

JOE N. JOHNSON

IBLA 83-892

Decided January 31, 1984

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's oil and gas lease offer NM-A 46653-OK.

Vacated and remanded.

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

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Reinstatement -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer filed "over-the-counter" is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

4. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Lands Subject to

43 CFR 3112.1-1 provides that all lands which are not within a known geological structure and are covered by a lease which expires by operation of law are subject to leasing only in accordance with 43 CFR Subpart 3112.

APPEARANCES: Joe N. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Joe N. Johnson has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 19, 1983, rejecting his noncompetitive lease offer NM-A 46653-OK.

On July 22, 1981, appellant filed an "Offer to Lease and Lease for Oil and Gas Noncompetitive Acquired Lands Lease," Form 3110-3 (March 1978). With his offer appellant submitted \$2,743 for filing fees and the first year's rental on 33 tracts of land identified by tract number. Appellant calculated the acreage to be 2,732.85 acres. In making the calculation appellant made a prorata reduction of the acreage and resulting rental for the tracts subject to the offer which were fractionally owned by the United States. Attached to the offer was a sheet noting those tracts which were fractionally owned and the net acreage calculated by the appellant. Using appellant's calculations, the first year's rental due for the net acreage was \$2,733. While the total acreage was not shown on the appellant's offer, the total acreage calculated by BLM, based on the maps and attachments submitted with appellant's offer, is 3,049.65 acres.

The form upon which the offer was submitted contains the following language as part of the instructions:

Item 4. The total amount remitted should include a \$10 filing fee and the first year's rental of the land requested at the rate of \$1.00 an acre or fraction thereof, if the United States owns a 100 percent interest in the oil and gas deposits. If the interest is less than 100 percent, rental should be paid in the proportion outlined in Section 4(a) of the Lease Terms. * * * In order to protect the offeror's priorities with respect to the land requested, it is important that the rental payment submitted with the offer be sufficient to cover all the land requested at the rates indicated above. [Emphasis added.]

Section 4 of the "Lease Terms" referred to in Item 4 of the instructions contains the following language:

Sec. 4. Undivided fractional interest. -- Where the interest of the United States in the oil and gas underlying any tract or tracts described in item 3 on the reverse hereof is an undivided fractional interest, the following terms and conditions shall apply:

(a) Rentals and royalties payable on account of each such tract shall be in the same proportion to the rentals and royalties provided in Section 2(d) hereof as the undivided fractional interest of the United States in the oil and gas underlying such tract is to the full fee simple interest. [Emphasis added.]

However, at the time that the offer was filed, the applicable regulations clearly provided that rental should not be prorated. This provision is found at 43 CFR 3130.2-1 (1981), 1/ which provided: "§ 3130.2-1 Rental. Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103 of this chapter for the full acreage in such lands." Therefore, there was a conflict between the express provisions of the lease offer form and the regulations applicable to the leases for which the form was adopted.

On September 28, 1982, BLM issued a decision that the applicant must sign and return stipulations included with the decision prior to the issuance of the lease. Interlineated in the decision was a holographic notation as follows: "The acreage on your offer is 3015.27, therefore an additional \$283.00 is due at this time." On October 10, 1982, appellant signed the stipulations and returned same together with a check in the amount of \$283. Receipt 315477 reflects receipt of this amount on October 15, 1982.

On July 19, 1983, BLM again issued a decision with respect to this lease offer. This decision stated that the "total of the acreage for the lands applied for is 3049.65. On July 22, 1981, the date the offer was filed, only \$2,733.00 was remitted for the advance rental, which is over 10 percent short of the required amount." The decision then stated that "pursuant to 43 CFR 3103.3-1, this offer is rejected in its entirety."

On August 18, 1983, BLM received notice of appellant's appeal of the July 19, 1983, decision. A statement of reasons was filed with this Board on September 12, 1983.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected where the offeror fails to tender the full first year's advance rental with his offer as required by 43 CFR 3103.3-1 and the amount tendered is deficient by more than 10 percent of the proper amount due. See, e.g., James M. Chudnow, 62 IBLA 19 (1982).

