

INEXCO OIL CO.

IBLA 82-1203

Decided July 22, 1983

Appeal from decisions of the California State Office, Bureau of Land Management, rejecting oil and gas lease offers CA 9748, and CA 9749.

Affirmed.

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

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

2. Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or a reference by BLM serial number to a file in which such information

has been filed, its offer receives no priority until the defect is cured.

3. Administrative Authority: Generally -- Administrative Authority: Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Robert E. Gill, Jr., Esq., Houston, Texas, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Inexco Oil Company has appealed from the two decisions of the California State Office, Bureau of Land Management (BLM), dated June 29, 1982, and July 9, 1982, rejecting its noncompetitive over-the-counter oil and gas lease offers CA 9748 and CA 9749, filed May 11, 1981. <sup>1/</sup> Both decisions rejected the offers because they described lands included in oil and gas leases CA 9728, CA 9920 and CA 9729.

When the two noncompetitive oil and gas lease offers were filed on May 11, 1981, appellant failed to include a statement of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or refer to one on file with BLM as provided in 43 CFR 3102.2-1 (1981). On May 22, 1981, appellant submitted a letter advising BLM that its corporate qualification statement was on file with the Denver BLM under file C 3431. Accordingly, BLM assigned appellant's oil and gas lease offers priority as of that date. On May 11, and May 15, 1981, conflicting oil and gas offers were filed for the same land described in appellant's offers. As these junior offers were completed, their priority attached as of the date filed.

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<sup>1/</sup> Appellant's offer, CA 9748, included the following lands: T. 15 S., R. 18 E., San Bernardino meridian, sec. 7, lots 3, 4, 5, and 6, E 1/2 W 1/2, E 1/2; sec. 8, S 1/2; sec. 15, S 1/2; sec. 17, all; sec. 18, lots 3, 4, 5, and 6, E 1/2 W 1/2, E 1/2; sec. 19, lots 3, 4, 5, and 6 E 1/2 W 1/2, E 1/2; sec. 20, all; sec. 21, all; sec. 22, all; sec. 27, all; sec. 28, all; sec. 29, all; sec. 30, lots 3, 4, 5, and 6, E 1/2 W 1/2, E 1/2; sec. 31, lots 3, 4, 5, and 6, E 1/2 W 1/2, E 1/2; sec. 32, all; sec. 33, all; sec. 34, all. On May 15, 1981, appellant withdrew its offer for the following lands: Sec. 8, S 1/2; sec. 18, all; sec. 20, all; sec. 22, all; sec. 28, all; sec. 30, all; sec. 32, all; sec. 34, all.

Lease offer CA 9749 included the following lands: T. 15 S., R. 18 E., San Bernardino meridian, sec. 1, all; sec. 2, all; sec. 3, lots 3, 4, 5, and 6, S 1/2 N 1/2, S 1/2, all; sec. 4, lots 3, 4, 5, and 6, S 1/2 N 1/2, S 1/2, all; sec. 8, N 1/2; sec. 9, all; sec. 10, all; sec. 11, all; sec. 12, all; sec. 13, all; sec. 14, all; sec. 15, N 1/2; sec. 23, all; sec. 24, all; sec. 25, all; sec. 26, all; sec. 35, all.

Appellant, in its statement of reasons, 2/ contends that, (1) its failure to include its qualification number on its offer to lease was caused by erroneous advice given by BLM to their representative; (2) that the language of Information Memorandum No. 82-297 (March 8, 1981) indicates that the failure to place its qualification number on its application for lease was not fatal, and that BLM should not have given its application a new date (upon filing of the letter), but should have considered it complete as of the date originally filed.

[1] Where a noncompetitive over-the-counter lease offer is incomplete because of the failure of the offeror to comply with the regulations, no priority attaches. However, where the offeror provides the missing information before rejection of the defective offer, an effective filing occurs, and priority attaches as of the date of receipt of the curative information. Peter D. Van Der Jagt, 65 IBLA 56 (1982); Leon F. Scully, Jr., 50 IBLA 19 (1980).

[2] A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) (Supp. V 1981); Frandy, Inc., 69 IBLA 26 (1982); Impel Energy Corp., 64 IBLA 92 (1982). Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of its corporate qualifications as required by 43 CFR 3102.2-5 (effective June 16, 1980, published in the Federal Register, May 23, 1980, 45 FR 35163), or a reference to a serial number where the evidence has earlier been submitted to BLM, the offer receives no priority until the defect is cured. Peter D. Van Der Jagt, supra.

On February 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982).

Instruction Memorandum No. 82-297 (Mar. 8, 1982) referred to by appellant was issued pursuant to these interim regulations. The preamble, in pertinent part, states:

Pending applications and offers for which there are no junior conflicting applications or offers pending on this date will not be subject to rejection for any failure to comply with the rules in Subpart 3102 of Title 43 of the Code of Federal Regulations in effect at the time of filing. All such failures are waived by promulgation of this rulemaking with respect to all requirements altered or eliminated by the rulemaking. [Emphasis supplied.]

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2/ We note that on appeal appellant has not challenged that portion of the BLM decisions which rejected CA 9740 in part because the land was withdrawn by Public Land Order No. 283, May 31, 1945, and part of CA 9749 because it described land included in a terminated oil and gas lease and was only available for leasing through the simultaneous oil and gas leasing procedure.

In the instant case conflicting offers were pending, consequently, waiver of the requirement was not applicable to appellant. As the offers filed by appellant on May 11, 1981, were not perfected until May 22, 1981, the conflicting junior offers were entitled to receive priority. Accordingly, BLM properly rejected appellant's offers.

[3] Appellant's contention that they received erroneous advice from a BLM employee does not alter this result. Apparently appellant's employee misunderstood the advice given when it presented the defective offer for filing. The employee was correct in advising appellant that the reference number would be accepted at a later date. The fact that appellant did not understand that the filing of a completed offer determines priority was not, however, the result of BLM disseminating misinformation. At any rate, reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law. 43 CFR 1810.3(c) (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 appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge