117 and 190 was granted by the Board of Land Appeals.

Your offers are hereby rejected because the placement of your name on the drawing entry card is not in conformance with the printed instructions on the cards. The cards clearly indicate that the offeror's name must be inserted on the appropriate line by last name, first name, and middle initial. See the enclosed copy of recent Board of Land Appeals decision Gordon N. Blair, 41 IBLA 288 (1979). Enclosed is a copy of the drawing entry cards for your information.

The BLM decision dated November 16, 1979, which was later rescinded, rejected appellant's offer for exactly the same reason stated above.

The BLM decision dated November 21, 1979, after rescinding the decision of November 16, 1979, stated:

Since the issuance of our previous decision, it has come to our attention that Leland A. Hodges did not file as an individual, but as trustee for the entity Hall Trust. The offer is therefore rejected because the name of the entity (Hall Trust) did not appear on the face of the drawing entry card.

A review of the trust qualifications file reveals that on April 25, 1974, the Trust Agreement was amended. The amendment states that the Trust be designated and named "Hall Trust" and shall henceforth be known and identified as "Hall Trust."

Since Leland A. Hodges did not file the card as an individual, but as Trustee of Hall Trust, his name and signing capacity should appear on the back of the card. The legal name of the entity (Hall Trust) must appear on the face of the card.

Appellant states as follows in its statements of reasons:

Leland A. Hodges, Trustee is a legal entity. The drawing entry cards for Leland A. Hodges, Trustee, list the tax identification number accorded to Leland A. Hodges, Trustee, and not the tax identification number for Leland A. Hodges individually. He further states that Leland A. Hodges, Trustee, was the name used and accepted on the drawing entry cards filed in Bureau of Land Management New Mexico State Office qualifications file NM 0558400. He explains that other Bureau of Land Management offices have found the Leland A. Hodges, Trustee, qualifications to be fully acceptable, and that as recently as July 6, 1979, the Montana State Office issued Federal oil and gas lease M 43660 to Leland A. Hodges, Trustee.

Appellant contends that following the date of execution of the original trust instrument, activities of the trust, including, but not limited to State, Federal and fee oil and gas and mineral holdings have been, without exception, conducted in the name of Leland A. Hodges, Trustee.

Appellant submits that he did, in fact comply with, 43 CFR 3112.2-1(a), for his DEC's were fully signed and executed in accordance with the regulations, and in accordance with long standing acceptable procedures within the Bureau of Land Management.

Appellant states that he has no objection to filing in the name of Hall Trust if the BLM will approve such filings, but a retroactive decision by one office in conflict with another, to change a procedure or more than 10 years standing, where no law or regulation has been violated, is patently arbitrary and capricious.

In his statement of reasons, appellant argues that Leland A. Hodges, Trustee, is a legal entity.

The applicable regulations are 43 CFR 3102.1-1 and 43 CFR 3102.3-1.

43 CFR 3102.1-1 states that:

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interest by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof, or (d) municipalities. As used in this group, "association" includes "partnership."

Regulation 43 CFR 3102.3-1 provides that if the offeror is an association, the required qualifications must be met by the association and its members, and the individual executing the lease must be authorized to act on behalf of the association. Further, said regulation states that when qualifications have been previously met, a reference by serial number to the record where such information has been filed will be acceptable.

In the instant case, the trust was created in the State of Texas in September 1966. The trust when created had no name designation. Leland A. Hodges was appointed trustee on January 21, 1974, at which time the trust was amended to add to and clarify the powers of the trustee.

On April 25, 1974, a second amendment to the trust was made, with the trust being designated and named "Hall Trust." Each and

every term of the original trust instrument which was not amended was redeclared and reaffirmed. The following language from the original trust instrument did not change, and remained in full force and effect, viz:

NOW THEREFORE, the undersigned hereby designate and appoint Leland A. Hodges, as trustee, as their agent to apply for, acquire, and hold in the name of Leland A. Hodges, Trustee, federal and state mining claims, federal and state mining and mineral leases and prospecting permits, and fee mineral leases, options and lands for the undersigned. [Emphasis added.]

Clearly, appellant was authorized under the terms of the trust to apply for Federal oil and gas leases in the name of Leland A. Hodges, Trustee. There was no authorization or requirement for him to do so in the name "Hall Trust." nor do the Departmental regulations so require. Therefore, the BLM decision of November 21, 1979, so holding, must be reversed.

Thus, this case must turn on whether appellant in his capacity as trustee used his individual name and failed to comply with the printed instructions on the DEC's and, if so, whether his lease offers can properly be rejected for this reason.

[1] 43 CFR 3112.2-1(a) requires that the DEC must be "signed and fully executed." The instruction on the card indicate that the offeror's name must be inserted on the appropriate line in the following manner: "[L]ast name, first, and middle initial."

The precedent established by this Board in such oil and gas lease drawing entry card cases came under judicial scrutiny in Brick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980). Brick submitted an entry card for the drawing on parcel WY-76 then listed as available for leasing by the Wyoming State office of the BLM. At the public drawing held on October 14, 1977, Brick's entry card was drawn first for parcel WY-76. Under Department's regulations Brick therefore gained first priority of consideration to lease this parcel. However, on October 21, 1977, Brick was notified by the Wyoming Office that his offer had been disqualified because his name and address were shown on the entry card by means of an address label glued to the card. This, the Wyoming Office pointed out, violated a public notice issued by the office which indicated that it would reject any entry cards marked or altered in any manner that altered the feel and appearance of the card. Brick appealed this decision to this Board, which rejected the reason the Wyoming Office gave for disqualifying Brick's offer. This Board noted that it had previously held:

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations

which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

36 IBLA at 236, quoting Margaret A. Ruggiero, 34 IBLA 171 (1978).<sup>2/</sup> This Board nevertheless affirmed BLM's rejection of the offer, finding that Brick's offer was prima facie defective because Brick had not entered his name on the entry card in the proper order indicated by the instructions on the card – last name, first name, middle initial. Instead, the address label on his entry card read "Dr. Irving B. Brick." Brick sought review of this Board's decision in the District Court for the District of Columbia, arguing that the action of the Department in rejecting his offer was arbitrary, capricious, and an abuse of discretion. On cross-motions for summary judgment the court granted judgment for the Government on its finding that

[t]he decision of the Interior Board of Land Appeals on August 8, 1978 – determining that plaintiff's drawing entry card for parcel WY-76 was "prima facie defective in that the expression of the name of the offeror by means of an address label [listing plaintiff's first name, first, and last name, last] is not in conformance with the printed instructions on the card ["last name, first name, and middle initial," in that order]" – was not arbitrary, irrational, or an abuse of discretion, and is entitled to deference from this Court. [Bracketed material in original.]

Brick appealed from the District Court's decision, and presented two arguments in support of his position that this Board's decision should be reversed. First, he argued that the decision to reject his offer was arbitrary and capricious. Second, Brick contended that even if the Department could properly have rejected his entry card, it waived any objections it may have to the form of his card by accepting it for the drawing.

The Court of Appeals for the District of Columbia held that nothing in the Department's regulations themselves indicates that entry cards must be completed in the precise manner specified by the instruction on the card, nor do the cases cited by the Board in which entry cards were rejected because they were improperly completed address this issue. The court stated:

In the circumstances presented by this case we are forced to conclude that the Secretary's decision to disqualify Brick's offer was arbitrary and capricious.

---

<sup>2/</sup> This Board also ruled that the Wyoming State Office's Public Notice was invalid because it contravened the instructions of the Director of the BLM.

Accordingly, we reverse the judgment of the District Court and remand the case to that court for remand to the Secretary with instructions to reinstate Brick's offer to lease Parcel WY-76.

Accordingly, since the case of appellant Leland A. Hodges raises similar issues as Brick, supra, and in light of the Court of Appeals' ruling, we reverse the decision of the BLM, Montana State Office.

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 reversed and the case remanded for further proceedings in accordance herewith.

---

Edward W. Stuebing  
Administrative Judge

We concur.

---

Anne Poindexter Lewis  
Administrative Judge

---

Joan B. Thompson  
Administrative Judge

