

MATTHEW C. MAYS ET AL.

IBLA 85-307

Decided July 10, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 33912 (III.).

Affirmed.

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

Departmental regulation 43 CFR 3111.1-1(a) requires that an over-the-counter noncompetitive oil and gas lease offer be made on a current form approved by the Director, or on unofficial copies of that form in current use. Copies must be exact reproductions on one page of both sides of the official approved form without additions, omissions, or other changes or advertising. An oil and gas lease offer is properly rejected if the two sides of the approved form are copied on separate sheets of paper.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Land determined to be within the known geological structure of a producing oil and gas field may be leased only through competitive bidding and a noncompetitive offer for such land is properly rejected. One who believes the land should no longer be included in a known geological structure and wishes to obtain a noncompetitive lease for the land must first petition for rescission of the known geological determination.

APPEARANCES: Matthew C. Mays, for himself and other appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On behalf of himself and C. John Mann, Ralph L. Langenheim, Jr., and Ronald J. Hills, Matthew C. Mays has appealed from the December 31, 1984, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting over-the-counter oil and gas lease offer ES 33912 (III.).
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decision provided that certain of the lands requested were within a known geological structure (KGS) of a producing oil or gas field and were therefore not available for noncompetitive leasing. Appellants' offer was also rejected because the copies of the forms filed by appellants on September 20, 1984, did not comply with the requirement that lease forms be exact reproductions on one page of both sides of the official approved form.

[1] Appellants did not submit their offer on BLM forms but instead submitted copies. The front and back of the BLM form had been photocopied on separate pieces of paper. Departmental regulation 43 CFR 3111.1-1(a) provides in pertinent part:

An over-the-counter noncompetitive offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2-4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form without additions, omissions or other changes or advertising. (Emphasis added.)

Prior to July 22, 1983, an offeror could correct this defect without loss of priority of his application. See, e.g., Richard F. Carroll, 71 IBLA 307 (1983). However, regulations concerning over-the-counter offers were amended to eliminate the provision for curing this defect. 48 FR 33648 (July 22, 1983). The preamble to that rulemaking states: "The final rule-making does not adopt the language allowing that improper reproduction may be cured." Id. at 33656. The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department. Ensearch Exploration, Inc., 70 IBLA 25 (1983).

Appellants, however, are principally concerned with the other reason for rejecting their offer, i.e., that the land described in the offer is included in the KGS of a producing oil and gas field and is thus available only for competitive leasing. They assume improper reproduction "was not the primary reason for rejection of said offer, and therefore, are not resubmitting the lease on one sheet of paper just to have it rejected again for the alternative reason." Instead, appellants state their belief "that the proposed area to be leased is not a producing oil and gas field. This field has not produced for some time and therefore, pursuant to your rules, would be eligible for noncompetitive leasing."

[2] Land within a KGS may be leased only through competitive bidding and a noncompetitive lease offer for such land is properly rejected. See 30 U.S.C. § 226(c) (1982); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Therefore, even if appellants' application form had been proper, we still would affirm the rejection of appellants' offer, but only to the extent it includes land within the KGS of a producing oil or gas field. The designation of a portion of the land described in the offer as being within a KGS was a matter of record at the time appellants filed their offer. In James A. Wallender, 26 IBLA 317, 318 (1976), we held that the correct procedure in a circumstance such as this would be to petition for rescission of the KGS determination prior to filing an offer. We stated: "If the KGS determination is removed and the BLM land

status record so noted, the lands thereafter would be available for the filing of noncompetitive oil and gas lease offers." Id. at 318.

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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

