

INTERIOR BOARD OF LAND APPEALS

American Energy Independence Royalty, LLC

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AMERICAN ENERGY INDEPENDENCE ROYALTY, LLC

IBLA 2004-70

Decided April 25, 2005

Appeal from a decision of the Supervisor, Branch of Minerals Adjudication, Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. N-77610 through N-77625.

Reversed.

1. Oil and Gas Leases: Offers to Lease

A BLM decision rejecting a noncompetitive oil and gas lease offer on the basis that the offeror failed to comply with the requirement of 43 CFR 3102.4(a) that the offer be “signed in ink” by the potential lessee or anyone authorized to sign on his behalf, because the offer form was not holographically (manually) signed by the offeror or his representative, will be reversed where the regulation was satisfied by placing a rubber-stamp facsimile signature of an authorized agent of the offeror on the form.

APPEARANCES: John M. Cogswell, Esq., Buena Vista, Colorado, for appellant; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

American Energy Independence Royalty, LLC (American Energy) has appealed from an October 3, 2003, decision of the Supervisor, Branch of Minerals Adjudication, Nevada State Office, Bureau of Land Management (BLM), rejecting its 16 noncompetitive oil and gas lease offers, N-77610 through N-77625, because the

offer forms had not been holographically (manually) signed by the offeror or its representative.^{1/}

The 71 lease parcels at issue here were offered for competitive oil and gas leasing, pursuant to a September 2001 Notice of Competitive Oil and Gas Lease Sale.^{2/} Absent any competitive bid, each of the parcels became available for noncompetitive oil and gas leasing for a two-year period following the competitive sale on September 11, 2001, pursuant to 30 U.S.C. § 226(b)(1)(A) (2000), and 43 CFR 3110.1(b). Section 17(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(c) (2000), provides that “the person first making application for the lease who is qualified to hold a lease under [30 U.S.C.] [C]hapter [3A] shall be entitled to a lease of such lands without competitive bidding[.]” (Emphasis added.) See, e.g., McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Parties desiring to lease the parcels noncompetitively were required to file an oil and gas lease offer, on a “current form approved by the Director, [BLM,] or on unofficial copies of that form in current use,” on or before September 12, 2003. 43 CFR 3110.4(a). Regulation 43 CFR 3110.4(a) also provides:

The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror’s duly authorized agent, and shall be accompanied by the first year’s rental and a nonrefundable filing fee of \$75. The original and 2 copies of

^{1/} Following the filing of its appeal, appellant provided the Board, on Jan. 13, 2005, with copies of 14 letters, all dated Jan. 7, 2005, addressed to BLM, requesting the withdrawal of 14 of its lease offers, in whole or in part, and a full or partial refund of the first year advance rental paid in connection with the offers. With our decision in this matter, BLM regains jurisdiction over the offers in question, and may take what action it deems appropriate to address appellant’s withdrawal and refund request.

^{2/} BLM identified the parcels at page 1 of its October 2003 decision. All of the parcels begin with the notation “NV-01-09,” followed by a four-digit number. We refer to the parcels by that four-digit number, as follows: 0023, 0024, 0026 through 0029, 0033, 0034, 0046 through 0054, 0056 through 0058, 0060 through 0063, 0065, 0067, 0068, 0086 through 0103, 0110, 0111, 0113, 0114, 0127 through 0129, 0134, 0136 through 0139, 0141, 0143, and 0193 through 0204. These parcels encompass a total of 106,723.55 acres of public land situated in T. 34 N., R. 55 E., T. 35 N., Rs. 55 and 57 E., Ts. 36 and 37 N., Rs. 54-56 and 58 E., T. 37 N., R. 57 E., T. 38 N., Rs. 55, 56, and 57 E., and T. 39 N., Rs. 56 and 57 E., Mount Diablo Meridian, Elko County, Nevada.

each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. [Emphasis added.]

In addition, 43 CFR 3110.4(d) states that “[c]ompliance with [43 CFR] [S]ubpart 3102 shall be required.” Regulation 43 CFR 3102.4(a) provides, in relevant part, that “[t]he original of an offer * * * shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.” (Emphasis added.) Further, 43 CFR 3110.7(d) states that, except as otherwise provided, “an offer that is not filed in accordance with the regulations in [43 CFR] [P]art [3110] shall be rejected.”

On September 12, 2003, American Energy filed, in the case of each of the lease offers at issue here, three copies of an “OFFER TO LEASE AND LEASE FOR OIL AND GAS” (Form 3100-11 (October 1992)). Each offer clearly named American Energy as the offeror. It also specified the particular lease parcel or parcels sought, setting forth, on an attached exhibit, the parcel number or numbers and the corresponding legal land description, referring to the aliquot parts of the public-land rectangular survey system encompassed by each parcel. Each offer also identified the acreage of the parcel or parcels, and the total acreage covered by the entire offer.

At the bottom of each offer form, on its face, was the signature, in blue ink and in the form of handwriting, of “Dr. C. William Feldman DC.”^{3/} The same signature appears on the back of the offer form.^{4/}

^{3/} The signature on the face of each offer form appears below the words “**THE UNITED STATES OF AMERICA,**” and on a line next to the word “by.” Immediately below the line is the notation “(Signing Officer).” Below that are lines similarly denoted by the words “(Title)” and “(Date),” which contain the handwritten entries, in black ink, of “Agent” and “9-12-03.” Below that, and at the very bottom of the page, are the words “**EFFECTIVE DATE OF LEASE,**” with a line for an entry. No date appears on that line.

^{4/} The signature on the back of each offer form appears on a line immediately below which is the notation “(Signature of Lessee or Attorney-in-fact),” and which is next to a line for entry of the date of execution. The date of execution (Sept. 12, 2003) is handwritten in black ink. The signature also follows a pre-printed statement which states, in subsection (a), that the “offeror” certifies that it is in compliance with the various statutory and regulatory prerequisites for a valid lease offer. See 43 CFR 3102.5. Subsection (b) of the statement states that the offeror “agrees that signature to this offer constitutes acceptance of this lease, including all terms, conditions, and
(continued...)”

American Energy also submitted with each offer a check in full payment of the \$75 filing fee and the first year advance rental for the parcel or parcels sought.

In its October 2003 decision, BLM stated that “43 CFR 3102.4(a) as well as the instructions on the offer-to-lease form (3100-11) require an original ink signature on at least one of each of the lease offers.” (Decision at 1.) It noted, however, that “[t]he signatures on all of the lease offers you submitted appear to be placed by a rubber stamp and are not original signatures.”^{5/} *Id.*, emphasis added. While it is never stated in the decision, it is clear that American Energy’s failure to place an “original signature” on each of the lease offers constitutes the basis for BLM’s stated rejection of the offers.^{6/} BLM rejected all 16 offers because the offer forms were not holographically (manually) signed.

American Energy filed a timely notice of appeal/preliminary statement of reasons (NA/SOR) accompanied by a November 5, 2003, statement of Dr. Feldman, in affidavit form. In that statement, Dr. Feldman, American Energy’s manager, states: “My signature appears on oil and gas offers to lease filed with the Nevada State Office of the Bureau of Land Management to which the attached correspondence dated October 3, 2003[,] applies.” The attached “correspondence” was BLM’s October 2003 decision. He also asserts that, in signing the offers, he was acting as the “agent” of American Energy, and had “full legal authority” to submit the offers on American Energy’s behalf. On February 18, 2005, appellant requested expedited review of its appeal. That request is hereby granted.

^{4/} (...continued)

stipulations of which offeror has been given notice, * * * [and] that this offer cannot be withdrawn, either in whole or in part, unless the withdrawal is received by the proper BLM State Office before this lease * * * has been signed on behalf of the United States.”

^{5/} BLM also noted that “both the signature stamp and signatory (agent) identification” were improperly placed on the face of the offer form in the area at the bottom of the form “reserved for Bureau of Land Management (BLM) use only.” (Decision at 2.) It did not, however, reject the lease offers on this basis.

^{6/} BLM also stated, at page 2 of the decision, that its review of the exhibits attached to the lease offers had disclosed “numerous errors in the legal descriptions” of the lands sought, noting further that “[i]ncorrect legal descriptions can also result in the rejection of your lease offer(s).” BLM did not identify any offers which contained errors in their legal land description, or the specific “errors” at issue, and did not make any such error the basis for its rejection of the offers. See Response to Statement of Reasons (Response) at 2.

In its initial NA/SOR, appellant admits that “the signatures on the offers in question were rubber stamped,” but contends that BLM was not justified in rejecting its lease offers. (NA/SOR at 1.) Appellant later provided, attached to its supplemental SOR as Exhibit A, the January 7, 2004, affidavit of Lawrence W. McGary, who explained that he went, at the direction of Feldman, to BLM’s State Office in Reno, Nevada, and there, in the presence of BLM’s employees, personally affixed Feldman’s signature, using a rubber-stamp facsimile and ink, to all of the offers,^{7/} with the intent of executing the offers on behalf of Feldman: “I affirm that the stamp I used was an ink stamp and, in affixing the stamp, it was my intent to sign for Dr. Feldman from whom I had authority to act in his capacity as manager of American [Energy].”^{8/} (McGary Affidavit at 4, ¶12.) Appellant asserts that the offers were “signed in ink,” which is all that is currently required by 43 CFR 3102.4(a): “Unlike the prior regulation [43 CFR 3102.4 (1987)], 43 C.F.R. Section 3102.4(a) contains no requirement that the signature be manually or holographically signed.”^{2/} (NA/SOR at 1.)

Appellant contends, in the alternative, that, even if the lease offers were defective under 43 CFR 3102.4(a), BLM was not justified in rejecting them because the defect is “minor and does [not] affect the integrity of the BLM leasing system.” (NA/SOR at 1.) Appellant argues that, under the holding of Jack Williams, 91 IBLA 335, 93 I.D. 186 (1986), which applied the reasoning of the court in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), BLM is not justified in rejecting a lease offer when the regulatory defect in the offer is technical or non-substantive, since, despite the defect,

^{7/} McGary reports that he also affixed Feldman’s rubber-stamp facsimile signature to each of the 16 checks submitted in payment of the filing fee and first year advance rental. (Affidavit at 2, ¶4.)

^{8/} Appellant also provided, as part of Exhibit B attached to its supplemental SOR, its “Articles of Organization” (Articles), which had been filed, pursuant to Colo. Rev. Stat. § 7-80-203 (2003), with the Colorado Secretary of State on June 10, 2003. The Articles list Feldman as appellant’s “manager[.]” and “registered agent,” for purposes of service of process. See Colo. Rev. Stat. §§ 7-80-102(8) (“‘Manager’ means a person elected or otherwise designated by the members of a limited liability company to manage the company”) and 7-80-204 (2004).

^{2/} We note that the prior regulation provided, in relevant part: “[T]he original of [all] offers * * * shall be holographically (manually) signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee. * * * Machine or rubber stamped signatures shall not be used.” [Emphasis added.] 43 CFR 3102.4 (1987).

the purposes of the regulation have been satisfied. Appellant asserts that the purposes of the signature requirement in 43 CFR 3102.4(a), to directly involve the potential lessee in the leasing process and thus avoid the possibility of any fraud against the United States and other participants in the leasing system, were satisfied in this case, since the signatures at issue were personally affixed by a person acting on behalf of the offeror. (Supplemental SOR at 2-3.) It concludes that BLM could not, under the reasoning of Conway, reject the offers on the basis that they were defective, simply because the signature was not a holographic (manual) signature.

We conclude that BLM's rejection of appellant's lease offers because the offer forms were not holographically (manually) signed was improper, and BLM's October 2003 decision will be reversed.

It is undisputed that McGary, acting as appellant's representative, personally affixed a replica of the signature of Feldman, who was authorized to sign oil and gas lease offers on appellant's behalf, to the offers at issue here, using a rubber-stamp facsimile of the signature and ink. See Response at 11. Further, it is not disputed that he did so with the intention of executing the offers on behalf of Feldman. This satisfied the requirement of 43 CFR 3102.4(a) that an offer be "signed in ink."

[1] Regulation 43 CFR 3102.4(a) does not expressly require that an offer be either "holographically" or "manually" signed. Indeed, the regulation was amended to its current form in 1988, specifically deleting the former language requiring that an offer be "holographically (manually) signed," and precluding the use of "[m]achine or rubber stamped signatures[.]" 43 CFR 3102.4 (1987). In addition, the requirement of a holographic or manual signature is not necessarily implied by the term "signed." The verb "sign" does not necessarily signify that a person engages in the physical act of writing his or her name, since its definition is, in relevant part: "**a** : to affix a signature to[.]" (Webster's Third New International Dictionary 2115 (1966).) Thus, the word clearly may encompass the act, undertaken by one person, of writing or affixing the name of a different person. See D.E. Pack (On Reconsideration), 38 IBLA 23, 44-45, 85 I.D. 408, 419 (1978), rev'd in part on other grounds sub nom., Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980).

Further, we noted as follows in Jack Williams, 91 IBLA at 336-37, 93 I.D. at 187, in discussing the Board's interpretation of the regulatory language which predated the specific requirement in 43 CFR 3112.2-1(b) (1980) (later embodied in 43 CFR 3102.4 (1987)), that an application for a noncompetitive oil and gas lease be "holographically (manually) signed":

The applicable regulation with respect to the preparation of a simultaneous oil and gas lease application (formerly a drawing entry card), 43 CFR 3112.2-1(a) (1971)[,] at one time provided only that an application must be “signed and fully executed.” In Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), and subsequent cases, the Board held the term “signed” in 43 CFR 3112.2-1(a) (1971) encompassed the use of a rubber stamp to affix a signature to a drawing entry card provided it was the applicant’s intention that the stamp be his signature. See Elizabeth McClellan, 45 IBLA 342 (1980). In Mary I. Arata, *supra* at 204, 78 I.D. at 398, the Board acknowledged that “perhaps it would be better policy to require that the signature on the drawing [entry] card be ‘handwritten in ink’ by the [applicant],” but refused to read such a requirement into the regulation as written. Subsequently, the Board recognized that such a signature may be applied to the application not only by the applicant himself, but also by the agent of the applicant. See D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978). [^{10/}] [Emphasis added.]

See D.E. Pack, 30 IBLA 166, 168-69, 84 I.D. 192, 193 (1977), and cases cited.

Since it is undisputed that McGary affixed Feldman’s signature to the offers at issue, using a rubber-stamp facsimile of the signature and ink, and Feldman intended to execute the offers on behalf of appellant, we conclude, applying the Board’s holdings in Arata and Pack (On Reconsideration), that the offers complied with the requirement of 43 CFR 3102.4(a) that offers be “signed in ink * * * by the * * * potential lessee or by anyone authorized to sign on behalf of the * * * potential lessee.” (Emphasis added.) Under the holdings in Arata and Pack (On Reconsideration), it does not matter that the signature was that of someone authorized to sign on behalf of the offeror, rather than the offeror. The offers at issue here were not defective under that regulation.

The present situation is akin to that in Lewis W. Peters, 44 IBLA 35 (1979), wherein we effectively held that the same regulation at issue in Arata, requiring

^{10/} Pack (On Reconsideration) adopted the earlier holding by the Board in Robert C. Leary, 27 IBLA 296, 299 (1976), that an agent may sign a lease application using a rubber-stamp facsimile of the applicant’s signature, provided that it was the applicant’s intent that it be his signature, further stating: “To meet the requirement that offers be ‘signed and fully executed’ it is not necessary to show that the offeror personally stamped the offer or that it was stamped in his presence.” (Emphasis added.) See D.E. Pack (On Reconsideration), 38 IBLA at 29, 85 I.D. at 411.

simultaneous oil and gas lease applications to be “signed and fully executed,” was not violated, and rejection of an application was not justified, where an “agent affixed the offeror’s facsimile signature” to the application. *Id.* at 36 (citing Robert B. Coen, 41 IBLA 55 (1979), rev’d on other grounds sub nom., Ahrens v. Andrus, No. C79-166B (D. Wyo. July 28, 1980), aff’d in part and rev’d in part, 690 F.2d 805 (10th Cir. 1982)). Similarly, in the present case, we deem it sufficient, under 43 CFR 3102.4(a), that a rubber-stamp facsimile signature of a person authorized to sign on behalf of the offeror was affixed to the offers.

Since we conclude that a lease offer which bears a rubber-stamp facsimile signature satisfies the regulatory requirement that an offer be “signed in ink,” and is not defective, we need not address the question of whether, if such an offer is defective because it is not holographically (manually) signed, such a defect can nonetheless be considered a de minimis, non-substantive defect, under the reasoning of Conway.

Finally, BLM argues, on appeal, that appellant’s lease offers were properly rejected because the offer forms were not signed by McGary in his own name, in violation of 43 CFR 3102.4(a), and McGary’s name and relationship to the offeror were not disclosed on the forms, in violation of 43 CFR 3102.4(c).^{11/} (Response at 7-8, 10 (citing Elaine Wolf, 113 IBLA 364, 365 (1990), aff’d, Wolf v. Lujan, No. 90-CV-0155-B (D. Wyo. Feb. 11, 1991)).)

This was not the stated basis for rejection of the offers in BLM’s October 2003 decision. In any event, the “name of the signatory” (“Dr. C. William Feldman DC”) and his “relationship” to appellant (“Agent”) were “reveal[ed]” on the forms. 43 CFR 3102.4(c); see T.E.T. Partnership (On Reconsideration), 88 IBLA 13, 17 (1985); Monty Cranston, 67 IBLA 364, 367 (1982), rev’d on other grounds, Cranston v. Clark, No. CV 83-4-BLG (D. Mont. July 23, 1984), rev’d, 767 F.2d 1319 (9th Cir. 1985); R. Hugo C. Cotter, 58 IBLA 145, 88 I.D. 870 (1981). The regulatory term “signatory” means the person whose rubber-stamp facsimile signature appears on the form on behalf of the offeror. In the present case, that is Feldman. The only question is whether McGary could apply Feldman’s signature. We find nothing in the regulations that precludes one person, who is authorized to do so, from placing a rubber-stamp facsimile signature of another person, who is authorized to sign on behalf of an offeror, on its offer, or specifically requires that such a person also sign

^{11/} Regulation 43 CFR 3102.4(c) states, in relevant part: “Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship.”

and disclose his relationship to the offeror. Cf. Stanley L. Slater, 74 IBLA 357 (1983), and Tommy L. Alford, 71 IBLA 29, 34-35 (1983) (Regulations do not require corporate agent of oil and gas lease applicant to provide evidence of authority of employee of agent to sign applications on behalf of agent); Eugene O. Colley, 78 IBLA 64, 66 (1983), aff'd, Colley v. Clark, No. C84-0190W (D. Utah Mar. 6, 1985), and Henry A. Alker, 62 IBLA 211, 213 (1982) (Regulations do not require employee of corporate agent to manually sign principal's name, in addition to employee's name). We find nothing in Wolf or any other case that requires more.

Further, we reject BLM's assertion that, but for McGary's affidavit on appeal, it "had no way of knowing that someone other than Dr. Feldman * * * had actually filled out and submitted" the offers on appellant's behalf. (Response at 10.) Rather, the fact that the signature was rubber stamped (or appeared so), which BLM admitted in its October 2003 decision, was clear evidence that a person other than the named individual might have prepared and filed the offers. See id. ("A hand-written signature is presumed to have been written by the person named therein, but there is no such presumption attaching to a facsimile signature," quoting William J. Sparks, 27 IBLA 330, 336, 83 I.D. 538, 540 (1976)). Thus, BLM was afforded ample notice regarding the type of signature, sufficient to justify it, had it been so inclined, in pursuing clarification and supporting documentation regarding the binding nature of appellant's offers. BLM could have, had it so chosen, taken action to "police the integrity of the noncompetitive oil and gas leasing system." (Response at 10.) It could not, however, simply declare the offers defective, and reject them on the basis of the present language of 43 CFR 3102.4(a).

We, therefore, hold that BLM improperly rejected appellant's noncompetitive oil and gas lease offers on the basis that the offer forms were not holographically (manually) signed.

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 reversed.

H. Barry Holt
Chief Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge