

ROBERT G. LYNN

IBLA 82-968

Decided January 17, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA 9927.

Affirmed.

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

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

2. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: Robert G. Lynn, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert G. Lynn has appealed from a decision of the California State Office, BLM, dated May 12, 1982, which held for rejection his noncompetitive oil and gas lease offer CA 9927 for the reason that he had failed to comply with the requirements of 43 CFR 3111.1-1(a) by filing only four copies of the lease offer.

[1] The governing regulation in 43 CFR 3111.1-1(a) provides in pertinent part:

(a) Application -- (1) Forms. Except as provided in Subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, * * *. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). [Emphasis added.]

The regulations in 43 CFR 3111.1-1(e) specifically set out all the curable defects for the filing of noncompetitive offers. ^{1/} The failure to file the required number of copies is not included. We have specifically ruled that all failures to comply with this regulation, save those listed in 43 CFR 3111.1-1(e), are fatal to an oil and gas lease offer. Duncan Miller, 10 IBLA 208, 211 (1973). Thus, there is no margin for error. Where the offeror fails to file the required number of copies he is not a qualified offeror and the offer must be rejected. John P. Errebo, Jr., 32 IBLA 191 (1977).

BLM provided in the decision that Lynn would be allowed 30 days from the receipt thereof in which to file the fifth copy of offer CA 9927, and that if he did so, the offer would be given a priority as of the date the copy was received by BLM. The decision further provided that if the offer was not received within the time allowed, the offer would be rejected without further notice. The case file contains only four copies of the offer and no other copy was filed with the notice of, and statement of reasons for, appeal.

In his statement of reasons for appeal, Lynn contends that five copies of his noncompetitive over-the-counter lease offer were filed and, that the missing copy is the responsibility of BLM.

In support of his contention, Lynn states that he personally filed 18 sets of offers on May 15, 1981, of which the offer, CA 9927, was one; that a BLM employee counted and time-stamped each set, removing a sixth copy from each set which was returned to Lynn; and that no mention was made at the time of filing of a deficiency in any of the sets. Noting that almost a year passed before the deficiency was discovered, Lynn discusses possible ways by

^{1/} This section of the regulation provides:

"(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:

"(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

"(2) An offer completed in pencil or script.

"(3) An offer on a lease form not currently in use.

"(4) An offer on a form correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing."

which the fifth copy of offer CA 9927 could have been separated from the other copies while the file was under the jurisdiction of BLM.

Together with a memorandum transmitting the case file to this Board, BLM provided an unsigned, undated single page document entitled "Comments on the Appeal" in which it is stated:

We think Lynn's case is based on a very strong argument, but, we think, not based on evidence. We agree that it is the intention of the accounting section personnel to count the copies of applications received over the counter. This, however, is done as a courtesy. It is not an official verifying system. The accounting personnel make no actual documentation of the numbers of copies of applications filed. On inquiry about Lynn's offer (filed a little over a year ago), the accounting personnel not only cannot verify how many copies were filed, they cannot even verify which particular individual handled it.

[2] BLM has stated that counting the copies of each offer at the time of filing is done as a courtesy not as an official verifying system. Although Lynn asserts that he knows he filed the required number of copies, the case record contains only four copies.

A similar situation was dealt with in Tree v. White, 110 Utah 233, 171 P.2d 398 (Utah 1946). There the Supreme Court of Utah held:

Defendants concede that one of the affidavits was missing at the time of trial. However, they contend that such fact alone would not prove that both were not in fact properly executed and physically attached at the time they were required to be executed and attached. Appellants say that an officer is presumed to do his duty, and that by reason of such presumption, notwithstanding the affidavit in question was not attached to the roll at the time of the trial, this court should presume that it was duly executed and attached at the time it should have been attached. It is aptly stated in Hall v. Kellogg, 16 Mich. 135, 139:

"The law presumes that all officers intrusted with the custody of public files and records, will perform their official duty by keeping them safely in their offices. Where a paper is not found where, if in existence, it ought to be deposited or recorded, the presumption therefore arises that no such document has ever been in existence. Platt v. Stewart, 10 Mich. 260. Until this presumption is rebutted, it must stand as proof of such non-existence."

Id. at 400. See United States v. Chemical Foundation, Inc., 272 U.S. 1914 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976).

An uncorroborated statement, as provided by Lynn, that the proper number of offers were filed is not sufficient to overcome the presumption that BLM

properly discharged its duties and did not lose or misplace the document in issue. Metro Energy, Inc., 52 IBLA 369, 371 (1981).

Accordingly, 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.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

