JAMES W. LACY

IBLA 82-916 Decided December 21, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease U 50684 to first-drawn applicant.

Reversed and remanded.

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

   An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c).

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

   Where a potential oil and gas lease applicant that has filed a statement of partnership qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-4, the application must be rejected as incomplete.

APPEARANCES: James W. Lacy, pro se; J. Gregory Crum, Esq., Malibu, California, for respondent, Precambrian-Quaternary Joint Venture.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James W. Lacy has appealed the May 27, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), dismissing his protest against the

validity of the application of Precambrian-Quaternary Joint Venture (Precambrian) for lease U-50684.

Lacy and Precambrian each filed simultaneous noncompetitive oil and gas lease applications for parcel UT-116 in the January 1982 drawing in the Utah State Office. Precambrian's application was drawn with first priority; Lacy's was drawn with second priority.

As will be shown below, Precambrian's application was incomplete and should have been rejected by BLM. However, BLM erroneously determined otherwise and, on March 15, 1982, sent lease forms and notice of rental due to Precambrian. Precambrian executed the forms and paid the rental, and BLM issued the lease on April 29, 1982. BLM states that, on the same date, it returned Lacy's second-drawn application to him, thus indicating that it had been rejected. However, there is no cover letter or anything else in the record showing the date of mailing and no return receipt card showing when Lacy received the rejected application. 1/

On May 13, 1982, only 14 days after BLM allegedly returned Lacy's card to him, he filed a "notice of intent to challenge" Precambrian's qualifications to hold and/or retain the lease, generally alleging violations of 43 CFR 3112.2-1. He indicated that he was assembling information in support of the challenge and would file it within 30 days.

On May 27, 1982, BLM responded, advising Lacy that he had lost any possible interest in the lease "since neither of the unsuccessful applicants appealed within 30 days from receipt of their unsuccessful applications." Thus, BLM simply closed its eyes to the fact that Lacy had initiated a protest on May 13, 1982, well within the appeal period.

Even more inexplicable is the fact that BLM did not even wait until the expiration of the 30-day appeal period to issue this letter. BLM alleges that it returned the second and third priority cards on April 29, 1982. BLM's decision of May 27, 1982 (erroneously declaring that Lacy had not appealed within 30 days), was issued just 28 days later, when at least 2 days still remained to file notices of appeal. 2/

1/ We have further reason to doubt that Lacy's application was returned to him on Apr. 29, as BLM states. Lacy's letter of May 10, 1982, filed on May 13 (discussed below) contains no reference to his having received the rejected application. In his letter of June 7, 1982, filed on June 10 (also discussed below) Lacy noted that was he responding "within thirty (30) days after receipt of [BLM's] rejection of [his] second priority." Taken together, these letters suggest that Lacy received the rejection no earlier than May 11, 1982. If, as BLM states, it was sent to him on Apr. 29, he would, in all probability, have received it earlier.

2/ Since the 30-day appeal period did not commence until the second and third drawees received their return cards by mail, which probably did not occur until May 11, at the earliest (see n. 1 supra.) the May 27 decision was more likely at least 2 weeks premature. We note that, as of June 7, 1982, Lacy had apparently not received BLM's May 27 decision. Had this decision been mailed promptly, he would, in all probability, have received it by this

On June 10, 1982, Lacy filed a "notice of protest and notice of appeal," dated June 7, 1982, in which he stated that he had not yet received any written reply to his earlier protest. BLM regarded this filing as a notice of appeal and forwarded the case to us.

[1] Material filed on appeal by Precambrian shows conclusively that it is a partnership. Under 43 CFR 3102.2-4(a), 3/ any association, including a partnership, which seeks to lease must file specific information along with its application, to wit: a certified copy of its partnership articles, a statement that it is authorized to hold oil and gas leases, and a complete list of all general partners, along with citizenship and authority statements. Under 43 CFR 3102.2-4(b), additional information must be filed with BLM within 15 days after the filing of the application, to wit: separate statements from each person owning or controlling more than 10 percent of the association.

Under 43 CFR 3102.2-1(c), this partnership-qualifications statement may be placed on file with any BLM office. After review, BLM indicates its acceptance of the qualifications by assigning a serial number to the statement. When it receives notice that the serial number has been assigned, the partnership may refer to it on its application instead of filing the statement with each and every application. 43 CFR 3102.2-1(c); Cluff Oil Inc., 64 IBLA 156 (1982).

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). See Cluff Oil, Inc., (Syllabus), supra. Precambrian's application was not accompanied by the required statement of qualifications. Nor did its application bear any reference to the serial number of a file in any of BLM's offices containing an accepted statement of qualifications. Accordingly, it failed to meet the requirements of 43 CFR 3102.2-4, and BLM should have rejected its application. 43 CFR 3112.2-3; 3112.6-1(b).

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fn. 2 (continued)
date. Since BLM did not use certified mail, return receipt requested, to mail the rejected cards, or to mail its May 27, 1982, decision to Lacy, we have no way of knowing for certain when Lacy received the April 29 rejection or the May 27 decision.

3/ On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications previously required by 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party (see James E. Strong, 45 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of the second and third priority applicants coupled with the obligation to issue a noncompetitive lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); see Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Precambrian asserts that its qualification statement was on file in the California State Office (CASO), BLM, under serial Number CA-3000, and that it (Precambrian) identified this serial number in a letter to the Utah State Office, dated January 21, 1982, which accompanied its applications in January 1982. To the contrary, this letter expressly advised BLM that Federal Lease Filing Corporation (FLFC) intended not to include a serial number reference on Precambrian's application:

> The Statement of Qualifications requested under 43 CFR Section 3102.2 for many of these clients have been prefiled with the Bureau of Land Management office in Sacramento, California, and have been assigned the Serial Number CA-3000.
>
> For those clients without an acknowledged Serial Number [including Precambrian], wherein we have submitted their documents and requested a serial number to be assigned prior to the January filing deadline, <u>we have left the qualifications space blank on our clients' application cards</u>. [Emphasis supplied.]

The simultaneous application of Precambrian contained no reference to the serial number of a BLM file where the partnership qualifications had been accepted, the place on the application for such a reference was left blank. The record establishes that Precambrian was a "client without an acknowledged Serial Number." FLFC thus clearly intended to leave the space blank and to make no reference to any serial number.

[2] It is clear that FLFC left the qualification space blank because it did not know what serial number would be assigned to Precambrian's qualifications. However, where the applicant has not received an approved serial number from BLM, he has no choice but to file the qualifications with his application, on pain of rejection. <u>Cluff Oil, Inc.</u>, <u>supra</u>. Thus, until the applicant is notified of the assignment by BLM of a serial number to his qualifications, by which action BLM approves them, the applicant must file the statement with BLM, and may not leave the space blank in expectation that a number will be assigned.

In a memorandum to this Board dated August 26, 1982, BLM explained that Precambrian's "application was processed in accordance with BLM Instruction Memorandum No. 82-297 issued by the Washington Office dated March 8, 1982." This memorandum provides for the implementation of amended regulations which, effective February 26, 1982 (after the January 1982 filing), largely eliminated the requirement to submit documents related to qualifications. However, it expressly notes that the filing requirements were <u>not</u> to be waived "in relation to pending * * * applications for which <u>conflicting</u> applications * * * were pending on February 26, 1982." (Emphasis supplied.) Clearly, there were conflicting applications pending here on February 26, and BLM failed to follow this memorandum.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting

Lacy's protest is reversed, and the case is remanded to BLM for cancellation of oil and gas lease U 50684, issued to Precambrian, and adjudication of Lacy's application.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge