

TEXACO INC.

IBLA 85-553

Decided February 24, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer C-39903 because the power of attorney for the signatory of the lease offer failed to indicate that the attorney-in-fact was prohibited from filing offers for other participants.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Offers to Lease

The attorney-in-fact regulation, 43 CFR 3112.6-1(b)(1), prohibits an attorney-in-fact from executing a lease offer under the simultaneous leasing procedures, 43 CFR Subpart 3112, for one party when he is authorized to file offers as an attorney-in-fact for another. It specifically requires that a power of attorney document expressly prohibit the attorney-in-fact from filing offers on behalf of any other participant. If a person whose power of attorney contains the prohibition signs a lease offer on behalf of another party, he violates the terms of his power of attorney.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for Texaco Inc.; Lowell L. Madsen, Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Texaco Inc. has appealed a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 28, 1985, rejecting noncompetitive oil and gas lease offer C-39903 because the power of attorney for the signatory of the lease offer "does not indicate that the attorney-in-fact is prohibited from filing offers for other participants" as required by 43 CFR 3112.6-1(b) (Emphasis in original).

Texaco's application to lease parcel CO-443 was drawn with first priority in the August 1984 simultaneous oil and gas lease drawing. By notice dated January 17, 1985, BLM transmitted the lease offer documents and lease to Texaco. The transmittal notice stated in part:

If the lease is signed by an attorney-in-fact, the regulations require that the power of attorney contain particular provisions and that a copy of the power of attorney accompany the offer, 43 CFR 3112.6-1. If the offer is to be signed by an attorney-in-fact, we suggest that you contact this office to insure compliance with the regulations and avoid unnecessary technical rejection of the application or offer. (Telephone No. (305) 294-7600).

The signed lease forms were received by BLM on January 31, 1985. The lease forms were signed by K. L. Morgan as attorney-in-fact. Apparently in response to a telephone inquiry from BLM, by letter dated February 6, 1985, Texaco informed BLM that the power of attorney for Morgan was located in Texaco's qualifications file and provided the file number. The decision of March 28, 1985, and this appeal followed.

The regulation cited by BLM in its decision, 43 CFR 3112.6-1(b)(1), provides in relevant part: "An attorney-in-fact may sign the lease offer only if: (i) The power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant \* \* \*." The power of attorney for Morgan in Texaco's qualifications file, executed August 12, 1982, authorizes him "to file offers to lease with, \* \* \* to accept and execute leases, \* \* \* for the sole and exclusive benefit of Texaco Inc., and not in [sic] behalf of any other person in whole or in part \* \* \*." Thus, the issue on appeal is whether this language "prohibits the attorney-in-fact from filing offers on behalf of any other participant" as required by the regulation.

In its statement of reasons appellant argues that the regulation does not require the use of the word "prohibit" in a power of attorney and that the language of the power of attorney satisfies the requirement of the regulation (Statement of Reasons at 3-4, 7). Appellant further argues that, even if the wording of its power of attorney does not comply with the regulation, the omission is a de minimis error which cannot be held to be grounds for per se rejection of a lease offer under Conway v. Watt, 717 F.2d 512 (10th Cir. 1983) (Statement of Reasons at 5).

Counsel for BLM replies that the wording of the power of attorney limits Morgan to acting "for the sole and exclusive benefit" of Texaco only when he is acting under the authority delegated by the power of attorney and that he is not prohibited from acting on behalf of other parties in other instances (Answer at 7-8). In support of its position, BLM has submitted a second power of attorney authorizing Morgan to file offers "for the sole and exclusive benefit" of Texaco Producing, Inc., a subsidiary of Texaco Inc., "and not in behalf of any other person \* \* \* except to the extent of making such filings for Texaco Inc. or another of its subsidiaries, if duly empowered."

