

Oil and Gas Leases: Future and Fractional Interest Leases

Where applications for future interest oil and gas leases filed more than one year prior to the date of vesting in the United States of the present possessory interest in the minerals are not accompanied by a showing as to the citizenship of the applicants, but such showing is later made, the applicants are otherwise qualified to receive such leases, the omission does not violate a statutory provision, no third party rights are involved, and acceptance of the supplemental showing will not unduly interfere with the orderly conduct of business, the date of the applications will remain that on which they were first filed.

IBLA 71-167	:	NM-A 12063, 12064, 12065, 12066,
		:
		12067, 12068 (Texas)
		:
FRANK B. BAIRD, JR. ET AL.	:	Applications for future interest
		:
		oil and gas leases rejected
		:
		:
		Decision vacated, cases remanded

DECISION

Frank B. Baird, Jr. and others <sup>1/</sup> have appealed to the Board of Land Appeals from a decision issued December 21, 1970, whereby the New Mexico land office, Bureau of Land Management, rejected their applications NM-A 12063 through 12068 (Texas) for future interest oil and gas leases on approximately 12,352 acres of lands acquired for the Angelina National Forest, Angelina County, Texas. The decision recited that the required evidence as to the trust agreements, including citizenship of the trustees and beneficiaries and authority of the trustees to act, and as to the citizenship of the individual applicants, had not accompanied the applications when first filed on June 29, 1970. The land office held that as the United States will accede to the present interest in the mineral estate within the subject lands on July 1, 1971, and as the regulations provide that an application for a future interest oil and gas lease must be completed not less than one year prior to the vesting of the present interest in the United States, the applications may not now be accepted even if the omitted information is submitted.

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<sup>1/</sup> The appellants are Frank B. Baird, Jr., William C. Baird, Jane Dugan Baird, Margaret C. B. Hopkins, Eleanor Cameron Peterson, Mary S. B. Reichenbach, Helen M. Jones, Flora C. Atherton (formerly Flora C. Kampmann), and E. C. Bolton, all individually; Catherine Ross Bolton (granddaughter of E. R. Bolton), Beneficiary of E. R. Bolton Trust #3, E. C. Bolton, Trustee; Margaret Cameron Bolton, Beneficiary of Margaret Cameron Bolton Trust, Wilford W. Naman, Trustee; Mary Staton Bolton, Beneficiary of Mary Staton Bolton Trust, Wilford W. Naman, Trustee; Catherine Ross Bolton (wife of E. C. Bolton), Beneficiary of Catherine Ross Bolton Trust, Wilford W. Naman, Trustee; and Catherine Ross Bolton (daughter of E. C. Bolton), Beneficiary of Catherine Ross Bolton Trust, Wilford W. Naman, Trustee.

The appellants acknowledge that it was their responsibility to determine the requirements from the Code of Federal Regulations in making up their applications for future interest oil and gas leases, but they allege that they followed completely the requirements outlined to them by land office personnel. They argue that they have a prior right to obtain a future interest lease, based on their present ownership of the minerals, and contend it is not the intent of the Congress to construe the regulations so strictly as to reject absolutely their applications in the circumstances.

It is well settled that the Department is not bound by erroneous or incomplete advice given by its employees, and that one who acts solely on such advice in the preparation and filing of oil and gas lease applications, without verifying the applicable regulatory requirements, does so at his peril. Cf. Fred and Mildred M. Bohlen et al., 63 I.D. 65 (1956); United States v. Richard Dean Lance, 73 I.D. 218 (1966); 43 CFR 1810.3(c), 35 F.R. 9513.

Regulation 43 CFR 3130.4-5(a), 35 F.R. 9694 (June 13, 1970) (formerly 43 CFR 3212.3), sets forth the requirements for filing applications for future interest oil and gas leases, and indicates that such applications should conform to and include the information required by 43 CFR 3101.2-3, 35 F.R. 9676, and 3111.1-2, 35 F.R. 9690. Section 3111.1-2 deals with acquired lands lease offers and applications, and at 3111.1-2(a)(2) requires compliance with 43 CFR Subpart 3102. Within this subpart, 3102.2-1, 35 F.R. 9679 (formerly 3123.2(e)), requires that a statement over the offeror's signature setting forth his citizenship accompany each offer when first filed. Section 3102.5-1, 35 F.R. 9679 (formerly 3123.2(e)), discusses the showing required by guardians and trustees, but does not carry forward a mandatory time requirement for submission of the required evidence, as is necessary for the showing as to citizenship. <sup>2/</sup>

The evidence required by the land office decision has now been submitted. The question is whether the applications may now be considered as having been filed more than one year prior to the date of vesting of the mineral interests in the United States, in accordance with the regulatory requirements.

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<sup>2/</sup> In the request for information addressed to the land office prior to the filing of these applications, it was stated that each individual who would participate in the applications for future interest leases is a citizen of the United States.

While the date of completion of noncompetitive oil and gas lease applications is important because of the priority of consideration afforded to the first qualified applicant, this first qualified applicant rule does not apply to leasing of future interests. LAW OF FEDERAL OIL AND GAS LEASES, § 9.5 (Rocky Mountain Mineral Law Foundation ed. 1969). A lease of such interest will be given only to the applicant who owns or controls the present operating rights. 43 CFR 3130.4-5(a), supra.

Regulation 43 CFR 1821.2-2(g), 35 F.R. 9516, provides that when a document is required to be filed within a specified time, filing of the document after expiration of that period will not prevent the authorized officer from considering the document as being timely filed except where the law does not permit it, where the rights of third parties have intervened, or where the authorized officer determines that further consideration of the document would unduly interfere with orderly conduct of business. The omission by the applicants of the statements as to their citizenship was not a violation of any statutory provision, nor have the rights of any third parties intervened. We cannot see how acceptance of the showing now tendered would unduly interfere with the orderly conduct of business in the land office.

Accordingly, the supplemental showings by the applicants are accepted as timely filed, and the applications shall be processed expeditiously in order that the leases may issue prior to July 1, 1971, all else being regular. 3/

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3/ Unless the leases are issued before July 1, 1971, the date on which the United States obtains the present possessory rights to the minerals in the lands involved, these applications will lapse and only offers for a present interest lease will be considered. 43 CFR 3130.4-5(a), 35 F.R. 9694.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (21 DM 13.5; 35 F.R. 12081), the decision below is vacated, and the cases are remanded to the Bureau of Land Management for further appropriate action consistent herewith.

Newton Frishberg, Chairman

We concur:

Francis E. Mayhue, Member

Edward W. Stuebing, Member.

