

GEORGETTE B. LEE

IBLA 70-373

Decided April 13, 1972

Appeal from decision of Eastern States land office, Bureau of Land Management, rejecting oil and gas lease offer.

Decision vacated, case remanded.

Oil and Gas Leases: Generally

When the United States issues an oil and gas lease, it makes no warranty as to its title to the oil and gas deposits and is under no obligation to the lessee either to discover and dispose of any other claims to the oil and gas deposits, not reflected by the records of the Bureau of Land Management, prior to issuance of the lease, or to defend the lease thereafter against such claims.

Oil and Gas Leases: Lands Subject to

Where an oil and gas lease offer is rejected as to a tract of land for the reason that the tract has been patented, the case will be remanded for further consideration of the offer where the land office records do not clearly indicate that a patent does cover such land.

APPEARANCES: Georgette B. Lee, pro se.

OPINION BY MR. HENRIQUES

Georgette B. Lee has appealed from a decision dated July 3, 1969, by which the Eastern States land office, Bureau of Land Management, rejected her oil and gas lease offer ES 5446 (Miss.) for all sec. 28, T. 5 N., R. 2 W., Wash. Mer., Adams County, Mississippi, because the land was confirmed to George Rapalje, under private land claim A-656, as reported in American State Papers (Gales and Seaton edition), vol. 1, page 878, and so is not now public land available for such oil and gas leasing.

Appellant contends that the land office erred in its recital of the facts relating to private land claim 522 of George Rapalje

in that confirmatory patent number 1125501, describing sec. 44, T. 6 N., R. 2 W., Wash. Mer., was issued in response to certificate A-656, and that there is no legal evidence to support the allegation that sec. 28, T. 5 N., R. 2 W., Wash. Mer., was included in the claim of Rapalje and is not now public land.

A land office plat for the said T. 5 N., R. 2 W., has the name "George Rapalje" written in sec. 28, similar in style to the names of other persons inscribed in adjoining sections on the township plat. There is nothing to indicate when or why or by whose authority the name of George Rapalje was written in sec. 28 of the plat. Confirmatory patents have been issued by the United States to every other person named on the plat of township 5 N., R. 2 W., each in response to a private land claim and each patent duly recorded in the tract book for T. 5 N., R. 2 W. But this tract book is devoid of any entry in sec. 28.

The index of private land claims confirmed by the Board of Land Commissioners as reported in American State Papers shows only one entry in the name of George Rapalje, that confirmed under certificate A-656 for which patent 1125501 was subsequently issued.

Information contained in American State Papers is ordinarily accepted as best evidence of confirmation of a private land claim, being a compilation and transcript of reports of various Boards of Commissioners appointed to hear and decide on claims or lands. We recognize that it is possible a pertinent report could have been omitted in compilation of American State Papers. Inquiry to the county recorder for Adams County, Mississippi, elicited no response to our question about present ownership of the said sec. 28, T. 5 N., R. 2 W. Nor has research in the National Archives been fruitful.

An oil and gas lease issued pursuant to § 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), is merely a term conveyance of the rights of the United States and in no manner shall interfere with any valid right to the same oil and gas deposits, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same oil and gas deposits. Cf. 43 U.S.C. § 1151 (1970). When the United States issues an oil and gas lease, it makes no warranty as to its title to the oil and gas deposits and is under no obligation to the lessee either to discover and dispose of any other claims to the oil and gas deposits, not reflected by the records of the Bureau of

Land Management, prior to issuance of the lease, or to defend the lease thereafter against such claims. Duncan Miller, A-30122 (September 23, 1964).

The land office record does not unambiguously support its decision that sec. 28, T. 5 N., R. 2 W., Wash. Mer., Mississippi is not public land. There is no apparent legal reason why the offer to lease from Mrs. Lee ES 5446 (Miss.) may not be accepted for sec. 28, T. 5 N., R. 2 W., Wash. Mer., Mississippi. Where an oil and gas lease offer is rejected as to a tract of land for the reason that the tract has been patented, the case will be remanded for further consideration of the offer where the land office record does not clearly indicate that a patent covers such land. Cf. Ethel Severson, A-27921 (May 21, 1959).

Appellant apparently recognizes that the federal title to the oil and gas deposits is not free from doubt, but wishes, nevertheless, to receive a federal lease therefor. It will be appropriate in these circumstances for the Bureau to obtain a written stipulation from the offeror prior to issuance of any oil and gas lease on the subject land that such lease is accepted with prior knowledge that the federal title to the oil and gas deposits is not clear and the United States makes no warranty of title, expressed or implied, to the oil and gas deposits, and that the United States assumes no obligation to defend the validity of such oil and gas lease.

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 land office decision is vacated and the case is remanded to the Bureau of Land Management for further appropriate action.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

