

CHICKASAW OIL AND GAS, INC.

IBLA 84-370

Decided July 11, 1984

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease application for parcel MT 152, serial number M 58769, drawn with second priority in the May 1983 drawing.

Appeal dismissed.

1. Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

In a simultaneous oil and gas lease drawing, the first-qualified applicant drawn with first priority is entitled to receive the lease. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

APPEARANCES: Antone L. Peterson III, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellant has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated February 14, 1984, rejecting appellant's simultaneous oil and gas lease application for parcel MT 152, serial number M 58769, in the May 1983 drawing.

BLM rejected appellant's application because appellant received second priority in the drawing. A lease has already been issued to the first drawn applicant.

In its statement of reasons, appellant confusingly argues that the relationship of the signatory to the applicant was properly set forth in its application. However, that was not a basis for BLM's rejection of the application. Appellant's statement of reasons is not germane to the appeal, as BLM's rejection of appellant's application was solely due to the fact that

appellant was drawn with second priority and that the lease has already been issued to the first-drawn, qualified applicant. <sup>1/</sup>

[1] The applicable statute 30 U.S.C. § 226(c) (1982), which governs oil and gas leasing on lands not on a known geologic structure of a producing oil and gas field, mandates that the first person making application for the lease who is qualified shall be entitled to receive it. Udall v. Tallman, 380 U.S. 1, 2 (1965); A. W. Rutter, Jr., 74 IBLA 345, 347 (1983); Bernard Kosik, 70 IBLA 373, 374 (1983); York Associates, Ltd., 58 IBLA 25, 27 (1981). "Thus, the Department is restrictively authorized to issue a noncompetitive oil and gas lease only to the first-qualified applicant." Bernard Kosik, *supra* at 374, citing Udall v. Tallman, *supra*.

The Secretary of the Interior has discretion to offer lands for lease, but once he has decided to lease, it is mandatory that he issue a lease to the first-qualified applicant. *E.g.*, Arnold v. Morton, 529 F.2d 1101 (9th Cir. 1976); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 654 (10th Cir. 1966); Duesing v. Udall, 350 F.2d 748, 750 (D.C. Cir. 1965). 43 CFR 3112.2-1 provides in part: "[T]he first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall have priority of opportunity to complete an offer to lease as described in 43 CFR § 3112.6-1 of this title." *See* 43 CFR 3112.4-1.

There is no evidence that the first-drawn applicant's application was defective. In the absence of a defect in that application, there is no basis to reverse BLM's decision rejecting appellant's application drawn with second priority. *See* A. W. Rutter, Jr., *supra* at 347; York Associates, Ltd., *supra* at 27; A. D. Matchett, 56 IBLA 231, 232-33 (1981); George P. Wolter, Jr., 47 IBLA 396, 398 (1980). Appellant has not alleged any such defect, and its statement of reasons for appeal is totally non-responsive to the decision from which the appeal is taken. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial. Duncan Miller, 37 IBLA 129 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is hereby dismissed.

Edward W. Stuebing  
Administrative Judge

We concur

James L. Burski  
Administrative Judge

Will A. Irwin  
Administrative Judge

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<sup>1/</sup> Counsel for appellant apparently resorted to a word processing machine to replicate identical statements of reasons for use in a number of appeals to this Board without bothering to notice that the cases were dissimilar, thereby wasting the time and resources of all concerned.

