

IRVIN WALL

IBLA 82-1061

Decided December 13, 1982

Appeal from separate decisions of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offers OR 32904 in part and OR 32905 in full.

Affirmed in part; dismissed in part.

1. Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and no reason for maintaining the appeal is apparent.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: 640-Acre Limitation

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

A noncompetitive oil and gas lease offer is properly rejected in favor of a senior offer that would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irvin Wall appealed from separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting his noncompetitive over-the-counter oil and gas lease offers OR 32904 in part and OR 32905 in full to the extent that they included land leased to senior offerors.

[1] Wall filed oil and gas lease offer OR 32904 on September 11, 1981. Wall's offer described land overlapping in part with land described in senior offers filed by Champlin Petroleum Company (Champlin), OR 21413, and Tyrex Oil Company (Tyrex), OR 25101. Champlin's offer was filed on June 4, 1979, and a lease was issued effective November 1, 1981. Tyrex's offer was filed on October 16, 1980, and a lease was issued effective November 1, 1981. By decision dated June 28, 1982, the State Office rejected Wall's offer to the extent of these conflicts, and Wall appealed. Wall has withdrawn his appeal to the extent of the conflict with Champlin's lease OR 21413. His appeal is properly dismissed to that extent, there being no apparent reason to maintain the action. Irvin Wall, 68 IBLA 308 (1982); Elko County Board of County Supervisors, 29 IBLA 220 (1977); Texaco, Inc., 1 IBLA 477 (1971).

[2] However, Wall contends that Tyrex's offer, OR 25101, described less than 640 acres even though adjacent acreage was available for leasing. Wall points to the requirement of Departmental regulation 43 CFR 3110.1-3(a) that no offer may be made for less than 640 acres except where the land is surrounded by lands not available for leasing under the Act. Tyrex's offer described only 200 acres, and BLM rejected that offer to the extent that it described parcels adjacent to other parcels available for leasing but which Tyrex had failed to apply for. The lease was issued, however, for one 40-acre parcel which was isolated. It is proper to issue an oil and gas lease for less than 640 acres where none of the land surrounding the leased parcel is available for lease. See Dayton F. Hale, 69 IBLA 167 (1982).

We now turn to Wall's appeal from rejection of oil and gas lease offer OR 32905. This offer, also filed on September 11, 1981, was rejected because it conflicted with land described in a senior offer by Champlin, OR 21417, filed on June 4, 1979, for which a lease was issued effective November 1, 1981. Wall's offer also conflicted with that of Tyrex, OR 25002, filed October 14, 1980, for which a lease was issued effective November 1, 1981. Wall contends that Tyrex's offer covered only 400 acres when there was adjacent acreage available, placing the filing in violation of the 640-acre rule. Wall again errs; there was no adjacent land available for leasing. As for Champlin's offer, Wall contends that the acreage described in OR 21417 totals 2,685.71 acres, making it in excess of the 2,560-acre maximum allowed under 43 CFR 3110.1-3 (1979), which was in effect at the time of Champlin's filing. Even though Champlin's offer exceeded the acreage maximum then in effect, BLM applied another regulation then in effect, 43 CFR 3111.1-1(e)(2) (1979), to cure the defect in Champlin's offer without loss of priority:

(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

* * * * *

(2) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

[3] The above regulation was deleted at the same time that the acreage limit was raised to 10,240 acres. 45 FR 35163 (May 23, 1980). If it were improper for BLM to apply the deleted provision to cure the defect in Champlin's offer without loss of priority, the increase in the acreage limitation would have cured that defect as of the time the new limit became effective. Where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply this amendment to pending cases. Duncan Miller, 28 IBLA 292 (1976). Since Wall did not file his offer until long after the amendment, he had no intervening right that would have prevented BLM from applying the amendment to Champlin's offer. Thus, Wall has provided no reason why his offer should prevail over Champlin's, since Champlin's offer would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued. Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, 30 U.S.C. § 226(c) (1976), a junior offer is properly rejected to the extent that it includes land describes land in a senior offer and a junior offeror fails to provide valid reasons why the senior offer should be considered defective. Irvin Wall, 68 IBLA 243 (1982).

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 dismissed in part and affirmed in part.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge