

JAMES W. PHILLIPS

IBLA 81-1105

Decided February 3, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting over-the-counter noncompetitive oil and gas lease offer. NM 44426.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

APPEARANCES: James W. Phillips, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On February 23, 1981, James W. Phillips filed an over-the-counter noncompetitive oil and gas lease offer, NM 44426, for 1,280 acres in Guadalupe County, New Mexico, with the New Mexico State Office, Bureau of Land Management (BLM). The lands covered by Phillips' offer were previously included in oil and gas lease NM 0559370, which expired in March 1976, and were subsequently listed four times 1/ in drawings for

1/ The lands were listed on the following dates: Apr. 19, 1976; Dec. 20, 1976; Sept. 19, 1977; and Apr. 17, 1978.

simultaneous noncompetitive leasing. Although BLM received at least two offers for the parcel each time it was listed, no successful offeror paid first-year rental, and no lease issued. After the fourth unsuccessful listing, BLM did not relist the parcel.

On July 22, 1981, BLM rejected Phillips' offer, holding that the lands must be relisted pursuant to 43 CFR Subpart 3112 and that they are not available for over-the-counter leasing under 43 CFR Subpart 3111. Phillips appealed.

[1] BLM correctly rejected appellant's over-the-counter offer, because the lands are not available for such offers. At all times between the expiration of the previous lease in March 1976 and April 1978, when BLM decided not to relist the parcel for a fifth time, 43 CFR 3112.1-1 (1979) governed its actions. ^{2/} Under this regulation BLM could consider over-the-counter offers for a parcel only if it had first been put up for simultaneous offers and no offers were received during the period provided for simultaneous filing. The record shows that BLM received at least two simultaneous offers for the parcel each time it was listed. Thus, BLM was never in a position to open the parcel to over-the-counter lease offers.

Nor can BLM be faulted for its continuing decision after April 1978 not to relist the parcel. The Secretary has broad discretion to decide whether to make public lands available for oil and gas leasing. Udall v. Tallman, 380 U.S. 1, rehearing denied, 380 U.S. 989 (1965). Appellant has not shown that this decision was not in the public interest, and we will not disturb it. See Placid Oil Co., 58 IBLA 294 (1981).

However, the file contains no explanation of the fact that BLM has not seen fit to relist the parcel for simultaneous applications for nearly 4 years. In light of appellant's current interest, we believe BLM should do so now. If no lease issues as a result of the simultaneous filings, then BLM should determine pursuant to 43 CFR 3112.7 (1980) whether to put the parcel up for over-the-counter offers.

^{2/} Appellant cites 43 CFR 3112.7 (1980) in support of his argument that BLM should have put the lands up for over-the-counter offers. This regulation did not take effect until June 16, 1980. 43 FR 35160 (May 23, 1980). The governing regulation had been in effect since 1970.

Accordingly, 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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

