

GERARD C. BARROWS

IBLA 83-168

Decided March 22, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting first drawn simultaneous oil and gas lease offer W 64432.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Failure to forward timely payment of first year's rental for oil and gas lease is not excused where the case record contains a signed postal return receipt card indicating that lease rental notice was received at appellant's address, even where the signature on the card was not that of the lease applicant.

2. Administrative Authority: Estoppel -- Administrative Authority:
Laches -- Estoppel -- Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Gerard C. Barrows, pro se; Laura L. Payne, Esq., Denver, Colorado, for the Blackbird Company.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Gerard C. Barrows has appealed from the November 9, 1982, decision of the Wyoming State Office, Bureau of Land Management, which rejected his simultaneous oil and gas lease offer for parcel WY-5 (W64432). His drawing entry card was drawn with first priority in the June 1978 filing period.
BLM

rejected the offer because appellant had failed to submit payment of the first year's rental.

The record indicates that BLM sent notice by certified mail to appellant's address. The return receipt card was signed by Dave Barrows on July 15, 1978. There was no other response. When BLM did not receive the rental payment from appellant within the time allowed by 43 CFR 3112.4-1 (1978) it issued the lease to the second drawee upon timely payment of the rental. However, appellant's first-drawn drawing entry card was not returned in 1978, but with this decision in 1982.

Appellant states that he did not receive the notice of rental due, otherwise he would have paid the rental. He points out that his drawing entry card was not returned until November 9, 1982.

The Blackbird Company, successor in interest to the successful second drawee, has entered an appearance. Because it is preparing to drill on this lease, it has petitioned for expedited consideration of the appeal.

Departmental regulation 43 CFR 3112.4-1 (1978), in effect when this offer was filed, specified that the first year's rental must be paid within 15 days of notice to avoid automatic disqualification. ^{1/} Appellant did not send the rental due, and claims that he did not receive notice that he should do so.

[1] 43 CFR 1810.2(b) states:

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. [Emphasis supplied.]

In Robert D. Nininger, 16 IBLA 200 (1974), *aff'd*, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), the Board held that failure to forward timely payment of the first year's rental is not excused where the lease rental notice was received at appellant's address, even where the signature on the return receipt card was not that of the oil and gas lease applicant. See also Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (1977). Enforcement of this regulation arises from the need for expeditious administration. Robert D. Nininger, *supra* at 202. Under these circumstances the first drawee is automatically disqualified, and the rights of the second drawee intervene. ^{2/} William H. Bevis, 52 IBLA 125, 127 (1981).

[2] Appellant rightfully questions the BLM's inordinate delay in returning his card. It appears that BLM returned the card after reviewing

^{1/} In 1980, 43 CFR 3112.4-1 was amended to allow, among other things, 30 days from receipt of notice until rental is due. 45 FR 35164 (May 23, 1980).

^{2/} Because of our holding in this case, it is not necessary to address Blackbird's arguments concerning bona fide purchaser status.

the case record in response to predrilling inquiries from the Blackbird Company. However, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); Simon A. Rife, 56 IBLA 378 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

