

VIRGIL V. PETERSON

IBLA 81-908

Decided August 10, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease application U-47615.

Dismissed.

1. Administrative Procedure: Generally--Appeals--Rules of Practice:
Appeals: Generally--Rules of Practice: Appeals: Failure to Appeal

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

2. Administrative Authority: Laches--Estoppel--Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

3. Appeals--Rules of Practice: Appeals: Dismissal--Rules of Practice:
Appeals: Statement of Reasons

A statement of reasons in support of an appeal, which does not point out affirmatively in what respect the decision

appealed from is in error, does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

APPEARANCES: Gerald E. Nielson, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Virgil V. Peterson appeals from a decision dated June 23, 1981, of the Utah State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease application, U-47615, on the ground that the lands were included in a previously filed application, U-47564.

On August 17, 1979, appellant, under the name of Wildcat Exploration Company, had filed application U-43854 for 965.50 acres in T. 15 S.R. 19 W., Salt Lake meridian, Millard County, Utah. On item 5 of the application appellant certified that it was a corporation. Appellant did not answer item 6, which asked whether the applicant is the sole party in interest in the offer. On August 31, 1979, BLM rejected this offer for two stated reasons: it included less than 640 acres, and the applicant failed to refer to a serial number identifying what corporate qualifications had previously been filed. On September 6, 1979, appellant filed with BLM a letter captioned "Amendment to Offer to Lease Filing No. U 43854." He indicated in the letter that he had previously filed corporate qualifications with BLM under No. 38700. He stated also that Wildcat Exploration Company was, in fact, the sole party in interest. This letter is date stamped received September 6, 1979, by the Utah State Office. In a memorandum to the file, dated July 23, 1981, BLM's land law examiner states as follows with respect to appellant's application U-43854:

This office rejected the subject offer by decision dated August 31, 1979, for the reason that the offeror did not refer to the serial number identifying where corporate qualifications have been previously filed. The offer was also rejected because the offer included less than 640 acres of available land. This land rejection was in error inasmuch as the offer included 965.50 acres of available land. However, Item 6 on the lease form was not completed which refers to whether the offeror was the sole party in interest or not. 1/

On October 31, 1979, this office closed the case and refunded the first year's rental after the 30 day appeal period given Wildcat Exploration Co. was over.

1/ The decision does not list this omission as a reason for rejection.

Virgil Peterson of Wildcat Exploration Co. at this time brought to our attention that he had filed an amendment to this offer of September 6, 1980. [2/] Apparently the amendment was not in the case file at the time the case was closed.

Mr. Peterson did not refile at this time, but waited until November 10, 1981, [3/] at which time another offer had been filed which resulted in an issued lease, given Serial No. U-47564. Mr. Peterson's offer U-47615 was then rejected.

Appellant's statement of reasons is addressed to BLM's August 31, 1979, rejection of U-43854. Appellant asserts that after he received this decision, he went to the State Office and was told that if he would submit his qualifications serial number, the rejection of his application would be corrected. Appellant then filed his letter of amendment. Hearing nothing from BLM for a protracted period, appellant again returned to the State Office. He was then advised to file a new application. Thereafter, on November 10, 1980, appellant filed U-47615. The intervening offer, U-47564, had been filed on October 30, 1980.

Appellant points out that BLM concedes rejecting U-43854 for an incorrect reason, that of insufficient acreage. He also states that he corrected his application and that omission of the qualifications serial number would not, of itself, have caused rejection. Appellant alleges that he was misled by BLM personnel on whose advice he relied, and that he should not be penalized for such reliance.

Appellant has not challenged the June 23, 1981, decision.

[1] Appellant's challenges, directed to BLM's August 31, 1979, decision, are untimely and cannot be considered. That decision indicated a right of appeal pursuant to 43 CFR Part 4. When appellant failed to appeal that decision within the 30-day limit prescribed in 43 CFR 4.411, the rejection of U-43854 became final, and BLM properly closed the case. When a party does not appeal a BLM decision, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issues in a later appeal. Ralph and Ruth Dickinson, 39 IBLA 258 (1979); Wilfred Plomis, 35 IBLA 1 (1978).

We are not unmindful of the Department's consistent holdings that an "over-the-counter" noncompetitive lease offer which has a "curable" defect can earn priority as of the date the defect is remedied. NL Industries, Inc., 41 IBLA 38 (1979), and cases there cited. However, the opportunity to establish priority by submitting curative information is not synonymous with the appeal process. One adversely affected by a final BLM determination must

2/ This date is incorrect; the amendment referred to was actually filed Sept. 6, 1979.

3/ This date too is incorrect; offer U-47615 was received by BLM on Nov. 10, 1980.

timely pursue his right to seek review thereof or lose that right. Thus, appellant should either have appealed the August 31, 1979, decision within the appeal period and submitted any necessary information to cure his application with his appeal, or prevailed upon BLM to vacate its decision and reinstate the offer.

[2] We sympathize with appellant to the extent he may have been misled or misinformed by employees of BLM. His reliance, however, cannot confer any rights not authorized by statute or regulation. 43 CFR 1810.3(c). The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); James N. Tibbals, 58 IBLA 42 (1981).

[3] Appellant has made no challenge to the decision of June 23, 1981. It is well settled that a statement of reasons that does not point out affirmatively in what respect the decision appealed from is in error, does not meet the requirements of the Department's rules of practice and the appeal may be dismissed. Geneva Barry, 54 IBLA 48 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

