

KENNETH H. GRAY
JAY R. GARNER

IBLA 82-48

Decided November 20, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application. NM 43431.

Affirmed as modified.

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

Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.

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

A statement setting forth the nature of an oral agreement between a simultaneous noncompetitive oil and gas lease applicant and another party in interest must include, or be accompanied within 15 days

after the filing by, statements signed by the latter setting forth his citizenship and compliance with acreage limitations on pain of rejection of the application.

APPEARANCES: Kenneth H. Gray and Jay R. Garner, pro sese.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On November 24, 1980, Jay R. Garner filed a simultaneous noncompetitive oil and gas lease application for parcel NM 35 with the New Mexico State Office, Bureau of Land Management (BLM). This application, NM 43431, was drawn with first priority by BLM in the December 1980 drawing.

Garner's application listed Kenneth H. Gray as another party in interest in the application, which was accompanied by a statement, signed and dated by both Garner and Gray, noting as follows:

TO: BUREAU OF LAND MANAGEMENT

This is to advise that on Nov. 17, 1980, JAY R. GARNER and KENNETH H. GRAY entered into an oral agreement to share in Parcel No. NM 35, if drawn, in the following proportions:

JAY R. GARNER 50%
KENNETH H. GRAY 50%

 [s/] [s/]
KENNETH H. GRAY JAY R. GARNER

(The underlined portions of the agreement consisted of blank lines that were filled in by ballpoint pen.) No other statement was filed by Garner and Gray.

On July 20, 1981, BLM issued a decision rejecting the "offer to lease," 1/ holding that Garner had failed to set forth adequately the

1/ We note that BLM incorrectly referred to Garner's application as an "offer to lease." Under the amended regulations, the card now submitted is properly styled an "application." 43 CFR 3112.2-1. An "offer" is a different form, which a successful applicant is required to complete following adjudication and approval of his "application." 43 CFR 3112.4-1.

Appellants also correctly point out that BLM's decision misstated several pertinent dates. However, it appears that these mistakes did not prejudice them in the preparation of their appeal.

nature of the oral agreement between him and Gray in this statement, citing Harry Reich, 27 IBLA 123 (1976); that Gray had not attested as to his citizenship or his compliance with acreage limitations; and that he had not indicated that he is of the age of majority. Garner and Gray appealed.

[1] BLM erred insofar as it held that appellants' statement failed to describe adequately the nature of their oral agreement. As we held in Phillip E. Flanagan, 57 IBLA 357 (1981) (issued after BLM's decision here), concerning a similar statement which described each party simply as having 50 percent by oral agreement:

[A]ppellant's description of the division of interests between him and * * * [the other party in interest] may reasonably be regarded as referring to 50 percent of all of any interest acquired by appellant, in the absence of any language suggesting that either party's interest is limited or enhanced in any way. Appellant's description meets the minimum requirements of 43 CFR 3102.2-7(b). [Emphasis in original.]

It may be so regarded here as well, and we modify BLM's decision accordingly.

[2] However, BLM correctly held that the statement filed with appellants' application failed to comply with 43 CFR 3102.2-7(b) 2/ in that Gray did not set forth in it his citizenship or his compliance with acreage limitations. Nor did appellants file any supplemental statement including this information within 15 days after the filing of the application as allowed by the regulation.

2/ This section provides as follows:

"(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

"(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title." (Emphasis added.)

The penalty for failing to file an adequate statement containing all of the information required by 43 CFR 3102.2-7(b) is rejection of the application. 43 CFR 3112.6-1(b). Thus, BLM properly rejected this application.

We note that nothing in 43 CFR 3102.2-7(b) requires another party in interest to attest to his being of the age of majority in the required statement of interest. BLM may inquire independently into whether another party in interest is of the age of majority in order to determine whether the party is qualified to hold a lease interest. See 43 CFR 3102.1(c). However, under the present regulations, BLM may not reject an application because of the failure of the other party in interest to state within 15 days of the filing of the application that he is of the age of majority. Accordingly, we modify BLM's decision in this regard as well.

Appellants argue that they understood that, by both signing the attached statement, they were both acknowledging their citizenship, acreage limitations, and age of majority. This argument is unpersuasive in view of the explicit requirement in 43 CFR 3102.2-7(b) that other parties in interest must do so on the separate statement. Nor, as appellants suggest, can we allow them to submit this information now, since this regulation specifies a 15-day deadline for doing so. To hold otherwise would infringe on the rights of second-priority applicants who have complied with the Department's regulations. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1975), aff'd per curiam, 544 F.2d 1067 (10th Cir. 1976).

Appellants allege that they prepared the attached statement under the direction of a BLM employee and that this employee approved it prior to its use in this drawing. Even accepting these allegations as true, we are unable to excuse the lack of compliance here. Reliance upon information or opinion provided by any employee of the Department cannot operate to change the requirements of the regulations. See 43 CFR 1810.3. As we observed in Donald W. Coyer (On Judicial Remand), 50 IBLA 306, 313 (1980), aff'd, Coyer v. Andrus, No. C 78-104 K (D. Wyo. Mar. 5, 1981), appeal pending: "To allow subordinate officials to enter into binding agreements would empower them to take actions immune from review by the Department and would effectively undermine the supervisory power of the Secretary to make and enforce policy in the Department, or to correct the errors of his subordinates." Thus, while BLM's employees should always undertake to assist the public by answering their inquiries, parties seeking advisory legal opinions in advance from BLM about the validity of their individual applications must accept these opinions at some risk in view of the necessity of maintaining uniform and correct enforcement of the Department's requirements.

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 as modified.

Bernard V. Parrette
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

