

MARK G. ANDERSON

IBLA 82-1009

Decided January 6, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application U-50996.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

Oil and gas lease application, Form 3112-1 (September 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

APPEARANCES: Francis J. Rondoni, Esq., Minneapolis, Minnesota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Mark G. Anderson has appealed from the decision of the Utah State Office, Bureau of Land Management (BLM), dated June 8, 1982, rejecting his noncompetitive oil and gas lease application, U-50996, because it was not fully executed. Appellant's application had been drawn with first priority for parcel UT 110 in the simultaneous oil and gas lease drawing held in March 1982.

The basis for the BLM decision was appellant's failure to answer the questions on the back of the application by completing items (d), (e), and

(f), relating, respectively, to other parties in interest, assignments, and multiple filings. 1/

In his statement of reasons, appellant acknowledges that he failed to answer questions (d), (e), and (f) but asserts that he is nevertheless the first-qualified applicant for lease U-50996. He blames his failure on inexperience with the simultaneous leasing program and on insufficient guidance from his filing service and submits an affidavit attesting to the answers to the questions on the application. He argues that it is arbitrary and capricious to reject his application for failure to comply with "a purely administrative requirement" when he is otherwise the first-qualified applicant.

[1] The applicable regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added). The application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics.) Small boxes appear following those items where a checked response is required.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3112.2-3 (47 FR 8545 (Feb. 26, 1982)); the assignment of an interest in the lease offer (question (e)) prior to lease issuance or the lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil and gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?"

information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Jake Huebert, 59 IBLA 179 (1981).

The information required under questions (d), (e), and (f) on Form 3112-1 (September 1981) was part of the certification of qualifications required by all applicants for oil and gas leases. William J. McGrath, 62 IBLA 110 (1982). Strict compliance with the regulations governing each drawing, 43 CFR Subpart 3112, is required to protect the rights of the second and third qualified applicants. Bonita L. Ferguson, 61 IBLA 178 (1982); 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). The responsibility for completing the simultaneous lease application rested on appellant. Reliance on instructions from a private filing service does not excuse the failure to fully execute the application. Walter B. Moore, Jr., 41 IBLA 95 (1979); John G. Keane, 37 IBLA 364 (1978).

This Board has repeatedly held that an applicant has not complied with 43 CFR 3112.2-1(a) where he has failed to answer questions (d), (e), and (f) on the application and that such failure properly results in rejection of the application. Carol V. Miller, 66 IBLA 394 (1982); John Gahr, 65 IBLA 268 (1982); Clifford E. Shaw, 63 IBLA 293 (1982); and cases cited therein.

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 affirmed.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ Form 3112-1 (September 1981) refers to 43 CFR 3102.2-7 (1981) as requiring the disclosure of other parties in interest. That regulation was revoked effective Feb. 26, 1982, and replaced with 43 CFR 3112.2-3 for simultaneous filings. See 47 FR 8544 (Feb. 26, 1982).

