INTERIOR BOARD OF LAND APPEALS

Carlton Oil Corp.

129 IBLA 144 (April 18, 1994)

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Editor's note: Reconsideration denied by Order dated Aug. 17, 1994.

CARLTON OIL CORP.

IBLA 94-347 Decided April 18, 1994

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease application OHES 46404.

Stay denied; decision affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Offers to Lease

BLM properly rejected an oil and gas lease application that was not made on a standard form as required by 43 CFR 3101.1-1.

APPEARANCES: Danny W. Thompson, President, Carlton Oil Corporation, Newport, Ohio.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Carlton Oil Corporation (Carlton) has appealed from a January 31, 1994, decision of the Eastern States Office, Bureau of Land Management (BLM) that rejected oil and gas acquired lease application OHES 46404 covering land in sec. 30, T. 2 N., R. 5 W, and secs. 25 and 31, T. 3. N., R. 5 W., Ohio River Survey, Monroe County, Ohio. The Carlton application, made pursuant to a provision of the Energy Policy Act of 1992 (1992 Act), 106 Stat 3107, 43 U.S.C. § 226(b)(3)(B)(i) (1992 Supp IV), sought to continue a lease issued to Carlton by Mary, James, and Dorothy Littleton on January 28, 1984, that was granted subject to vesting in the United States of the leased mineral interest (the surface was already in Federal ownership) on November 1, 1991. The January 31 decision to reject the offer was based on a finding that Carlton failed to file noncompetitive "Form 3100-11[,] Offer to Lease and Lease for Oil and Gas," contrary to filing instructions provided by BLM on February 12, 1993. Carlton filed a timely appeal and application for stay pursuant to 43 CFR 4.21(b).

When the surface and mineral interests in the leased land merged in the United States on November 1, 1991, the lease was held by production from the Littleton #1 gas well. Production continued until May 1992, when Carlton shut it in "pending receipt of this lease as a private non-competitive lease." See Carlton lease application dated Oct. 19, 1993. The Carlton application was made in contemplation of a provision of the 1992 Act establishing time limitations for conversion of private leases

to Federal noncompetitive leases upon vesting of affected mineral interests in Federal ownership, thereby providing an exception to the general requirement that all Federal oil and gas leasing shall be by "competitive bidding." See 30 U.S.C. § 226(b)(1) (1988). To take advantage of the exception offered by the 1992 Act, Carlton furnished, in addition to a covering letter requesting issuance of a "private non-competitive lease" the required application fee, bonding statement, report of production, private lease agreement, and title statement enumerated by BLM on February 12, 1992. The Carlton application did not, however, include the Federal leasing form of application for noncompetitive lease.

As Carlton explains on appeal, this omission was not an oversight; the form was not provided because Carlton does not wish to submit to Federal regulation, but seeks instead to continue the terms of his private lease by changing the royalty payee from the Littletons to the United States while retaining the lease terms made by agreement with the Littletons. Arguing that special rulemaking is necessary before there can be meaningful negotiation concerning any lease to be entered into between Carlton and the United States, Carlton reasons that "[u]nless I am apprised of the specific environmental and operating standards that would apply to operation of
the Littleton #1 under a Federal lease, neither BLM nor I could determine whether or not I have a well 'capable of producing in paying quantities.' And if I do not have a well capable of producing in paying quantities, I could choose not to commit the time and effort to embrace the leasing
procedures set out by BLM (Statement of reasons at 1). It is Carlton's position that the Littleton lease should continue unchanged (except for
the identity of the lessor) because "the [statute] states that an operator may 'elect to continue the lease as a noncompetitive lease' if the election is made by the timeframes stated in the law. The [statute] does not state that a lease must be applied for by the deadline, only that an election must be made" (Emphasis in original). Id. at 2. It is also argued that responsibility for plugging and abandonment must be agreed upon before a noncompetitive lease offer could be made by Carlton.

Carlton has requested that the BLM decision be stayed pending appeal, arguing that to do so would simply continue the status quo (the Littleton lease). It is contended that there is a strong likelihood of success on appeal because a "long and confusing history of the Federal government's handling of mineral reversions in the Wayne National Forest" indicates
there is a likelihood this appeal will succeed. It is also argued that
any other course will result in hardship to Carlton, which will be disadvantaged in the market if the existing well is ultimately subjected to competitive leasing by BLM's leasing regulations. Finally, Carlton concludes that continued loss of production from the marginal well on the lease deprives the company "of a reasonable return [on] investment" (Petition for Stay at 1).

The 1992 Act cited by Carlton provides, relevantly, that:

> If the United States held a vested future interest in a mineral estate that, immediately
> prior to becoming a vested

> present interest, was subject to a lease under which * * * gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day not more than * * * 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease * * * in the case of an interest which vested after January 1, 1990, and on or before the date of enactment of this paragraph, if the election is made [before October 24, 1993].

43 U.S.C. § 226(b)(3)(A) and (B)(i) (1992 Supp. IV).

[1] The Mineral Leasing Act for Acquired Lands (MLAAL), as amended, 30 U.S.C. §§ 351-359 (1988), provides that the Secretary shall, by regulation, administer leasing of such lands under rules that "shall be the same as those prescribed under the mineral leasing laws." 30 U.S.C. § 359 (1988). Departmental onshore oil and gas leasing regulation 43 CFR 3101.1-1 provides that "[a] lease shall be issued only on the standard form approved by the Director." In the administration of such leases, the Department must consistently follow its rules, and is bound by them. See generally Foster Minerals, Ltd., 128 IBLA 192, 195 (1994) (administration of acquired lands leases to conform to Departmental regulation) and cases cited. Failure to make timely application on the required form, therefore, required rejection of the Carlton offer. See 43 CFR 3101.1-1; Lawrence E. Welsh, Jr., 91 IBLA 324, 325 (1986) and cases cited.

While Carlton suggests that special rulemaking is required for the class of leases affected by the 1992 Act, no authority for this proposition is cited, and the history of the 1992 Act reveals none. The 1992 Act instead provides that the amendment here under consideration shall "apply with respect to those mineral estates in which the interest of the United States becomes a vested interest after January 1, 1990." See 30 U.S.C. § 266 note (1992 Supp. IV). The 1992 Act provides a schedule limiting the time for holders of existing private leases to make applications for Federal noncompetitive leases (see 30 U.S.C. § 226(b)(3)(B) (1992 Supp. IV)); failure to make an application for a noncompetitive lease within the times provided by subsection (B) of the 1992 Act (in this case by October 24, 1993) means that leasing will be governed by the competitive leasing provisions of the Mineral Leasing Act, 30 U.S.C. § 226(b)(1), inasmuch as the statute requires that Federal oil and gas leasing shall be by competitive bidding unless otherwise excepted from that requirement. Id.

By failing to submit an application for a noncompetitive acquired lands lease prior to October 24, 1993, Carlton chose not to seek the exception to competitive leasing provided by the 1992 Act. The alternative course of action that Carlton proposes, involving a special rulemaking for acquired lands lessees affected by the 1992 Act, is not authorized by the 1992 Act. Similarly, the request by Carlton that BLM negotiate lease terms outside the regulations presently in effect for gas leasing on Federal lands is not sanctioned by the 1992 Act and is contrary to the MLAAL. Because this appeal is defective on its face, it is rejected; the petition for stay must

also be denied, inasmuch as our review of the petition for stay has revealed there is no likelihood of success on the merits. See 43 CFR 4.21(b)(1)(ii); Clay Worst, 128 IBLA 165, 166 (1994).

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 and the petition for stay is denied.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge