

ROBERT W. PIATT

IBLA 82-979

Decided June 2, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 50926.

Affirmed.

1. Oil and Gas Leases: Lands Subject to

A noncompetitive oil and gas lease offer is properly rejected where, as of the date the offer was filed, the land which is the subject of such offer has been withdrawn and has not yet officially been opened to applications under the mineral leasing laws pursuant to the terms of the public land order that revoked the prior withdrawal.

APPEARANCES: Robert W. Piatt, pro se; Robert Uram, Esq., Office of the Solicitor, Southwest Region, Santa Fe, New Mexico, for the Bureau of Land Management; Charles B. Gonzales, pro se, as adverse party.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert W. Piatt has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 14, 1982, which rejected his oil and gas lease offer NM 50926 because the offer was filed prior to the date the applied-for lands were officially available for mineral leasing.

The record shows that on October 28, 1981, appellant filed his noncompetitive oil and gas lease offer (NM 50926) for 1,680 acres of land in Sandoval County, New Mexico. This same 1,680 acres had previously been withdrawn by Public Land Order (PLO) No. 1581, February 5, 1958, for use as the San Luis (Rio Puerco) Experimental Watershed. On October 2, 1981, PLO 6017 was published in the Federal Register (46 FR 48668) effective October 29, 1981, which revoked PLO 1581 in its entirety and restored these lands (1,480 acres of public lands and 200 acres of patented lands with all minerals reserved to the United States) to the operation of the public land laws, including the mining and mineral leasing laws.

PLO 6017 provided, in pertinent part:

2. At 8 a.m. on October 29, 1981, all the lands, except the N 1/2 N 1/2 NW 1/4, Sec. 4, T. 17 N., R. 2 W., and the SW 1/4, Sec. 33, T. 18 N., R. 2 W., containing 200 acres which are patented, shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on October 29, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. All of the public and patented lands will be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, at 8 a.m. on October 29, 1981. [Emphasis added.]

In response to this order, Piatt and three other persons filed oil and gas lease offers for these lands prior to October 29, 1981. After receiving these offers, the New Mexico State Office issued a notice on April 5, 1982, indicating that "those offers received at or prior to 8:00 a.m. on October 29, 1981, shall be considered as simultaneous filed." A drawing was held April 12, 1982, and Piatt's offer received number three priority. Subsequently, BLM apparently re-examined these offers in light of the language of PLO 6017 and determined that it had incorrectly accepted these offers as being properly filed. By decision of May 14, 1982, BLM rejected these offers as being prematurely filed.

The record also shows that on December 22, 1981, an application, NM 51860, was filed for the same lands by C. B. Gonzales. BLM issued a lease to Gonzales on May 17, 1982, effective June 1, 1982.

Appellant objects to the manner in which BLM handled his lease offer stating:

I am protesting the entire procedure of the local BLM office determining that such applications were timely filed; of telling two applicants that they filed too late (Ex. I and J); of actually holding a drawing to determine priorities on April 12, 1982; and then rejecting such "simultaneous filed" applications.

BLM has responded that the decision properly rejected appellant's offer because it was filed on October 28, 1981, before the lands became open to filing of oil and gas lease offers on October 29, 1981, in accordance with the language of paragraph 3 of PLO 6017. We agree with this interpretation of the terms of that order.

As correctly noted by BLM, paragraph 2 of PLO 6017 which opened the lands to the "operation of the public land laws generally" for the filings of applications "at or prior to 8 a.m. on October 29, 1981," did not apply to applications filed under the "mineral leasing laws." This order set forth two discrete procedures for reopening these lands to development and disposal. Paragraph 2 specifically applied to applications under the "public land laws." This Board has recently considered and rejected the contention that

the term "public land laws" necessarily includes the Mineral Leasing Act. Compare Dale Armstrong, 53 IBLA 153, 156 (1981), with O. Glenn Oliver, 73 IBLA 56 (1983). It is the context in which the term is used that determines its scope.

The language of the order was clear and unambiguous in its intent. Paragraph 3 of this order specifically states that it applies to applications under the mineral leasing laws and those applications could not properly be filed until 8 a.m. on October 29, 1981. It is obvious that paragraph 2 was not meant to open land to mineral leasing since such an interpretation would make paragraph 3 superfluous. In view of this mandate, BLM properly reconsidered its action to accept appellant's application and rejected the offer. A noncompetitive oil and gas lease for Federal lands may only be issued to the first-qualified applicant, pursuant to 30 U.S.C. § 226(c) (Supp. V 1981). See McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Impel Energy Corp., 64 IBLA 92 (1982). Thereby, when a properly filed offer was received, BLM was obligated to issue the lease to that qualified applicant, C. B. Gonzales. 1/

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.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Will A. Irwin
Administrative Judge

1/ Appellant suggests that two offers which were filed on Oct. 29, 1981, by other individuals were withdrawn after these offerors were informed that the offers had been filed too late to participate in the simultaneous filing. It is obvious that, assuming this advice was given, the advice was erroneous. These offerors, however, could have ignored such advice and appealed the subsequent rejection of their offers. The withdrawal of these offers, even if based on erroneous advice, was an act of their own volition, and it effectively terminated any rights they might have to be awarded the lease.