Section 3103.3-1, in effect at the time that appellant filed, 2/ is as follows:

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing

1/ The regulations regarding oil and gas leasing on Federal lands were recently amended. Effective Aug. 22, 1983, the provisions in section 3130.2-1 are set forth at 43 CFR 3102.3-1(b) as follows: "(b) Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable for the full acreage in such lands." 48 FR 33667 (July 22, 1983).

2/ As previously noted, the regulations regarding oil and gas leasing on Federal lands were recently amended. Effective Aug. 22, 1983, the provisions in section 3103.3-1 are set forth at 43 CFR 3103.2-1(a) as follows:

officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

[2] Appellant's first argument is that the offer as submitted in 1981 was in compliance with the regulations in effect at the time of filing. This is in error. However, it is understandable that appellant would believe this to be the case, as the lease form, which was approved by BLM in 1978, specifically provided for prorating the rental based on partial ownership. This is not the first case which has reached this Board because of the inconsistency between the regulatory provisions and the lease form. In Thomas F. Keating, 53 IBLA 349 (1981), this Board was faced with the same problem. In that case, the Board stated:

Unfortunately, the text of this paragraph in the lease form is an incorrect statement of the current legal requirements for fractional interests. This paragraph conforms to the former requirements of the regulation before they were changed effective October 28, 1976, 43 FR 43149. Therefore, this form should either be amended or be recalled to reflect this regulatory change. However, appellant must still comply with the requirements of the current regulation to receive this lease. Id. at 351.

It is obvious that 6 months after the issuance of the Keating decision on March 30, 1981, the New Mexico State Office, BLM, was still using the March 1978 forms. However, in spite of the reluctance on the part of the New Mexico office to heed the advice of this Board, the applicant must meet the regulatory requirements. The provisions of 43 CFR 3130.2-1 clearly provide that rentals shall not be prorated but shall be payable at the same rate as for the full acreage. Appellant submitted the first year's rentals based upon a prorated rental calculation. By prorating the rental amount appellant calculated the amount due to be \$2,733. The acreage for which the offer was made was, in fact, 3,049.65 acres, requiring a first year's rental of \$3,050. The amount actually submitted with the lease offer in 1981 was 89.61 percent of the required amount. The determination that the amount initially submitted was more than 10 percent deficient was correct.

[3] In response to the provisions of the decision of September 28, 1983, appellant submitted additional payment in the amount of \$283. This amount was received on October 15, 1982. The effect of the submittal of this additional payment at the request of BLM was to cure the defect contained in

fn. 2 (continued)

"§ 3103.2-1 Rental requirements.

"(a) Each offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or \$200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met. Rental submitted shall be determined based on the total amount remitted less all required fees. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of cancellation of the lease." 48 FR 33667 (July 22, 1983).

the original offer, effective October 15, 1982. When the balance is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected. Gian R. Cassarino, 78 IBLA 242, 247 (1984). While the record indicates that there is another offer pending with respect to all or a portion of the same lands, there is nothing in the record to indicate the date that the other offer was filed. The July 19, 1983, BLM determination that the initial amount submitted was more than 10 percent deficient and that because of the deficiency the offer should be rejected would be affirmed had the defect not been cured on October 15, 1982. The priority of the appellant's application should be determined as of October 15, 1982.

[4] We note that parcel 112 was included as part of the lease offer and subsequently made a part of the documents considered further by BLM in preparation for issuance of the offer. The file indicates that there was a valid oil and gas lease existing with respect to this tract at the time of the appellant's initial offer and that this lease expired on July 29, 1982. It would appear that this tract is more properly subject to issuance of a lease pursuant to the provisions of 43 CFR Subpart 3112.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office, BLM, is vacated and remanded to said office for further processing consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge

