

CLAYTON H. READ and
GERALD A. MYRES

IBLA 80-442

Decided August 11, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 69717.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests as required by 43 CFR 3102.7.

2. Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law.

APPEARANCES: Clayton H. Read and Gerald A. Myres, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated January 31, 1980, by the Wyoming State Office, Bureau of Land Management (BLM) rejecting appellants' first drawn simultaneous oil and gas lease offer for parcel No. 2189 because no statement of interest was attached or filed as required by 43 CFR 3102.7. 1/

1/ This regulation 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

The front of appellants' drawing entry card (DEC) contains the name of Clayton H. Read and his address. The back of the card is signed by Read and by one Gerald Myres. The space marked "other parties in interest" has the names and social security numbers of two further individuals, Walter Brunner and H. W. Powell.

Appellants concede that no statement of interest was filed. Appellants state that the regulations are not clear, that they had difficulty in obtaining instructions on how to fill out the card, and that they relied on erroneous advice allegedly given by a BLM employee. However, they also assert that they could have complied with the regulations had they not been ill-advised by BLM. Appellants suggest the doctrine of estoppel as a basis for reversing the decision appealed from.

[1] The Board has many times held that compliance with the requirements of 43 CFR 3102.7 is mandatory. An offer not in compliance therewith must be rejected. Mildred A. Moss, 28 IBLA 364 (1977), aff'd Moss v. Andrus, Civ. No. 78-1050 (10th Cir., Sept. 20, 1978); Herbert Adler, 42 IBLA 228 (1979); Lyle W. Todd, 26 IBLA 246 (1976); Emily Sonnek, 21 IBLA 245 (1975); Ross I. Gallen, 15 IBLA 86 (1974); Melvyn Kegler, 13 IBLA 265 (1973).

Moreover, appellants, as persons dealing with the Government are presumed to have knowledge of the pertinent regulations, regardless of actual knowledge of what is contained in such regulations or the hardship resulting from innocent ignorance. Federal Crop Ins., Corp. v. Merrill, 332 U.S. 380, at 384-85 (1970); see also 44 U.S.C. §§ 1507, 1510 (1976). The DEC itself contains the instruction "all interested parties named below must furnish evidence of their qualifications to hold such lease interest. See 43 CFR 3102.7."

[2] While it is unfortunate that appellants may have received erroneous information, this cannot provide a basis for creating any

forth the names of the other interested 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."

rights not authorized by law, J. A. Masek, 40 IBLA 123 (1979); Island Creek Coal Co., 35 IBLA 247 (1978). This case does not present the prerequisites for application of the extraordinary remedy of estoppel. Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given. See Alice E. Deetz, 48 IBLA 59, 62 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

Appellants in the instant case attempted to file an offer on behalf of four co-applicants. In order to effectuate this intent one individual's name and address was placed on the front of the card; two individuals signed the card in the boxes marked "Signature of Applicant" and entered a date in the appropriate box; and two other individuals signed the card, appended their social security numbers and entered a date in the box entitled "Other parties in interest." No statement of interest for the latter two individuals, as required by 43 CFR 3102.7, was ever filed. The question is whether appellants' offer was properly rejected. I believe this Board has no choice but to conclude that it was.

The applicable regulation, as well as numerous past decisions, clearly stands for the proposition that if one individual is an equal participant in the offer of another for a parcel, and that individual's name is included under the "other party in interest" category, failure to file the required statement of interest necessitates rejection of the offer. On the other hand, if the same two people sign as "applicants," no statement of interest is required. There are a number of cogent reasons for this traditional distinction.

A co-applicant is, by definition, an equal applicant. Thus, there is no need to disclose the terms of any agreement between co-applicants since they are disclosed by the nature of the application itself. Such is not the case with "other parties in interest." By way of example, if there are four co-applicants each one has an undivided 25-percent share in any lease that issues. If, however, there are three parties in interest in addition to the applicant, while each party with an interest may have a 25-percent share, it is equally possible that one party has an 85-percent interest and each of the others has a 5-percent interest. It is similarly possible that any of countless other permutations of interest may be involved.

The relevant percentage of interest is of importance in the determination of acreage holdings. The relevant regulation, 43 CFR 3101.1-5(d), provides that "[i]n computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage." Thus, the chargeable acreage is based on the percent of an individual's interest in the offer. The regulations also require that, where an offer is filed which would cause an individual to exceed the acreage holdings, that offer must be rejected. 43 CFR 3101.1-5(c)(3)(iii). The requirement that any applicant who files an offer which indicates that there are other parties in interest must, within 15 days, also file a copy of any agreement between them is premised partially on obviating the need to expressly seek a copy of such an agreement after the drawing has been held and priorities established. Considering the great number of lease drawings that are

held annually the requirement that such interests be disclosed has a sound and considered administrative basis.

When appellants crossed off the words "Other Parties in Interest" and wrote in "Other Applicants," they were, in effect, accomplishing what is normally done by placing more than one name in each box under "Applicants," viz., they were creating filings of multiple co-applicants. When, however, subsequent to 1978, appellants ceased crossing off the words "Other Parties in Interest" but nevertheless wrote in names under that column, all parties could no longer be treated as co-applicants. Rather, BLM was required to treat two of the offerors as co-applicants, and the other two individuals as parties in interest, and a statement under 43 CFR 3102.7 was necessary. While appellants contend that "after Appellant Read's conversation with the BLM office in January of 1979, the lease forms changed from an acceptable form to an unacceptable form," the form utilized by appellants was acceptable, provided they filed the statement of interest as required both by the regulation and the drawing entry card itself. This they did not do.

The dissenting opinion argues that the elements of estoppel are met. I do not agree. Assuming that all of appellants' statements are true, one must still face the reality that the drawing entry card specifically states: "Other parties in interest - All interested parties named below must furnish evidence of their qualifications to hold such lease interest. See 43 CFR 3102.7." In order to invoke estoppel, appellants must show that they had a superior right to rely upon the oral advice of a State Office employee which was, on its face, contrary to the express admonition contained on the drawing entry card, as well as the clear wording of the regulations. See Alice E. Deetz, 48 IBLA 59, 62 (1980).

One of the elements of the traditional test for estoppel is that the party asserting the estoppel must be ignorant of the true facts. In United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), the court noted that Georgia-Pacific had reason to rely on the validity of Public Land Order No. 1600 because "[t]here was no explicit statute, ruling, order or case authority to give Georgia-Pacific any indication whatsoever that PLO 1600 might have been issued pursuant to an improper delegation of authority * * *." Id. at 98.

In contradistinction to the Georgia-Pacific case, appellant had the express language of the DEC, the express language of the regulation, and the guidance of numerous decisions of this Board, only a few of which are cited in Judge Fishman's decision. This Board's decisions are published and indexed pursuant to section 552(a)(2) of the Administrative Procedure Act, 5 U.S.C. § 552(a)(2) (1976), and thus, serve as binding precedents for the Department. See Cheyenne Resources, Inc., 46 IBLA 277, 282-84, 87 I.D. 110 (1980).

The dissent apparently envisages a system in which the advice of a single unidentified employee can nullify longstanding Departmental regulations and interpretations and result in the invocation of estoppel no matter how patently erroneous the advice given may be.

Contrary to the dissenting opinion there is a great public interest in the efficient management of the simultaneous leasing system. Moreover, the dissent ignores the fact that the rights of individuals with offers drawn with lower priorities are involved here. Invocation of estoppel in factual situations such as that presented by the instant appeal can only result in chaos in the adjudication of priorities in simultaneous oil and gas leasing, and requirements for compliance with clear regulations and interpretations which fluctuate from applicant to applicant depending solely on advice received from individual employees of the Department.

I feel that this Board has no real alternative but to affirm the rejection of appellants' lease offer. Accordingly, I concur in Judge Fishman's decision.

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Under Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), and despite the rights of junior offerors, no first drawn entry card offer should be rejected except for significant violation of statute or regulation. Here, a sufficient offer has been submitted.

Appellants allege that the Government is estopped due to detrimental reliance under the following facts:

Appellant Read, desiring to fill out the cards properly, had prior to 1978 sought information from the BLM office in Wyoming upon the proper manner in which to fill out simultaneous oil and gas lease offers. He was informed by said office that the proper manner of filing in said offers was to cross out on the reverse side of the card the words "Other Parties in Interest" and in its place use the words "Other Applicants". Appellant Read was informed that where there were more than two applicants this should be done, and then all applicants should sign the reverse side and include their Social Security numbers. Said lease applications for 1978 were filled out and filed in this manner. Copies of said lease offers submitted by Appellant Read are incorporated and made a part hereof by reference and marked as Exhibit Four (4), containing 6 pages and included at the end of this brief.

In January of 1979 Appellant Read again sought guidance from the BLM office in Cheyenne. Appellant Read was concerned that one of the applicants who had been filing with him might not continue to file and Appellant Read desired to know whether he needed to file a new verbal agreement statement if such person withdrew from filings. Said verbal statement is Exhibit Six (6) and a copy thereof is enclosed at the end of this brief. Therefore in mid January, Appellant Read phoned the BLM office in Cheyenne to speak to one Vi Vols, an employee of the BLM who had advised Appellant Read in the past. A BLM employee answered and when Appellant Read asked for Vi Vols, he was informed she was out of the office. Appellant asked this employee concerning the Verbal Statement matter, but said employee said she had no knowledge thereof, but would find an employee who had knowledge in that area. A man then came to the phone, identified himself as a BLM employee, and asked what Appellant Read desired. Appellant Read informed this BLM employee of his question concerning the Verbal Agreement Statement and informed said employee how Appellant Read was previously filling out the simultaneous oil and gas lease applications. Said employee informed Appellant Read that the space for "Other Parties in Interest" could be used by applicants.

Said employee stated that other interested parties must print their names in said box, but other persons who signed their name there and included their social security numbers would be treated as applicants, not "Other Parties in Interest" nor even as "Other Applicants". He indicated that no verbal statement was necessary. Said employee repeated the aforementioned instructions. Appellant has no knowledge of the identity of said BLM employee of the Cheyenne BLM office, nor has he any knowledge concerning the said employee's official status with the BLM. Appellant Read knows that said employee was sought out by another BLM employee as one who had knowledge concerning the filling out of simultaneous oil and gas lease applications and who held out expertise in the area of regulation interpretation for filling out such lease forms.

In reliance upon the information given in the phone conversation with the Cheyenne BLM office, Appellant Read changed the method of fill[ing] out simultaneous oil and gas lease offers. Appellant Gerald A. Myres in 1979 became a co-applicant with Appellant Read on a number of simultaneous oil and gas lease offers. These simultaneous oil and gas lease offers were in the form of which copies marked Exhibit Five (5) consisting of six pages, are incorporated and made a part hereof by reference and included at the end of this brief. As can be seen from a comparison between the 1978 lease offers and the 1979 lease offers (Exhibits four and five respectively), after Appellant Read's conversation with the BLM office in January of 1979, the lease forms changed from an acceptable form to an unacceptable form. [Emphasis added.]

Before considering whether the Department should be estopped, the wording of the offer should be reviewed. The offer is made by the "undersigned," as stated on the back of the drawing entry card:

Undersigned offers to lease for oil and gas * * * and certifies: (1) applicant is a citizen of the United States, an association of such citizens, a partnership, a corporation, or a municipality organized under the laws of the United States or any State thereof; (2) applicant's interests in oil and gas offers to lease, leases, and options do not exceed the limitation provided by 43 CFR 3101.1-5; (3) applicant has not filed any other entry card for the parcel involved, and (4) applicant is the sole party in interest in this offer and the lease if issued, or if not the sole party in interest, that the names and addresses of all other interested parties are set forth below. The undersigned agrees that the successful drawing of this card will bind

him to a lease, on Forms 3110-2 or 3110-3, and the appropriate stipulations as provided in 43 CFR 3109.4-2 and the posted notice. [Emphasis added.]

Under the offer appear the signatures of C. H. Read and G. A. Myres as applicants, which signatures fill up the two lines allocated for signature of applicants. To the right thereof, but also in the bottom portion of the card, the signatures of Brunner and Powell are entered under "Other parties in interest." I would hold that Brunner and Powell intended to be and are among the "Undersigned" referred to in the offer, and that if the Government had issued the lease it could legally enforce the offer against them. Such being the case, they should be entitled to the benefits of the lease as co-offerors. The statement of interest under 43 CFR 3102.7 would therefore not be required.

As to estoppel, BLM has not had an opportunity to rule upon the above-quoted allegations, which were first set forth in the statement of reasons on appeal. If the facts are as alleged, the elements of estoppel may be present. Rather than ruling against appellants, I would remand to the Wyoming State Office for review under Edward L. Ellis, 42 IBLA 66 (1979). See also Public Service Co. of Oklahoma, 38 IBLA 193, 203-10 (dissent) (1978). If the appellants are correct, and estoppel is not invoked, the injury to appellants would be severe. On the other hand, the public interest would be furthered and in no way be unduly damaged ^{1/} from granting the accepted equitable relief.

Joseph W. Goss
Administrative Judge

^{1/} The case is somewhat analogous to United States v. Wharton, 514 F.2d 406 (9th Cir. 1975), wherein the Circuit Court stated at 413:

"The public will be damaged to no greater extent now than it would have been had the original entry been completed. * * * [T]he public has an interest in seeing its government deal carefully, honestly and fairly with its citizens."

See also Brandt v. Hikel, 427 F.2d 53 (9th Cir. 1970), which concerned a promise unauthorized by statute, regulation, or decision. Wharton at 411, n.6. In Brandt at 57, Chief Circuit Judge Chambers ruled: "To say to these appellants, 'The joke is on you. You wouldn't have trusted us,' is hardly worthy of our great government."

