

BERNARD SILVER

IBLA 88-414

Decided October 29, 1990

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive fractional interest oil and gas lease offer, ES 37828.

Affirmed.

1. Oil and Gas Leases: Future and Fractional Interest Leases

Where an oil and gas lease has issued for the fractional mineral interest belonging to the United States in a certain tract of land and, subsequently, title to the remaining fractional interest vests in the United States, a decision rejecting a noncompetitive fractional interest lease offer for lands already subject to a Federal oil and gas lease is properly affirmed.

APPEARANCES: Bernard Silver, pro se; Mary Katherine Ishee, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bernard Silver has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated March 28, 1988, rejecting his noncompetitive oil and gas lease offer, ES 37828. His offer received first priority at a drawing held on December 11, 1987, to determine the priority of noncompetitive lease applications filed simultaneously for T. 16 N., R. 14 W., sec. 3, Michigan Meridian, Newaygo County, Michigan, a 646.45-acre tract located in the Manistee National Forest. Silver's lease offer was rejected by BLM on the ground that the land was determined to be unavailable because it was embraced in a prior lease (ES 35173) issued effective March 1, 1987, and held by Shell Western E & P, Inc. (Shell Western).

According to records submitted by BLM, the lands in question were acquired by the United States by Warranty Deed dated November 27 and recorded November 29, 1937, in Liber 169 of Deeds, page 558, of the Newaygo County, Michigan, records. An undivided one-half interest in the mineral rights was excepted from the conveyance since it had previously been conveyed to a third party. The remaining one-half undivided mineral interest was reserved to the grantors for a period of 50 years.

In October 1985, Eileen Scully filed application to lease a one-half undivided interest in the tract, claiming that, pursuant to operation of "P.A. 1963 No. 42 Sec. 1, effective September 6, 1966, codified as Mich. CLA, Sections 554.291 et. seq.," (the Michigan Oil and Gas Dormancy Statute (M.S.A. § 26.1163)), those mineral rights excepted from the conveyance due to outstanding third-party interests had terminated. Scully claimed that by operation of this Michigan statute, on May 17, 1976, title to the excepted one-half mineral interest reverted to the United States Government, and that the tract was therefore available for mineral leasing from the United States.

On November 7, 1985, the Regional Attorney for the Forest Service (FS), Eastern Region, recommended to the Office of the Solicitor for the Department of the Interior that the land be approved for lease, to the extent of the 50-percent undivided mineral interest which had been excepted from the 1937 conveyance as vested in third parties. In its Title Report, FS found that the fractional interest reserved to the vendor had sufficient activity of record to maintain a nondormant status, but that there had been no recent activity of record on the fractional interest outstanding of record in third parties. Counsel from the Solicitor's office concurred and so advised BLM.

Effective March 1, 1987, BLM issued a 10-year noncompetitive oil and gas lease to Eileen Scully for the fractional undivided interest which had reverted to the Government by operation of Michigan law. On its face, the lease states that "the remaining fractional interest has been reserved until November 27, 1987." On June 1, 1987, BLM approved Scully's lease assignment to Shell Western.

On November 30, 1987, Bernard Silver filed an over-the-counter lease offer, 1/ limited solely to the 50-percent interest reserved by the grantors, which had vested in the United States 2 days earlier. On December 11, 1987, Bernard Silver's offer received first priority in a drawing held by BLM to determine the priority of four simultaneously filed applications on the tract. By decision dated March 28, 1988, BLM rejected Silver's lease offer, stating: "After a more complete search of our records, it was discovered that the lands you requested are currently under lease ES 35173 to Shell Western E & P, Inc. \* \* \* Because the lands were not, nor are they currently available, your offer is hereby rejected."

In his statement of reasons (SOR) for appeal, Silver argues that his lease offer for a fractional mineral interest was not contrary to the regulations at 43 CFR Part 3100, and that 43 CFR 3111.1-1(f) (1987) mandates

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1/ Effective Dec. 22, 1987, lands are not subject to noncompetitive leasing until they have first been placed in a competitive lease sale. Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), section 5102(a), 101 Stat. 1330-256 (1987) (codified at 30 U.S.C. § 226(b) (1988)). Noncompetitive oil and gas lease offers pending on Dec. 22, 1987, were excepted from this provision. FOOGLRA, section 5106, 101 Stat. 1330-259 (1987).

that lease offers in compliance with the regulations be approved. Silver states that he noted on his lease offer that he was filing for a fractional interest, and that BLM and FS personnel with whom he conversed could find no authority for rejection of his offer. Silver contends that FS provided no title opinion rejecting his offer for a fractional interest. Counsel for BLM has filed an answer contending that, under a prior decision of this Board, BLM has no authority to issue a lease for a fractional interest since the United States held 100 percent of the mineral interest at the time Silver filed his lease offer.

In his SOR, Silver states that, "[u]pon my reading \* \* \* of 43 CFR 3100, I could not find one single reference to a prohibition against such leasing, and by inference, 43 CFR 3111.1-1(f) directs that an offer which is in full compliance with the regulations shall not be rejected." Generally, 43 CFR Part 3100 sets forth departmental regulations pertaining to onshore oil and gas leasing. Specifically, 43 CFR 3111.1-1(f) provides, in pertinent part, "[e]xcept as otherwise \* \* \* provided in the regulations in this group, an offer which is not filed in accordance with the regulations in this part shall be rejected." The leap of logic necessary to conclude that this regulation by inference mandates that a lease offer filed in accordance with 43 CFR Part 3100 be accepted is broad indeed. Appellant assumes that if he complies with the requirements of 43 CFR Part 3100 in filing his lease application, he is entitled to a lease. However, an appellant may not be entitled to a noncompetitive lease for a myriad of reasons, despite his compliance with the filing requirements of 43 CFR Part 3100. Thus, it is well established that the Secretary of the Interior retains the discretionary authority to refuse to issue a noncompetitive lease for a given tract of land. Udall v. Tallman, 380 U.S. 1 (1965).

[1] Under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1988), the leasing of fractional or future mineral interests in public lands is limited to situations "[w]here the United States does not own all of the mineral deposits under any lands sought to be leased." (Emphasis added.) 30 U.S.C. § 354 (1988). Thus, this Board has held that the Secretary has no authority to issue two separate fractional interest leases in the same public lands to different parties contemporaneously. Soco 1980 Acreage Program, 68 IBLA 132 (1982); see Wilfred Plomis, 62 IBLA 162 (1980). In Soco, the Wyoming State Office, BLM, canceled a fractional-interest oil and gas lease where the other fractional interest in the leased lands was previously included in an outstanding Federal oil and gas lease. On appeal, this Board held that, where the Government owns a 50-percent mineral interest in certain acquired lands and has issued an oil and gas lease for that fractional interest, and later obtains the remaining 50 percent while the originally acquired fractional interest is still under lease, the Secretary has no statutory authority to issue a second oil and gas lease to another party for the newly vested fractional interest, and a lease so issued must be canceled. The Board in Soco further noted that even if it were assumed that statutory authority did exist for issuance of separate fractional interest leases in the same tract of land, rejection of a noncompetitive fractional interest lease offer for lands already subject to a fractional interest lease would be required in the exercise of

the Secretary's discretionary authority to reject lease offers in the public interest. 68 IBLA at 133-34. We find this precedent to be controlling in the present case.

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.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge