

LOWELL J. SIMONS

IBLA 82-670

Decided August 26, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers M 50390 and M 50392.

Affirmed as modified.

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

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

APPEARANCES: Lowell J. Simons, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lowell J. Simons appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 2, 1982, rejecting acquired lands oil and gas lease offers M 50390 and M 50392 because the oil and gas rights in the land are not owned by the United States.

Both offers were filed by appellant on April 8, 1981. In lease offer M 50390 appellant requested the E 1/2 sec. 29, T. 13 N., R. 48 E., Principal meridian, and in lease offer M 50392 he requested sec. 35, T. 13 N., R. 49 E., Principal meridian.

On appeal, appellant contends that the United States owns and has available for leasing, 93-3/4 percent of all oil and gas in lease offer M 50390 and all the minerals in lease offer M 50392. In support of his contention, appellant submits copies of certain documents including the abstract of title on the property from the microfilm records located at the BLM office in Billings, Montana.

Having reviewed the case file, we find that these lands are not available for over-the-counter offers in any event. The historical index plats

included in both files show that the lands requested by appellant in these lease offers were included in previous oil and gas leases. ^{1/} 43 CFR 3112.1-1 provides as follows:

§ 3112.1-1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart. Other lands which are not within a known geological structure of a producing oil or gas field may be leased in accordance with this subpart.

The lands included in appellant's offers had previously been leased for oil and gas, and thus could only be made available again through the system of simultaneous filings. It is only after BLM has posted such lands to a simultaneous list that they could again become subject to the filing of over-the-counter lease offers. 43 CFR 3112.7; Robert C. Rood, 62 IBLA 391 (1982). Therefore, even if the oil and gas rights to these lands are owned by the United States, the lands are not available for over-the-counter offers and such offers must be rejected.

The subject offers were filed April 8, 1981, and are governed by the regulations currently in effect. Assuming, arguendo, that the United States owns the oil and gas in the described lands and, assuming further that they have become subject to the filing of over-the-counter offers pursuant to 43 CFR 3111, the lands must be "opened for the filing of lease offers" by the posting of a notice to this effect on the list of lands available for the simultaneous filing of lease applications. 43 CFR 3112.7(d).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris Anne Poindexter Lewis
Administrative Judge

Administrative Judge

^{1/} The plats show that the lands requested by appellant in M 50390 were formerly included in oil and gas leases M 2983, M 024840, and M 054357. Lease offer M 50392 covers lands previously included in M 069127 and M 034611.

