

IRMA SPEAR

IBLA 80-962

Decided February 19, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and and gas lease offer ES 14469 (Pennsylvania).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

APPEARANCES: Irma Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irma Spear has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated August 25, 1980, which rejected her noncompetitive acquired lands oil and gas lease offer ES 14469 (Pennsylvania), filed as a drawing entry card for parcel 15 in the December 1974 notice of lands available for oil and gas leasing.

At a public drawing held pursuant to the procedures in 43 CFR 3112 to determine the priority of drawing entry cards (DEC) submitted for parcel 15, first priority went to the DEC of Paul Sellers, second priority to the DEC of Kathleen Griffith, and third priority to the DEC of appellant, Irma Spear. The United States owns only 75 percent mineral interest in the lands designated as parcel 15, as was indicated in the notice. The offer of Paul Sellers, whose DEC was drawn with first priority, was rejected by decision dated February 6, 1975, because it was not accompanied by the mandatory statement required by 43 CFR 3130.4-4 showing the extent of his ownership of the operating rights to the fractional mineral interest not owned by the United States. The second-drawn offer of Kathleen Griffith was rejected for the same reason.

On August 25, 1980, the Eastern States Office, BLM, issued a decision rejecting appellant's oil and gas lease offer stating: "Under the regulations governing Federal oil and gas leasing, the offeror must indicate the extent of his ownership in the operating rights to the fractional mineral interests not owned by the United States. Where such evidence was not filed within the time allowed, the offer must be rejected." The statement was required by 43 CFR 3130.4-4 (1975), amended, 41 FR 43149 (Sept. 30, 1976), 1/ which provided as follows:

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. [Emphasis supplied.]

In her statement of reasons on appeal appellant asserts:

The regulation cited by the decision has been abandoned by the Bureau of Land Management as uninterpretable [sic] and confusing, and is no longer required by the Bureau under the same circumstances. The lease is not in the process [sic] of being issued, and the regulations should be used which are now in force when the lease is being processed for issuance.

[1] If a DEC was defective under the regulations in effect when filed, it must be rejected notwithstanding any change in the regulations thereafter, because an oil and gas lease may only be issued to

1/ Amendments of the regulations governing fractional interest leases, including 43 CFR 3130.4-4, were published on September 30, 1976, 41 FR 43149. The new provision makes no express requirement for a statement of interest in the ownership of the non-Federally owned fraction.

the first qualified applicant. 30 U.S.C. § 226(c) (1970); 43 CFR 3112.4-1. Under the simultaneous filing procedure, an offer must be qualifying at the time it is filed in order to earn priority. No curative action subsequently taken can be effective in view of the special procedures established for the simultaneous filing of DEC offers. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Duncan Miller, 29 IBLA 1 (1977); Frank G. Wells, 28 IBLA 113 (1976). The Board has repeatedly emphasized the mandatory nature of the requirements of 43 CFR 3130.4-4 (1975) that an offer be accompanied by a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States. Where there was no such accompanying statement, the offer must be rejected. Duncan Miller, *supra*; Grady Argenbright, 27 IBLA 24 (1976); Michael Shearn, 24 IBLA 259 (1976).

In certain situations this Board has held that where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, grant the benefit of the amended regulation to the applicant. However, the Board has consistently refused to extend this rule to simultaneous applicants for fractional mineral interests who failed to provide the statement required by 43 CFR 3130.44(1975). *See, e.g., Duncan Miller, supra; Frank G. Wells, supra.* Even were we disposed to break this precedent, it would be manifestly unfair to enforce the regulation against the first and second drawees for this lease, thereby disqualifying their offers, only to waive it in favor of appellant, whose offer was drawn third.

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.

Edward W. Stuebing

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