[1] The wording of the regulation is not ambiguous. It prohibits an attorney-in-fact from executing a lease offer under the simultaneous leasing procedures, 43 CFR Subpart 3112, for one party if he is authorized to file offers as an attorney-in-fact for another party. Amy Polak, 79 IBLA 391,

393 (1984). <sup>1/</sup> It does so by specifically requiring a power of attorney document to expressly prohibit the attorney-in-fact from filing offers on behalf of any other participant. While we agree with appellant that the regulation does not require that the word "prohibit" be used, this does not in itself render appellant's power of attorney sufficient to satisfy the regulation. Whatever wording is used, the regulation requires that a power of attorney contain language affirmatively limiting the attorney-in-fact to filing simultaneous oil and gas lease offers on behalf of the party granting the power of attorney. Kirk Rhone, 76 IBLA 332, 334 (1983). We agree with counsel for BLM that appellant's power of attorney does not contain such a limitation.

Appellant also correctly notes that the regulation was designed to prevent filing services from executing lease offers as attorneys-in-fact for their clients (Statement of Reasons at 4). See Kirk Rhone, supra at 333-34 (discussing the administrative history). Previously, the unrestricted ability to sign as attorney-in-fact had allowed filing services to obtain, control, and dispose of their clients' leases without the clients' knowledge. See 44 FR 56176 (Sept. 28, 1979). The solution put into effect by the regulation was to allow a person to hold only one power of attorney to make simultaneous oil and gas lease offers. Amy Polak, supra at 393; Kirk Rhone, supra at 334. Requiring the power of attorney to itself contain the prohibition has the effect of making the limitation self-enforcing. If a person whose power of attorney contains the prohibition signs a lease offer on behalf of another party, he violates the terms of his power of attorney. Applying this test to Texaco's power of attorney to Morgan, we cannot say that if he had signed a lease offer on behalf of another party, he would have violated the terms of his power of attorney from Texaco. Thus, we agree with BLM that the power of attorney at issue did not prohibit Texaco's attorney-in-fact from filing offers on behalf of any other participant as required by 43 CFR 3112.6-1(b)(1).

This violation of the regulation is not a "trivial defect" or "nonsubstantive error" as described by the U.S. Court of Appeals for the Tenth Circuit in Conway v. Watt, supra. The ability of filing services to act as attorneys-in-fact permitted unscrupulous operators to defraud their clients and abuse the leasing system. Control over their clients' lease applications and offers allowed filing service operators to devise a variety of means to enrich themselves by obtaining interests in multiple filings and retaining undisclosed interests in their clients' lease offers. See generally Raymond G. Albrecht, 92 IBLA 235, 93 I.D. 258 (1986). Considering the nature of the abuses, the regulation, along with others, was intended to address the requirement that a power of attorney prohibit an attorney-in-fact from making

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<sup>1/</sup> The Board's decision was appealed to the United States District Court for the District of Wyoming and its decision, Civ. No. C84-192-K (Jan. 2, 1985), was appealed to the Tenth Circuit, Civ. No. 85-1366. The original plaintiffs withdrew their offers to lease and the appeal was dismissed as moot and the matter remanded to district court (Mar. 17, 1986). By Order on Mandate the district court vacated and set aside its original decision and order and dismissed the case (Mar. 25, 1986).

offers on behalf of other parties cannot be considered trivial or nonsubstantive. Anadarko Production Co., 83 IBLA 148, 150 (1984); Satellite 8211104, 89 IBLA 388, 396-97(1985), aff'd, Civ. No. 86-0456 (D.D.C. Nov. 21, 1986); see KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985). The ability to make offers as attorney-in-fact for more than one party was precisely the mechanism which permitted many abuses. If a power of attorney fails to contain the required prohibition, the offer is properly rejected. Satellite 8211104, supra; Satellite 8305128, 84 IBLA 74, 76 (1984); Anadarko Production Co., supra; Amy Polak, supra; Kirk Rhone, supra.

Accordingly, 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.

Franklin D. Arness  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

