

Appeal from a decision of Colorado State Office, Bureau of Land Management, rejecting application for simultaneous oil and gas lease parcels for alleged multiple filings. C 36472, C 36555, C 36586, C 36590, C 36592, C 36593, and C 36599.

Vacated and remanded.

1. Applications and Entries: Generally -- Oil and Gas Leases: Applications: Generally

A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end eo instante.

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

Where an applicant has withdrawn his first filed simultaneous oil and gas lease application because it contained a fatal flaw, and thereafter files a correct application, it is improper for the Bureau of Land Management to reject the second application as to parcels for which it received first priority for the reasons that the applicant made multiple filings.

APPEARANCES: John H. Trigg, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John H. Trigg has appealed the Colorado State Office, Bureau of Land Management (CSO), decision of April 14, 1983, which rejected his simultaneous oil and gas lease application, drawn with first priority for leases C 36472, C 36555, " 36586, C 36590, C 36592, C 36593, and C 36599, because he had

filed more than one application for the parcels listed in the September 1982 drawing, in violation of 43 CFR 3112.2-1(f). ^{1/}

Appellant states as follows:

On September 14, 1982, I withdrew an application dated September 7, 1982, the letter is enclosed that will explain the reason for withdrawal and which was stamped by the Bureau of Land Management when they received it. Also attached is a copy of the letter from Cathleen A. Cooney, Acting Chief, Branch of Records and Data Management, Cheyenne, Wyoming, stating that they would withdraw the application. Subsequently, I filed a new application with new filing fees for the September, 1982 Simultaneous Oil and Gas Drawing. Therefore there should have only been one offer entered in the September, 1982 Drawing.

The letter of September 14, 1982, from appellant to the Wyoming State Office stated the following:

On the Automated Simultaneous Oil and Gas Lease Application Part B for the State of Colorado, dated September 7, 1982, previously filed with your office, it was discovered that one digit in my Social Security Number was marked incorrectly.

By this letter I am requesting to withdraw that filing named above with the understanding that it would be disqualified because of that error. I am also requesting that the filing fees in the amount of \$9,150.00 be returned to me as soon as possible.

The letter was received by the Wyoming State Office September 15, 1982, at 11:33 a.m.

The response from the Wyoming State Office, under date of September 23, 1982, reads as follows: "There are six (6) instances listed in CFR 3112.5 in which a return of filing fees is permitted. A withdrawal request is not one of them. Therefore, we will withdraw the application at your request, but your filing fees will not be refunded."

[1] A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end *eo instante*. John J. Sexton (On Reconsideration), 20 IBLA 187 (1975); Lauren W. Gibbs, 67 I.D. 350 (1960).

^{1/} CSO received Trigg's notice of appeal on May 18, 1983. On May 20, 1983, COS issued a decision vacating its Apr. 14, 1983, decision as to offer C 36586 (parcel CO-232) because its rejection was premature since Mr. Trigg did not receive first priority. When an appeal from a decision of a BLM official is properly filed, that official loses jurisdiction over the case and has no further authority to take any action until jurisdiction over the case is restored by Board action. Therefore, the May 20, 1983, decision is a nullity. Sierra Club, 57 IBLA 288 (1981). CSO should have petitioned the Board to vacate its decision and to dismiss the appeal as to offer C 36586.

[2] Where an applicant has filed a withdrawal of his simultaneous oil and gas lease application, and has received advice from BLM that the withdrawal was accepted, it is error for CSO to reject the application as to parcels for which it received first priority in the drawing. Appellant was advised that his application dated September 7, 1982, was withdrawn, so any parcel for which the September 15, 1982, application of appellant drew first priority is acceptable as being the first-qualified application, and is entitled to receive an oil and gas lease therefor.

On remand, CSO is directed to review the cases, and if the first-drawn application is the one dated September 7, 1982, such priority is of no avail as that application was withdrawn. Where the first priority was given to the application dated September 15, 1982, that application must be considered as the first-qualified application for the parcel, all also being regular. 2/

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 vacated, and the cases are remanded to the Colorado State Office for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ A joint petition for remand of these cases was filed by counsel for appellant and counsel for BLM on June 17, 1983. Counsel asked for direction as to the procedure to be followed by BLM on the withdrawn Trigg application where it was given a priority for specific parcels. As pointed out above, the Sept. 7, 1982, application of Trigg was withdrawn, and accordingly, the assigned priorities given to that application should be disregarded. The Board recommends that if the other priority applications for the same parcels are determined to be unqualified or if the priority applicants fail to respond timely to the request of BLM for payment of the first year's rental and return of signed lease offer forms, BLM should then draw a single number from the applicants for that parcel if the nonpriority applicants have not been rejected, and then adjudicate the priority application thus drawn in the usual manner. If all the priority applications are determined to be unqualified, BLM should then follow the procedures set forth in 43 CFR 3112.7.

