

RICHARD F. CARROLL (ON RECONSIDERATION)

IBLA 83-93

Decided September 27, 1983

Petitions for reconsideration of Richard F. Carroll, 71 IBLA 307 (1983), in which the Board reversed and remanded the decisions of the Montana State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers M 55630, M 55631, M 55632, and M 55633.

Petitions granted; Board's decision affirmed.

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

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a).

2. Administrative Authority: Laches -- Estoppel -- Oil and Gas Leases: Applications: Filing

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

3. Administrative Practice -- Appeals -- Oil and Gas Leases:
Applications: Generally -- Regulations: Applicability

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Filing

Where the first-filed over-the-counter noncompetitive oil and gas lease offers each contain a curable defect listed in 43 CFR 3111.1-1(e), and where the offeror cures such defect, the offeror retains his priority as of the date the original offers were filed, even though a second qualified offeror filed an offer for some of the same lands included in the previously filed offers before the first offeror cured the defect in his offers.

APPEARANCES: James D. Voorhees, Esq., and Linnea Mitchell Simons, Esq., Denver, Colorado, for petitioner Frances Kunkel; William A. Forsythe, Esq., for petitioner Ted H. Williams.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

By decision dated March 22, 1983, Richard F. Carroll, 71 IBLA 307 (1983), this Board reversed decisions of the Montana State Office, Bureau of Land Management (BLM), which rejected Richard F. Carroll's noncompetitive over-the-counter oil and gas lease offers M 55630, M 55631, M 55632, and M 55633 because these offers were in violation of 43 CFR 3111.1-1. BLM explained that only one originally signed copy of each offer was filed and the

other four copies of each offer were xeroxed copies of the front of the original. BLM stated that 43 CFR 3111.1-1 provides that five copies of the official form or valid reproduction thereof shall be filed and that each offer must be signed in ink by the offeror.

In reversing BLM's decisions the Board held that where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror. The Board also held that where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed but that failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4).

The Board remanded the case to BLM and directed BLM to give Carroll an opportunity to comply with 43 CFR 3111.1-1(a). The Board stated that if Carroll complies with 43 CFR 3111.1-1(a) and the offers are acceptable, BLM should consider the offers to have been filed on the date the original offers were filed, June 24, 1982.

On April 8, 1983, and April 25, 1983, Ted H. Williams and Frances Kunkel filed petitions for reconsideration of the Board's decision in Richard F. Carroll, *supra*. Both Williams and Kunkel had filed offers to lease lands included in Carroll's offers.

In his motion for reconsideration Williams first contends that BLM should be estopped from accepting Carroll's offers to lease. Williams bases this argument on the fact that the instructions on the offer-to-lease form (Form 3110-1) state in three places on the form: "Fill in on typewriter or print plainly in ink and sign in ink"; "This offer must be filled in on a typewriter or printed plainly in ink and must be signed in ink?"; "This offer must be prepared in quintuplicate * * *."

In support of the estoppel argument, Williams also asserts that the Montana State Office has followed a policy of rejecting noncompetitive oil and gas lease offers which do not have an original ink signature on each of the five copies submitted. Williams states that employees of BLM have represented to Williams that the regulations as well as lease Form 3110-1 require an original ink signature on each of the five forms to constitute a valid offer.

In his second argument, Williams contends that the Board's holding in Fayette Oil & Gas Corp., 71 IBLA 79 (1983), herein referred to as "Fayette," and Richard F. Carroll, *supra*, that an offer consisting of a lease form with an original signature and four photocopies of that signature satisfies 43 CFR 3111.1-1(a), established a "new rule" and that retroactive application of this rule is improper.

Frances Kunkel adopts and incorporates by reference the discussion in Ted Williams' request for reconsideration. In addition, Kunkel asserts that the Carroll offers as originally filed were defective and did not entitle Carroll to a lease. She asserts that although the defects are curable, the Carroll offers are entitled to priority only as of the date the curative materials are filed. Kunkel points out that the Carroll offers were filed on June 24, 1982, and the Kunkel offers were filed on July 7, 1982.

Kunkel bases her argument on section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), which states that the person first making application for the lease who is qualified to hold the lease shall be entitled to the lease. Kunkel points out that the first-qualified applicant is one who is qualified under the applicable statutes and regulations to hold a lease and whose application or lease offer has complied with all mandatory regulations. Kunkel cites numerous decisions in which the Board held that a party whose offer does not comply with applicable regulations is not a qualified applicant until the defect is cured (if curable) and an offer which has a curable defect can earn priority only from the date the defect is cured. Kunkel states that on July 7, 1982, before any curative action was taken with respect to Carroll's offers, Kunkel filed her offers in compliance with the regulations, and is therefore the first-qualified applicant entitled to leases described in her offers as between herself and Carroll.

[1, 2] We affirm our decision in Richard F. Carroll, supra, in which we held that where an oil and gas lease offeror signs an offer form in ink and photocopies four exact reproductions of the front page of the offer form,

including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a). BLM's interpretation of the regulation, that all five copies must be signed in ink, is incorrect. Petitioners' argument that BLM should be estopped to accept Carroll's offers because of the instructions on the offer-to-lease form and the information provided by BLM employees is without merit. We find that the offer-to-lease form does not specify that the offeror must sign all five copies in ink. This is petitioners' interpretation of the instructions.

[3] Also, the authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees. Dennis M. Joy, 66 IBLA 260 (1982).

In considering the significance of actions taken by BLM officials in accepting oil and gas lease offers, we must bear in mind that the Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by his subordinates or his predecessors. See Pathfinder Mines Corp., 70 IBLA 264, 90 I.D. 10 (1983); Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976). It necessarily follows that this Board, in exercising the Secretary's review authority, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates. Pathfinder Mines Corp., *supra*. Therefore, we find that the alleged

providing of erroneous information by BLM to petitioners does not warrant application of the estoppel doctrine.

[4] Petitioners' second contention concerns the allegedly improper retroactive application of the holding in Carroll, supra, and Fayette, supra, that an offeror complies with the signature requirement of 43 CFR 3111.1-1(a) when he submits one offer form signed in ink and photocopies four exact reproductions including the signature. Petitioners contend that BLM has consistently rejected offers which do not have original signatures on each copy and that the holding in Carroll, supra, and Fayette, supra, constitutes a "new rule" with regard to the signing of oil and gas lease offers. Petitioners admit that the Secretary has the power to make a new rule but object to its retroactive application. Petitioners state that this rule did not exist at the time they filed their offers. Petitioners cite Runnells v. Andrus, 484 F. Supp. 1234 (D.C. Utah 1980), in which the court found the Secretary's interpretation of the relevant regulation (43 CFR 3102.6-1(a)(2) (1975)) reasonable and recognized the Secretary's right to interpret said regulation. ^{1/} Petitioners conclude that the present case is analogous to Runnells, supra, because they relied on the past practices of BLM in filing their lease applications and at the time they filed their applications, there was no IBLA ruling allowing the kind of application Carroll filed.

^{1/} In Runnells, supra, the court reversed the portion of the Board's decisions in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), and D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), giving the Board's interpretation of 43 CFR 3102.6-1(a)(2) (1975) retroactive effect.

We find that the situation in the present case is distinguishable from that in Runnells, *supra*. Although it is true that at the time petitioners filed their applications there was no IBLA ruling specifically allowing the kind of application filed by Carroll, there were IBLA decisions interpreting the signature requirement.

In Mary Adele Monson, 71 I.D. 269, 271, n.2 (1964), the Department stated with respect to the requirement of signing the offer that:

"[T]he regulation does not require that each of the five required copies be individually signed in ink, but it is sufficient if only one copy was directly signed in ink and the signature was impressed on the other four copies through the use of carbon paper. Duncan Miller, Robert A. Priestler, A-28621 etc. (May 10, 1961).

In Mary I. Arata, 4 IBLA 201, 203, 78 I.D. 397, 398 (1971), we stated:

There is an abundance of legal authority discussing and interpreting the terms "sign" and "signature." Many state and federal cases hold that the terms included any memorandum, mark, or sign, written or placed on any instrument or writing with intent to execute or authenticate such instrument. It may be written by hand, printed, stamped, typewritten, or engraved. It is immaterial with what kind of instrument a signature is made. Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir. 1951), cert. denied, 342 U.S. 820 (1951) (contract); Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966) (Uniform Commercial Code); Blackburn v. City of Paducah, 441 S.W.2d 395 (Ky. 1969) (resignation of city official); Weiner v. Mullaney, 59 Cal. App. 2d 620, 140 P.2d 704 (1943) (trust); Bishop v. Norell, 88 Ariz. 148, 353 P.2d 1022 (1960) (Statute of Frauds). The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written in the person's own handwriting. Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954).

From the discussions in these cases, it is clear that the Board's ruling in the Fayette and Carroll cases does not constitute an abrupt departure from a well stated practice, as did the Board's holding in D. E. Pack, supra. On the contrary, the Board's ruling in the present case is merely the initial interpretation and application of an existing regulation to this specific factual circumstance. It "fills a void in an unsettled area of the law." Runnells v. Andrus, supra. Because of our prior decisions in Monson, supra, and Arata, supra, and the clear language of the regulation, our decision in Carroll was not the retroactive application of a new rule.

[5] In support of its motion for reconsideration, petitioner Kunkel asserts that Carroll should not be allowed to cure the defect in his offers and retain his priority as of the date of the original offers, where a complete offer by a qualified offeror has intervened. Petitioner cites numerous Board decisions to support this point. While petitioner's assertion is generally correct as it applies to over-the-counter noncompetitive oil and gas lease offers, the concept of "curable defect" warrants our consideration.

Concerning defects in simultaneously filed oil and gas lease offers, the Board stated in Ballard E. Spencer Trust, Inc. v. Morton, 18 IBLA 25, 28 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976):

Under the simultaneous filing procedure it would be utterly pointless to allow the applicant whose defective offer is first drawn additional time to cure the defect, because he could not possibly gain priority over the next drawn offer which was regular on its face. The present procedure requires that three offers be drawn for each parcel. If the first drawn offer is unacceptable

for any reason, the second drawn offer gains priority as of the date and time the offers were simultaneously filed. If the second offer is then found to be unacceptable, the third offer gains first priority. If none of the three offers are acceptable as filed, the parcel must be listed for a subsequent simultaneous filing. 43 CFR 3112.5-1.

Therefore, under the "simultaneous filing" procedure a defective application filed by a first-drawn applicant must be rejected because giving an unqualified applicant additional time to file infringes on the rights of the second-drawn qualified applicant. Ballard E. Spencer Trust, Inc. v. Morton, supra.

By contrast, in the over-the-counter filing procedure, each offer is given priority by the date and time it is filed by the qualified offeror. Thus, if an offeror files a defective offer and a qualified offeror files an offer for the same land before the first offeror cures the defect, the lease must issue to the second offeror. Emerald Oil Co., 31 IBLA 119, 122 (1977). Michigan Wisconsin Pipe Line Co., 17 IBLA 282, 284 (1974). This principle applies in all cases except those specifically enumerated in 43 CFR 3111.1-1(e).

Regulation 43 CFR 3111.1-1(e) provides as follows:

(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(2) An offer completed in pencil or script.

(3) An offer on a lease form not currently in use.

(4) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by terms and conditions of the lease form in effect at the date of filing. [Emphasis added.]

It is apparent that the regulation contemplates that an offer deficient in these respects "will be approved by the signing officer * * *." This is entirely inconsistent with the idea that such offers will lose their priority.

Confusion arises over the use of the term "curable defect." In the over-the-counter offers cited by Kunkel, the defects involved failure to comply with a mandatory regulation; offers with such defects must be rejected. These offers would gain priority only as of the date the curative material was filed, whereas offers with the defects listed in 43 CFR 3111.1-1(e) would retain their priority and be approved. Thus, there may be said to be two classes of "curable defects"; those which are covered by the regulation, and those which are not.

For example, in John P. Errebo, Jr., 32 IBLA 191 (1977), the offeror failed to file five copies of his offer as required by 43 CFR 3111.1-1(a). The Board noted that failure to file the required number of copies is not included in the list of curable defects set forth in 43 CFR 3111.1-1(e), and then stated at page 192: "We have specifically ruled that all failures to comply with this regulation [43 CFR 3111.1-1(a)], save those listed in 43 CFR 3111.1-1(e) are fatal to an oil and gas offer. Duncan Miller, 10 IBLA 208, 211 (1973)." In Curtis Wheeler, 55 IBLA 65 (1981), an appeal involving a

similar factual situation, the Board noted that failure to file the required number of copies is not included in the list of curable defects enumerated in 43 CFR 3111.1-1(e), and held that the offer may earn priority as of the date when the required fifth copy of the lease offer was filed with BLM.

In Metro Energy, Inc., 52 IBLA 369 (1981), BLM rejected appellant's 11 oil and gas lease offers for failure to accompany each offer with an interest statement as required by 43 CFR 3102.7 (1979). The Board noted that failure to file the required interest statement is not among the curable defects listed in 43 CFR 3111.1-1(e). The appellant correctly noted that the Board has held that an offer which has been rejected for failure to file such statements may be reinstated when the required filing is made, and the offer will earn priority as of the time the required filing is made. Appellant withdrew six offers and the withdrawals, if effective, left a sufficient number of statements to cover the active offers. The Board held that those offers may be considered to be cured and earn priority as of the date when the withdrawal of the other offers was filed with BLM.

Again, in Milan S. Papulak, 30 IBLA 77 (1977), the rental submitted by the offeror was deficient by less than 10 percent. The Board held that this was a curable defect under 43 CFR 3111.1-1(e), but that if appellant had not submitted legally sufficient rental, within the limits of a curable deficiency, rejection of the offer would have been required.

The language used in 43 CFR 3111.1-1 dictates that offers with defects enumerated in 43 CFR 3111.1-1(e) should be treated differently from offers

with defects not enumerated. 43 CFR 3111.1-1(d) states: "(d) Rejection. Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority." The words "except as provided in this section" refer to 43 CFR 3111.1-1(e) which reads in pertinent part: "(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met * * *." The curable defects are then listed.

Since 43 CFR 3111.1-1(d) provides that offers with deficiencies be rejected with no priority, then it follows that 43 CFR 3111.1-1(e) must be interpreted to mean that offers with the defects listed "will be approved," (emphasis added), rather than rejected, and will receive priority as of the time they are filed, if all other requirements are met. If the offers with defects listed in 43 CFR 3111.1-1(e) received priority as of the time they were "cured," like the defects in the cases discussed above, then it would be meaningless to list them separately. This is the interpretation the Department gave 43 CFR 200.8(g)(2) (1954), a former version of 43 CFR 3111.1-1(e), in Celia R. Kammerman, 66 I.D. 255, 263 (1959). There the Department stated that 43 CFR 200.8(g)(2) "sets out the circumstances under which failure to comply with a mandatory requirement of the regulation will not result in loss of priority." (Emphasis added.) Therefore, we hold that if Carroll submits five copies of the lease form or valid reproductions thereof and if the offers are acceptable, he retains his priority as of the date the original offers were filed, June 24, 1982, even though Kunkel's offers were filed prior to the time Carroll cured the defect in his offers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, and the Board's prior decision styled Richard F. Carroll, 71 IBLA 307 (1983), is affirmed for the reasons set forth herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

