

MARGARET G. PASCALE

IBLA 81-1081

Decided October 26, 1981

Appeal of the August 27, 1981, priority reselection of simultaneous oil and gas lease applications submitted for parcel MT 28 in the July 1980 drawing. M 48618.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Where the procedures followed by the Montana State Office in reselecting the priority applications for the July 1980 simultaneous drawing comport with 43 CFR 3112.3-2, the results of the reselection will not be overturned by the Board of Land Appeals.

APPEARANCES: Margaret G. Pascale, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In July 1980, the Bureau of Land Management (BLM) resumed its simultaneous oil and gas lease drawings after a 4-month suspension. Under revised regulations, 1/ BLM required the filing fee to be paid in United States currency, Post Office or bank money order, bank cashier's check, or bank certified check. Following announcement of the July drawing, the Montana State Office, BLM, received numerous remittances which it found did not meet the regulatory requirements and rejected the corresponding lease applications prior to the drawing. In response, BLM received 96 protests which resulted in 12 appeals to this Board. On review, we reversed the rejection of the fees and applications involved in 11 of the appeals and remanded the cases, directing that a reselection be held in accordance with 43 CFR 3112.3-2. 2/

1/ The oil and gas leasing regulations were revised as of June 16, 1980. See 45 FR 35156 (May 23, 1980).

2/ See Eloise Miller, 56 IBLA 7 (1981); John L. Messinger, 56 IBLA 1 (1981); W. W. Priest, 55 IBLA 398 (1981); Charles J. Rydzewski, 55 IBLA 373 (1981); Eva McGhee, 55 IBLA 292 (1981); Frank H. Gower, Jr., 53 IBLA 146 (1981), Oxy Petroleum, Inc., 52 IBLA 239 (1981).

The oil and gas lease application of Margaret G. Pascale for parcel MT 28 was drawn with first priority during the July 1980 simultaneous drawing. The redrawing held on August 27, 1981, resulted in the application of Mariagnes K. Messinger receiving first priority for parcel MT 28. Margaret Pascale has appealed the result of this reselection.

As the basis for her appeal, appellant urges that (1) the blank cards used for the redrawing were not properly counted at the time of the redrawing, (2) the cards to be redrawn were not properly integrated into the mass of blank cards in the drum, and (3) the cards to be redrawn differed physically from the blank cards because of age and handling and therefore would behave differently in the drum.

The regulation governing reselection procedures, 43 CFR 3112.3-2, requires the following:

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. Such selection shall be conducted in the same manner as the original selection. If the omitted application is not selected first, second or third priority in the new selection, the priority established in the original selection shall stand. However, if an omitted application is selected in the first, second or third priority, it shall displace the application selected with the same and lower priorities in the original selection. No applications chosen in the first selection shall be eliminated from priority as a result of the selection of an omitted application in the reselection. The number of priorities shall be increased as necessary.

Included in the record herein is the statement of Delores M. James, Chief, Branch of Records and Data Management, describing the procedures followed for the reselection. She states:

The number of blank applications equaled the number of applications [sic] which were included in the first selection. The blank cards were counted at least once each by three separate individuals * * *. The counted blank applications were kept in a secure area until the day of the drawing, at which time they were transported to the Sixth Floor BLM conference room for the public drawing. The blank cards were transported to the drawing in postal trays, and each parcel was separated by a divider. As is our policy, the cards are never left unattended by BLM personnel prior to, during, or after the drawing.

During the drawing, I announced the parcel number, the number of blank entries, the number of additional entries and the total. The blank cards were then dropped into the drum. I then handed the appellants' [sic] entries to LeRoy Hesper, the BLM supervisor of the Simultaneous section, who scattered the appellants' [sic] entries across the length of the drum. The new entries were deliberately kept separate in case we were challenged by the public to prove that we had in fact added the appellants' [sic] cards. The electric blower on the drum was turned on and the drum was turned at least five turns forward and five backward. If there were 700-800 cards, it was turned even more. A BLM employee from outside this Branch was used to draw three entries. Her instructions were to look toward the audience, reach in and pull three cards, one at a time, and hand the card to Mr. Hesper who used a felt pen and marked the priority, #1, #2 or #3, on it. It was then handed to me and I read the name and address if there was one or indicated it was blank. After the drawing, the cards were transported back to the secure area where they were sorted and all entries with names were removed.

There were 72 original entries for parcel MT 28 to which two entries were added for a total of 74 for purposes of the redrawing. BLM procedures in this instance comported with the reselection requirements in the regulations. We find no basis for overturning the results of the redrawing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the results of the priority reselection for parcel MT 28 from the July 1980 simultaneous drawing are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

