

Appeal from decisions of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications. W-85527, et al.

Reversed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

BLM may not properly reject a simultaneous oil and gas lease application where the application is signed on behalf of the applicant and the signature includes the title of the applicant as "partner" of a particular partnership, designated as another party in interest, since it is possible to determine the identity of the applicant and the word referring to title should have been treated as surplusage.

APPEARANCES: James E. Nesland, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ann M. Davis, Joseph W. Cilurzo, Kathleen K. Machi, and Albert E. DiPaola have appealed from various decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated August 3, 9, 11, and 18, 1983, rejecting their simultaneous oil and gas lease applications, W-85527, et al., drawn with first priority in the May 1983 simultaneous oil and gas lease drawing. 1/

Appellants' lease applications indicate that appellants, as individuals, are the respective lease applicants. In addition, the applications disclose in each case that "a partnership" is another party in interest and that the applicant used the services of Energy Filing Corporation (Energy Filing), a

1/ The following is a list of the appellants, their lease applications, the parcels applied for, and the dates of the BLM decisions:

<u>Appellant</u>	<u>Application</u>	<u>Applied for</u>	<u>Lease</u>	<u>Parcel</u>	<u>Date of</u>
			<u>BLM Decision</u>		
Ann M. Davis	W-85527	WY-216	August 9, 1983		
Joseph W. Cilurzo	W-85625	WY-294	August 3, 1983		
	W-85711	WY-400			
Kathleen K. Machi	W-8579	WY-439	August 11, 1983		
Albert E. DiPaola	W-85912	WY-602	August 18, 1983		

filing service, in preparing and submitting the lease application. <sup>2/</sup> The lease applications are signed as follows: "Energy Filing Corporation as agent for [appellant], partner by: Michelle Mayer." The signature of Mayer is handwritten.

In its August 1983 decisions, BLM rejected appellants' lease applications because the signatures were "unacceptable." BLM stated that: "Since the applicant is an individual, the signature should also have shown an individual only, not a partner of the other party in interest."

In their statement of reasons for appeal, appellants contend that "reference to the Appellants' title as partner of the disclosed partnership did not create an ambiguity as to who the applicant was and, consequently, should have been disregarded as surplusage." Appellants argue that the lack of ambiguity is based on the following facts, viz., appellants, not the interested partnerships, were listed as the applicants; the partnerships were listed as other parties in interest, not applicants; the applications referenced appellants' assigned BLM applicant numbers; and the applications were signed on behalf of appellants, not the partnerships. Appellants cite the cases of Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979) Ann M. Davis, 74 IBLA 96 (1983), and Robert R. Brambley, 40 IBLA 215 (1979), wherein certain language identifying the lease offeror was treated as mere surplusage. Appellants conclude that they have not violated 43 CFR 3112.2-1(b) (1982) which requires the signature on a lease application, signed on behalf of the applicant, to disclose the names of the applicant and the signatory and their relationship.

[1] In its August 1983 decision, BLM does not cite which Departmental regulation(s) governing the simultaneous oil and gas leasing system was violated by appellants' lease applications. The only applicable regulations appear to be 43 CFR 3112.2-1(b) and (c) (1982), which govern in part the completion of simultaneous oil and gas lease applications. 43 CFR 3112.2-1(b) (1982) provided, in relevant part: "Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.)" (Emphasis added.) 43 CFR 3112.2-1(c) (1982) also provided, in relevant part: "The name of only one citizen, association, corporation or municipality may appear as applicant on any application." <sup>3/</sup> We can discern no violation of either regulation in the case of appellants' lease applications.

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<sup>2/</sup> The following other parties in interest were listed by appellants: Draco (Ann M. Davis); Gemini (Joseph W. Cilurzo); Pegasus (Kathleen K. Machi); and Cetus (Albert E. DiPaola).

<sup>3/</sup> Effective Aug. 22, 1983, the Department revised the regulations governing the simultaneous oil and gas leasing system, but retained the requirement that the lease application set forth the name of the applicant and be signed. 43 CFR 3112.2-1(b), (c) (48 FR 33678 (July 22, 1983)).

Appellants' lease applications, which were signed on appellants' behalf by an employee of Energy Filing, revealed the names of the applicants (appellants) and the signatory (Mayer) and their relationship (principal/agent). We do not construe the inclusion of the word "partner" as necessarily engendering any confusion as to the identity of the applicant, *i.e.*, individual or partnership, where the name of the applicant given in the signature box matched the name of the applicant in the box for the applicant's name, in each case. <sup>4/</sup> The word "partner" should have been treated as mere surplusage. Reference to the applicant's title as partner simply did not result in the metamorphosis of an application filed on behalf of an individual into one filed on behalf of a partnership, especially where the partnership was specifically identified as the other party in interest and not the applicant. See Robert R. Brambley, supra.

In this regard, the case of Ann M. Davis, supra, is virtually identical. In Davis, we concluded that BLM improperly rejected noncompetitive oil and gas lease offers where the names of the appellants therein appeared as the prospective lessees and those names matched the handwritten signatures on the lease offer forms. We held that reference to the appellants' titles as "General Partner" of the partnership disclosed as other parties in interest in appellants' lease applications did not alter this fact and that, in effect, there was no ambiguity as to whether the lease offerors were individuals, rather than partnerships. The only difference between Davis and the present case is that the former involved lease offers and the latter involves lease applications. However, the reasoning animating Davis is equally applicable herein. See Winkler v. Andrus, supra. Moreover the rationale for treating the title as surplusage is even stronger where appellants were identified as partners and the lease applications were signed by someone else, rather than the situation in Davis where the offerors, identified as partners, actually signed the lease offers.

Moreover, we are mindful of the recent trend in judicial pronouncements relating to the simultaneous oil and gas leasing system. That trend is best exemplified by the recent case of Conway v. Watt, 717 F.2d 512, 516 (10th Cir. 1983), wherein the court, in reviewing a case involving rejection of a lease application because it was undated, clearly stated that "nonsubstantive errors" are inappropriate grounds for finding lease applications defective. See also Charles Fox and George H. Keith, Partnership, 77 IBLA 199 (1983). In the present case, we conclude that the reference to appellants' titles on their lease applications rises to the level of a nonsubstantive error and, thus, clearly should not form the basis for rejection of appellants' lease applications. We conclude that BLM improperly rejected appellants' simultaneous oil and gas lease applications.

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<sup>4/</sup> Had the lease applications been rendered in a manner creating an ambiguity as to the identity of the applicants, we would have concluded that BLM properly rejected the lease applications. Jack Ortman, 76 IBLA 200 (1983). However, that is not the situation herein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed.

Gail M. Frazier  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

