

Appeal from decision of the Eastern States Office, Bureau of Land Management, dismissing protests against the issuance of noncompetitive oil and gas leases. ES 24678, etc.

Affirmed.

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

A protest of an oil and gas lease offer executed by an attorney-in-fact is properly rejected where the copy of the agreement between the offeror and the attorney-in-fact authorizing the latter to act for the offeror has been filed as required by 43 CFR 3102.2-6 (1981) and referenced on the lease offer as permitted by 43 CFR 3102.2-1(c) (1981).

APPEARANCES: Leon F. Scully, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal concerns conflicting regular (over-the-counter) offers for noncompetitive oil and gas leases filed by appellant and the Atlantic Richfield Company. 1/ The Bureau of Land Management (BLM) decision noted

1/ Following is a list identifying the conflicting lease offers.

Conflicting

<u>Atlantic Richfield Lease Offer</u>	<u>Scully Lease Offer</u>
ES 24678*	ES 26375
ES 24697	ES 26373
ES 24701/ES 25146	ES 26370
ES 24703	ES 26372
ES 24711	ES 26558S
ES 24730*	ES 26451
ES 24747*	ES 26458
ES 24795	ES 26368

that the Atlantic Richfield offers, as well as some of appellant's offers, were filed during the simultaneous filing period established when over-the-counter leasing was resumed pursuant to the Secretary's order of April 7, 1980 (Order No. 3051, 45 FR 30554 (May 8, 1980)) and, thus, were considered to have been filed as of June 23, 1980. See "Notice of Filing Period for Over-the-Counter Oil and Gas Lease Applications," 45 FR 39956 (June 12, 1980). The other conflicting offers of appellant were filed after the simultaneous filing period. The drawing held to establish priority of conflicting offers filed during the simultaneous filing period resulted in the Atlantic Richfield offers receiving priority over the conflicting offers filed by appellant.

Appellant seeks the cancellation of the leases issued by BLM, Eastern States Office, in response to three of Atlantic Richfield's conflicting offers, and protests BLM's issuance of any other leases to Atlantic Richfield in response to the conflicting offers. In support of the requested relief, appellant states that each of the conflicting offers was signed by a person acting as an attorney-in-fact for Atlantic Richfield, in violation of 43 CFR Subpart 3102 (1981). 2/ BLM dismissed appellant's protests in a decision dated June 9, 1982, and this appeal ensued.

fn. 1 (continued)

ES 24801/ES 25170	ES 26371
ES 24821	ES 26556
ES 24843	ES 26557
ES 24853	ES 26459
ES 24869	ES 26461
ES 24870	ES 24951
ES 24973	ES 26455
ES 24992	ES 26439
ES 24997/ES 25152	ES 26535
ES 25108	ES 26462
ES 25120	ES 26460
ES 25125	ES 26453
ES 25129	ES 25495
ES 25144	ES 26456

* Lease issued effective June 1, 1982.

2/ On May 23, 1980, the Department published final rules (45 FR 35156-66), effective June 16, 1980, amending various provisions of the oil and gas leasing regulations of 43 CFR Part 3100, with particular emphasis on the provisions of the simultaneous oil and gas leasing system. These revised regulations have subsequently been further revised effective Feb. 26, 1982, and the regulation governing qualification of an agent at 43 CFR 3102.2-6 (1981) eliminated. See 47 FR 8544-46 (Feb. 26, 1982). The existence of conflicting applications filed at the time the former regulations were in effect necessitates a determination of the first-qualified applicant under the now-superseded regulations.

Appellant contends in his statement of reasons for appeal that the Department intended to eliminate the provision for attorneys-in-fact to sign regular over-the-counter offers for noncompetitive leases as part of its rulemaking action published May 23, 1980. 45 FR 35156. In particular, appellant refers to the deletion of former section 3102.6 (1979), entitled "Attorney-in-fact," and the following statement in the preamble to the May 23 rulemaking action: "Several comments recommended that the attorney-in-fact provisions be eliminated because other changes in the proposed rulemaking rendered them unnecessary. After careful consideration of the comments, the recommendation has been adopted and the provisions eliminated from this section of the final rulemaking." 45 FR 35158 (May 23, 1980). In its June 9, 1982, decision, BLM rejected appellant's contention, stating that the deletion of former section 3102.6 merely eliminated the general requirement for attorneys-in-fact to file evidence of their authority to sign lease offers and did not preclude attorneys-in-fact from signing lease offers.

[1] The regulatory revisions of May 23, 1980, simply do not support the sweeping interpretation drawn by appellant that over-the-counter lease offers may not be executed by an attorney-in-fact on behalf of the offeror. An attorney-in-fact is an agent. See Black's Law Dictionary 164 (rev. 4th ed. 1968). The regulation at 43 CFR 3102.2-6 (1981) provides that any applicant receiving the assistance of any person in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the offer a signed copy of any written agreement under which such service is authorized to be performed. The regulation expressly notes that such an agreement might take the form of a "power of attorney." Further, the wording of the regulation requiring such filing "with the lease offer, or the lease application if leasing is in accordance with subpart 3112" (emphasis added) makes it clear that the agency requirement extends to over-the-counter lease offers. The record discloses that copies of the power of attorney for Atlantic Richfield's attorneys-in-fact were on file in the corporate qualifications file which was referenced on the lease offers as permitted by 43 CFR 3102.2-1(c) (1981).

The conflicting offers filed by appellant and Atlantic Richfield are regular (over-the-counter) offers for noncompetitive leases subject to the requirements of 43 CFR Subpart 3111 (1981). 3/ Subsection 3111.1-1 requires that each such offer "must be * * * signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent." (Emphasis added.) This plain language permitting an attorney-in-fact to sign a regular offer for a noncompetitive lease further rebuts appellant's contention that the Department's rulemaking action of May 23, 1980, precluded the use of an attorney-in-fact to sign regular offers for noncompetitive leases.

3/ All of the conflicting offers were submitted on Form 3110-3, entitled "OFFER TO LEASE AND LEASE FOR OIL AND GAS -- NONCOMPETITIVE ACQUIRED LANDS LEASE."

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge.

