



## INTERIOR BOARD OF INDIAN APPEALS

Jerry W. Scrivner and Estate of Gary Lynn Scrivner v. Eastern Oklahoma Regional  
Director, Bureau of Indian Affairs

44 IBIA 147 (03/06/2007)

Related Board case:  
43 IBIA 248



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
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ARLINGTON, VA 22203

JERRY W. SCRIVNER,	:	Order Affirming Decision
Appellant, and	:	
	:	
ESTATE OF GARY LYNN SCRIVNER,	:	
Appellant,	:	
	:	Docket Nos. IBIA 06-76-A
v.	:	06-77-A
	:	
EASTERN OKLAHOMA REGIONAL	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee.	:	March 6, 2007

Appellants Jerry W. Scrivner (No. IBIA 06-76-A) and the Estate of Gary Lynn Scrivner (No. IBIA 06-77-A), through Jerry W. Scrivner as administrator of the estate, seek review of a May 22, 2006 decision of the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director approved Oklahoma Corporation Commission (Commission) Order No. 499319 (Order), which provided for the drilling of an additional well on the 640-acre unit comprising Sec. 14, T. 6 N., R. 13 E., Pittsburg County, Oklahoma. The mineral interests in a portion (the Nelson Pickens allotment) of the 640-acre unit are restricted interests owned in part by Choctaw Indians, including Appellants. Therefore, the Regional Director's approval of the Order was required by Section 11 of the Act of August 4, 1947, 61 Stat. 731 (Act), before the Order could become valid with respect to those interests. <sup>1/</sup> Appellants contend that leases of their interests in the restricted property are invalid. Because the Regional Director found, as part of her decision, that the restricted Indian mineral interests are "currently leased," and Appellants contend that the leases are invalid, Appellants argue that the Regional Director's decision approving the Order was in error. We affirm the Regional

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<sup>1/</sup> Section 11 of the Act provides that, "[a]ll restricted lands of the Five Civilized Tribes are hereby subject to all oil and gas conservation laws of Oklahoma: *Provided*, That no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative."

Director's decision because (1) her factual finding that restricted interests within the unit are currently leased is correct, (2) this appeal is not the proper proceeding in which to collaterally attack the validity of Appellants' leases, which were approved by a state court pursuant to the Act, and (3) Appellants make no allegation that the Regional Director's approval of the Order, in substance, is not in the best interest of the Indian mineral owners.

### Background

#### 1. The Leases

Section 1(a) of the Act provides that

no conveyance, including an oil and gas or mineral lease, of any interest in land acquired before or after the date of this Act by an Indian heir or devisee of one-half or more Indian blood, when such interest in land was restricted in the hands of the person from whom such Indian heir or devisee acquired same, shall be valid unless approved in open court by the county court of the county in Oklahoma in which the land is situated.

Appellant Jerry Scrivner (Appellant Scrivner) is one-half blood Choctaw, as was his late brother, Gary Lynn Scrivner. Both apparently received devised interests from their mother, Eleanor Pickens Scrivner, a full-blood Choctaw, in the  $W\frac{1}{2}SE\frac{1}{4}$  of Section 14, which is part of the property that is the subject of the Regional Director's decision. On May 15, 2001, Appellant Scrivner, as lessor, and Tilford Pinson Exploration, LLC (Tilford Pinson), as lessee, entered into an oil and gas lease covering the  $W\frac{1}{2}SE\frac{1}{4}$  of Section 14. The administrative record includes six other leases entered into with Tilford Pinson on the same day, covering the  $W\frac{1}{2}SE\frac{1}{4}$  and  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 14. According to Appellants, all but two of the other lessees of these interests are half-blood Choctaw. On December 19, 2001, pursuant to section 1(a) of the Act, the District Court of Pittsburg County, Oklahoma, approved all seven leases.

All of the lessors identified in the leases in the administrative record apparently received their interests in Section 14 pursuant to a 1984 order of the District Court of Pittsburg County, Oklahoma, entered in the Estate of Eleanor Pickens Scrivner. Jurisdiction to probate the estates of members of the Five Civilized Tribes, which includes the Choctaw Tribe, is vested in the Oklahoma state courts. Act § 3(a). According to Appellants, the court distributed Eleanor's estate pursuant to her will, with a life estate for certain interests going to Robert E. Scrivner, and remainder interests for various interests going to Appellant Scrivner, Larry E. Scrivner, Gary Lynn Scrivner, Barry D. Scrivner, Danny R. Scrivner, Robert A. Scrivner, and Linda Sue Scrivner Thomason. Gary Lynn

Scrivner died in 1986, and the District Court of Pittsburg County, Oklahoma, by order dated May 26, 2004, appointed Jerry Scrivner as administrator of the estate. <sup>2/</sup> In 2004 or 2005, Appellant Scrivner sought and obtained an order from the state court reopening Eleanor's estate in order to give statutorily-required notice of the probate to the BIA, after which the probate was again closed, without any modification.

## 2. Commission Order No. 499319

On December 29, 2004, the Commission issued the Order, which provided for the drilling of an additional well on Section 14. The Commission determined that an additional well was necessary to "effectively drain that portion of the [Hartshorne] common source[] of supply that will not be drained by the existing unit well[]," and that the additional well would prevent waste.

On December 13, 2005, Tilford Pinson requested that BIA approve the Order, insofar as it affected the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14. By memorandum dated February 9, 2006, BIA requested a recommendation from the Bureau of Land Management (BLM) on whether the Order sufficiently provides protection of the Indian mineral interests. BLM responded that, based on its review of the available data, "the additional well will be a benefit to the Indian mineral interests located in section 14." Feb. 21, 2006 Memorandum from BLM to Regional Director. BLM therefore recommended that the Order be approved.

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<sup>2/</sup> The state court also apparently determined that Linda McElhaney (Gary's widow) and Robert E. Scrivner (Gary's father) were Gary's heirs at law. The Regional Director contends that Robert E. Scrivner is the sole heir of Gary's interest in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, but does not provide evidence to support that contention. Aside from the heirship issue, if Gary's heirs have been determined, it is unclear whether the administrator of his estate has standing to represent these inherited interests. In addition, the record contains no lease executed by Gary Lynn Scrivner or by Linda McElhaney as presumptive heir, although Appellants contend that McElhaney did execute a lease. However, because Jerry Scrivner raises identical arguments in both his own appeal and the appeal he filed on behalf of the Estate of Gary Lynn Scrivner, and given our resolution of these appeals, we need not resolve Jerry Scrivner's standing as administrator of Gary's estate, nor the issue of what, if any, interests in Gary's estate were affected by the Regional Director's decision. For purposes of this appeal we will assume that a lease exists for Gary's interest and will refer collectively to "Appellants' leases."

On May 22, 2006, the Regional Director issued her decision approving the Order. As part of her decision, the Regional Director found “[t]hat the restricted Indian mineral interests are currently leased.” Decision at 1, Finding No. 2. The Regional Director determined that the approval of the Order is necessary “to prevent waste and obtain the greatest ultimate recovery of oil for the restricted Indian mineral interests.” *Id.*, Finding No. 1.

Appellants appealed to the Board of Indian Appeals (Board). Appellants and the Regional Director filed briefs. On January 11, 2007, the Board received a request for expedited consideration from Tilford Pinson, which states that the appeal had halted the further development of the subject property, and that further delay could result in severe economic injury. In order to protect the interests of the Indian mineral owners who have not appealed the Regional Director’s decision, and because Appellants’ appeal is based solely on an attempt to collaterally attack the validity of the state-court-approved leases, the Board grants the request for expedited consideration.

#### Discussion

The Regional Director’s decision whether to approve the Order involves an exercise of discretion that is vested in BIA. In reviewing decisions involving an exercise of discretion, the Board’s role is limited to determining whether BIA’s decision is in accordance with the law, is supported by the record, and is adequately explained. McClurkin v. Eastern Oklahoma Regional Director, 44 IBIA 125, 129 (2007). An appellant has the burden to demonstrate reversible error. See Rosales v. Pacific Regional Director, 39 IBIA 12, 15 (2003).

The only argument that Appellants raise on appeal is that because BIA did not receive notice of Eleanor’s probate until 2004 or 2005, when her probate was reopened to cure that defect, Appellants’ interests did not vest and they did not have “good legal title” when the leases with Tilford Pinson were signed in 2001. Opening Brief at 4. Accordingly, Appellants argue that the leases are void and the Regional Director’s approval of the Order was improper because she found that the restricted Indian mineral interests “are currently leased.”

The Regional Director argues in response that the procedural defect in Eleanor’s probate in 1984 did not, as a matter of law, prevent Eleanor’s devisees from receiving title or from executing valid leases pending and prior to a final decree and distribution. The Regional Director’s argument appears to have merit, but we need not decide that issue because her finding that the mineral interests “are currently leased” is supported by the record and Appellants have not shown that adjudicating the validity of Appellants’ leases

was properly within the scope of the Regional Director's decision. Nor have they shown that she had any reason, in exercising her discretion, to consider Appellants' claim that their leases are invalid.

Appellants do not dispute the fact that the leases were approved by the state court. Nor do they contend that the state court lacked jurisdiction over the leases. The administrative record contains copies of the court-approved leases and thus the Regional Director's finding that the restricted mineral interests "are currently leased" is supported by the record. <sup>3/</sup>

Appellants simply assume that the Regional Director should have or could have, as part of her review of the Order, also reviewed and adjudicated the validity of Appellants' leases. But Appellants provide no legal authority to support that assumption. We reject Appellants' attempt to use these proceedings to obtain collateral review of the validity of their state-court-approved leases.

In addition, Appellants have not offered any evidence to show that they petitioned the state court to set aside its approval of their leases and that the Regional Director knew or should have known of any such proceedings. Thus, Appellants have provided no basis for us to conclude that the Regional Director erred by not considering the validity of Appellants' leases in deciding whether approval of the Order was in the best interest of the Indian mineral owners.

Appellants make no arguments that the Regional Director's decision to approve the Order was not in the best interest of the mineral owners, and therefore, except for their attempt to introduce a collateral attack on their leases into these proceedings, make no arguments for why the Regional Director's decision should be reversed.

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<sup>3/</sup> Appellants argue to the Board that all of the leases of the subject restricted property interests are invalid, but the other lessors have not appealed and Appellants cannot assert interests that are not their own. See Doney v. Rocky Mountain Regional Director, 43 IBIA 231, 234 (2006). One other lessor did appeal from the Regional Director's decision, but then withdrew his appeal. See Scrivner v. Eastern Oklahoma Regional Director, 43 IBIA 248 (2006) (dismissing appeal of Robert E. Scrivner). Thus, as a practical matter and except for Appellant Scrivner's lease, and possibly a lease that Appellant Scrivner purports to dispute as administrator of Gary Scrivner's estate, see supra note 2, there is no dispute that the other Indian mineral interests in the subject property "are currently leased," consistent with the Regional Director's finding.

Because Appellants only seek to raise an issue that was not properly before the Regional Director and is not properly before the Board, we conclude that Appellants have failed to show that the Regional Director committed error or abused her discretion in approving the Order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's May 22, 2006 decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge