

DUNCAN MILLER

IBLA 70-659

Decided February 22, 1972

Appeal from decision (BLM-A-034852) by Santa Fe, New Mexico, land office declaring lease null and void.

Reversed in part; affirmed in part.

Oil and Gas Leases: Cancellation

Where land not owned by the United States has been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be cancelled as only land owned by the United States is subject to leasing under that Act.

Oil and Gas Leases: Generally

Where the United States has paid for land and claimed title to that land for almost 40 years but title has not been perfected, oil and gas leases may be issued on that land if the public interest and fairness to the offeror warrant such action.

APPEARANCES: Duncan Miller, pro se.

OPINION BY MR. RITVO

This is an appeal by Duncan Miller from a Santa Fe land office decision dated March 5, 1970, which declared his lease BLM-A-034852 null and void because the United States was not vested with title to the minerals within the lease.

Oil and gas lease BLM-A-034852 became effective on April 1, 1959, and embraced the W 1/2 SE 1/4 sec. 7, and the W 1/2 NE 1/4 sec. 18, T. 19 S., R. 27 E., N.M.P.M., New Mexico, containing 160 acres. Duncan Miller filed a partial assignment transferring record title to the NW 1/4 SE 1/4 sec. 7, T. 19 S., R. 27 E., N.M.P.M., New Mexico, to D. Navarre. The partial assignment was approved and given serial BLM-A 034852-A and both leases were extended to February 28, 1971.

In 1968 a conflict developed as to the ownership of the mineral rights purportedly embraced by Miller's lease. The leased land lies within the boundaries of the McMillan Reservoir, Carlsbad Project, New Mexico. One Randolph M. Richardson alleges that he owns the minerals in the leased lands, except for two parcels totaling 10.71 acres in the W 1/2 SE 1/4 sec. 7.

In a memorandum dated November 3, 1969, the Field Solicitor, Amarillo, advised that a title search revealed the following:

Title to the lands comprising the McMillan Reservoir and the marginal lands were substantially acquired by the United States by two methods. The initial area of the reservoir was conveyed by warranty deed dated December 18, 1905. It covered the principal lands of the Carlsbad Project. The remaining marginal tracts around the original reservoir site are covered in the condemnation action entitled United States v. Bigelow, U.S. No. 361 filed January 18, 1915. [Including the two parcels in Sec. 7.] Title to many lands covered by the Bigelow condemnation were never reduced to judgment as the result of a series of unusual developments in the early 1930's including the death of one judge, and the transfer of attorneys familiar with the very complex facts upon which that suit was based. This office argues that fee title was acquired in these marginal lands as our review of the court files indicates that the amount of the fee appraisal was in fact paid to the owners.

Concerning the lands and interests in lands acquired from the Pecos Irrigation Company in 1905, this office has virtually no background title material.

However in researching the source of the Pecos Irrigation company title, it appears that the right to use these lands for reservoir purposes was originally obtained by the Company filing a plat with the United States under authority of the Act of March 3, 1891 (26 Stat. 1095) which law permits the applicant to obtain a reservoir site and other rights of way upon compliance with that Act. The Pecos Irrigation and Improvement

Company submitted an initial filing comprising a map and certification thereon in 1891. After several years of negotiation and modification, the reservoir site as described on the final plat was approved by the Department of Interior on February 23, 1897, with approval endorsed on the plat.

This office has by no means complete title reference material on this area. However, based upon the above "approved plat", it would appear that the Company acquired a right of use in the land described as a reservoir site. It did not, from this instrument, acquire fee title. Assuming that no additional title rights were acquired by the Company from others, then the only interest they could convey in the 1905 deed was a reservoir site and related control of surface interference. Insofar as the land described in Mr. Richardson's inquiry is concerned, subsequent information supports this interpretation of record rights. Two patents were issued by the United States covering the Richardson tracts. Patent Certificate No. 1740 dated June 8, 1908, and issued to Margaret R. Moseley grants the lands described in Sections 1 and 6. . . .

. . . .

A second patent dated November 11, 1909, granted lands in [W 1/2 SE 1/4] Sections 7 and [W 1/2 NE 1/4] 18 to Clarence M. Ricker subject to the following:

. . . any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted, a right of way thereon for

ditches or canals constructed by the authority of the United States. Subject to the outstanding rights under the approved map of location of the McMillan Reservoir site, February 23, 1897, under the provisions of the Act of March 3, 1891 (26 Stat. 1095), and the use thereof by the United States in connection with the Carlsbad project under the act of June 17, 1902.

Thus it was certainly the conclusion of the General Land Office in 1908 and 1909 that these lands were available public lands and they were patented subject to retention of the reservoir site rights.

Based upon the material recited above, this office is of the opinion that the part of Sections 1, 6, 7, and 18 as described by Mr. Richardson, and subject to the exclusions he lists (. . . 3.02 acres and 7.69 acres in Section 7) are private property subject to the reservoir reservation and related rights mentioned and the United States does not retain any right in the minerals.

This Board has previously considered whether lands included in the condemnation action United States v. Bigelow, supra, could be leased. In George E. Conley, 1 IBLA 223 (January 13, 1971), the Board held that oil and gas leases could be issued where the United States had paid for the land and claimed title to it for almost 40 years. Therefore, in the instant case the 10.71 acres which were included in the condemnation were available for leasing and the land office decision declaring that part of the lease null and void was incorrect and is hereby reversed.

As to the land included in the Ricker patent, the land was not available for leasing. As stated by the Field Solicitor, these lands are private lands. If the land is not owned by the United States, then the lease embracing that land must be cancelled. John E. Miles, A-27577 (June 12, 1958). That part of the land office decision is correct and is hereby affirmed.

If Miller desires a refund of the rentals paid on the land not subject to leasing, he must file an application for a refund pursuant to 43 CFR 1822.2. See Beard Oil Company, 77 I.D. 166 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision of the land office is reversed in part and affirmed in part.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Edward W. Stuebing, Member

