

LANE LASRICH

IBLA 82-19

Decided April 8, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-45392.

Vacated.

1. Federal Land Policy and Management Act of 1976: Exchanges--Segregation: Filing of Application

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

2. Oil and Gas Leases: Applications: 640-acre Limitation--Regulations: Applicability--Regulations: Interpretation--Segregation: Filing of Application

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

APPEARANCES: Lane Lasrich, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 12, 1980, Lane Lasrich filed in the Utah State Office of the Bureau of Land Management (BLM) his over-the-counter oil and gas lease offer U-45392 for 616.54 acres. 1/ By its decision dated September 18, 1981, BLM rejected the offer because "[t]he offer included less than 640 acres of available land." Lasrich has appealed.

On August 19, 1969, a forest exchange application had been received by the United States Department of Agriculture, Forest Service. 2/ The exchange application has a certain segregative effect on the selected land pursuant to 43 CFR 2244.1-2(h) (1968) which, by the time appellant's offer was filed, had been redesignated as 43 CFR 2091.2-3. 3/

The regulation, 43 CFR 2244.1-2(h), provided: "The filing of a valid formal application for exchange under the regulations of this subpart will segregate the selected public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws * * *." The regulation as redesignated, 43 CFR 2091.2-3, is, in essence, identical in wording to the 1968 regulation.

On December 13, 1971, BLM issued Information Memorandum No. 71-174 which stated that the filing of a valid application for exchange will segregate the selected public lands from all forms of appropriation.

[1, 2] In his statement of reasons for appeal Lasrich asserts that at the time his offer was filed and at all times prior thereto, the regulation had been interpreted as segregating the selected land in a pending exchange application from mineral leasing, so as to make such land "unavailable" under the 640-acre limitation rule expressed in 43 CFR 3110.1-3(a). Appellant asserts that he was aware of the interpretation of 43 CFR 2091.2-3 which was being applied by BLM and this Department at the time he filed his offer, and

1/ The lands sought by appellant are set forth in his offer as follows:

"Township 22 South, Range 2 East, SLM, Sevier Co., Utah,
Section 7: E 1/2 SE 1/4 NE 1/4, S 1/2 NE 1/4, E 1/2 SW 1/4, SE 1/4
Section 18: Lot 2, E 1/2 NW 1/4, W 1/2 NE 1/4, N 1/2 SE 1/4
containing 616.54 acres."

2/ The land adjoining the land sought to be leased by appellant and covered by that application is as follows: "T. 22 S., R. 2 E. SLM, Utah Sec. 18: N 1/2 SW 14." The forest exchange application was filed pursuant to 16 U.S.C. § 485 (1976), Exchange of Lands in National Forests; Cutting Timber in National Forests in Exchange for Lands Therein. Under section 206 of the Federal Land Policy and Management Act of 1976, a tract of land or interests therein within the national forest system may be disposed of by exchange by the Secretary of the Agriculture under applicable law where the Secretary determines that the public interest will be well served by making that exchange. 43 U.S.C. § 1716(a) (1976).

3/ That regulation, 43 CFR 2091.2-3, was repealed at 46 FR 1642 (Jan. 6, 1981). Regulations governing exchange procedures appear at 43 CFR Part 2200 (46 FR 1638 (Jan. 6, 1981)); see 43 CFR 2201.1(b).

he conformed the offer to that interpretation. Specifically, he asserts reliance on the BLM Director's Information Memorandum No. 71-174, and a decision dated May 3, 1979, by the Acting Chief, Minerals Section, Utah State Office, expressly holding that lands selected in a pending exchange application are not available for leasing under the Mineral Leasing Act. See also Paul S. Coupey, 14 IBLA 397 (1974), and Tom B. Boston, 6 IBLA 269 (1972). Therefore, he contends, his lease offer was fully in accord with the Departmental interpretation of its own regulation at the time the offer was filed. It was only subsequently, while the offer was pending, that this Board reinterpreted the regulation so as to alter its effect, first in Kerr-McGee Corp., 46 IBLA 156 (1980), and finally in Dale E. Armstrong, 53 IBLA 153 (1981); wherein we held that a pending exchange application does not segregate the selected lands from availability for mineral leasing. In consequence of our holding in Dale E. Armstrong, supra, the Acting Director, BLM, published Organic Act Directive No. 81-7 on April 9, 1981, in which he directed that "[a]ny application to lease public lands under the mineral leasing laws must be accepted and adjudicated on lands otherwise segregated through publication of the notice required by the subject regulations."

Appellant quite reasonably asserts that at the time he filed his lease offer he could not have anticipated that the regulation would be later reinterpreted so as to make available for leasing lands which were then considered to be unavailable.

We agree. This Board has often held that a regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be so interpreted and applied as to deprive him of a statutory right. In this case, the "statutory right" is his priority to be considered "the person first making application for the lease" if he is otherwise qualified and a lease is to be issued for the subject land. 30 U.S.C. § 226(c) (1976). The ambiguity of 43 CFR 2091.2-3 is well established in the analysis contained in Kerr-McGee Corp., supra, and Dale E. Armstrong, supra.

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 vacated.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

