

NEW MEXICO & ARIZONA LAND CO.

IBLA 85-818

Decided October 13, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM 61656.

Set aside and remanded.

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 and must be manually signed in ink and dated by the offeror or the offeror's duly authorized agent or attorney in fact. An original and two signed copies of each offer to lease must be filed in the proper BLM office. An oil and gas lease offer which is not properly filed in accordance with these requirements must be rejected pursuant to 43 CFR 3111.1-1(f).

2. Evidence: Credibility -- Oil and Gas Leases: Filing

Where an applicant submits evidence which supports a conclusion that two copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only one copy of the lease offer will be set aside.

APPEARANCES: J. D. Sphar, Vice President-Minerals, New Mexico and Arizona Land Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The New Mexico and Arizona Land Company (New Mexico), has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 22, 1985, which rejected its over-the-counter noncompetitive oil and gas lease offer (NM 61656) in its entirety for failure to properly file the lease offer. The decision stated:

The regulation Title 43 CFR 3111.1-1(a) provides in part that the original copy of each offer shall be manually signed in ink and dated by the offeror or the offer's duly authorized agent or attorney-in-fact. The original and 2 copies of each offer to lease with each copy showing evidence of having been signed, shall be filed in the proper BLM office.

The copy showing the date and time of receipt in this office is considered the original copy and it is not signed. Therefore offer NM 61656 is defective and hereby rejected.

On March 1, 1985, we received oil and gas offer to lease NM 61666 which includes all lands in offer NM 61656. This offer will now have priority of filing.

The record shows that simultaneous over-the-counter noncompetitive oil and gas lease offers were filed on March 1, 1985, by appellant and others for land in T. 1 S., R. 9 W., New Mexico Principal Meridian, within the Cobola National Forest, Catron County, New Mexico. A drawing was held April 24, 1985, to determine priority between the offerors. See 43 CFR 1821.2-3. Appellant's offer received higher priority than Liberty Petroleum, whose offer, NM 61666, included land in appellant's lease offer. Appellant's offer was rejected because one copy of its offer consisted of an unsigned photocopy of the front page of the lease offer. 1/ In its statement of reasons appellant contends it properly filed its lease offers:

Upon receiving your rejection notice, I checked our own case file and found a signed, dated, and stamped copy of the lease offer. This "original" as you term it was handed to the BLM clerk along with three other copies. One of the other three copies was an unsigned extra copy (the backside of the extra was not even xeroxed). The BLM clerk was asked to date stamp on her machine (well behind the counter and out of my reach) the extra unsigned copy for our records. Mr. John Somers * * * was at the counter with me and can verify this to be the case. Thus, the BLM received three copies, fully executed, along with a proper check. It was all filed properly. Then, the BLM returned to me, in error, what you now term "the original." We here entrust this "original" to the Office of the Secretary as self-evident proof that we filed said document. Inspection will show the BLM stamping which could only have occurred in BLM hands. Eight leases were submitted at once on this date and the clerk simply erred in returning the wrong form to us after the filing had taken place. [Emphasis in Original.]

[1] The regulations governing the filing of over-the-counter offers are found at 43 CFR Subpart 3111. 43 CFR 3111.1-1(a) provides in pertinent part:

1/ While the decision states that the original lease form is not signed, the record reflects that the form containing the BLM date stamp is properly signed and dated.

(a) 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. * * * Copies shall be exact reproductions on 1 page of both sides of the official approved form without additions, omissions or other changes or advertising. The original copy of each offer shall be filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror or the offeror's duly authorized agent or attorney-in-fact, and shall be accompanied by a nonrefundable filing fee of \$ 75 and the first year's rental. The original and 2 copies of each offer to lease, with each copy showing evidence of having been signed, shall be filed in the proper BLM office.

Unless 2 copies of the lease offer are filed as required by this provision, 43 CFR 3111.1-1(f) requires mandatory rejection of an offer.

[2] The BLM case file contains an original and one copy of the lease offer properly signed and dated. The second copy is only a front page reproduction of the original. On appeal appellant submitted an original offer properly signed and dated with a BLM date stamp of March 1, 1985, to evidence that the requisite copies were filed with BLM. Under 43 CFR 1821.2-2(f) the filing of a document is accomplished when the document is delivered to and received by the proper BLM office. The BLM date stamp shows that the original was delivered to BLM on March 1, 1985. The question before us is whether appellant's lease offer was properly filed in accordance with the applicable regulation. In light of our holding in Robert G. Lynn (On Reconsideration), 73 IBLA 288 (1983), we find that it was.

In Robert G. Lynn (On Reconsideration), *supra*, we vacated a previous Board decision in Robert G. Lynn, 70 IBLA 141 (1983), affirming a BLM decision rejecting the appellant's oil and gas lease for failing to comply with 43 CFR 3111.1-1(a) by filing the requisite number of copies of his lease offer. In Robert G. Lynn, *supra*, appellant maintained that he filed the correct number of copies. The BLM case file, however, contained one copy less than that required by the regulations. On reconsideration, appellant submitted a time stamped extra copy which had been returned to him by BLM. The Board held that a preponderance of the evidence supported a finding that all the required copies were timely filed and set aside the BLM decision. Robert G. Lynn (On Reconsideration), *supra*, at 290.

In this case, one completed copy of appellant's oil and gas lease offer is missing from the BLM case file. The date stamped copy provided by appellant evidences that a second copy was, however, submitted to BLM for filing at the same time an original, one completed copy, and one extra copy of the lease offer were filed. Somehow, after date stamping of the documents occurred, the extra copy was retained in the BLM file, instead of the completed copy. However, even though the completed copy was returned to appellant, the evidence in this case establishes that it was submitted for filing along with the original and one copy, and under the circumstances, we find that appellant's lease offer was properly filed in compliance with 43 CFR 3111.1-1(a). See Robert G. Lynn (On Reconsideration), *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 set aside, and the case file remanded.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

