

ARTHUR E. MEINHART, IRWIN RUBENSTEIN, Appellants;  
HOMER LYNN, Appellee

IBLA 71-123, 71-125

Decided June 7, 1973

Appeals from decisions by Eastern States Land Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers ES 6981-6994 (Fla.), inclusive.

Reversed.

Oil and Gas Leases: Application: Description--Oil and Gas Leases: Cancellation--Oil and Gas Leases: First Qualified Applicant--Oil and Gas Leases: Description of Land

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Survey of Public Lands: Authority to Make--Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands Leases

The subdivision of acquired lands of the United States into a rectangular system having aliquot parts similar to those employed in the public land surveys does not make the lands so designated "surveyed" within the ambit of the regulations under the Mineral Leasing Act for acquired Lands when the plat of the survey has not been approved by the Director, Bureau of Land Management.

Oil and Gas Leases: Application--Oil and Gas Leases: First Qualified Applicant--Rules of Practice: Protests

A relinquishment of a protest, filed by a junior offeror against a senior offer, does not operate as a relinquishment of the junior offer and if the senior offeror is found not to be the first qualified offeror, the junior application should be considered on its merits.

APPEARANCES: Arthur E. Meinhart, Irwin Rubenstein, pro se; Finlay MacLennan, Esq., Washington, D.C., for the appellee.

OPINION BY MR. RITVO

Arthur E. Meinhart and Irwin Rubenstein have appealed from decisions dated November 10, 12, 13 and 24, 1970, by which the Eastern States Land Office, Bureau of Land Management, rejected their noncompetitive oil and gas offers ES 6981-6994, inclusive, to lease acquired lands of the United States in the State of Florida, to the extent that the lands described in the offers were included in existing oil and gas leases ES 6955-6969, inclusive, issued to Homer Lynn. As each appeal involves the same issue, they have been consolidated for consideration.

The appellants contend that the lands involved are unsurveyed acquired lands of the United States, that the offers of Lynn were defective for failure to describe properly the land sought to be leased as required by 43 CFR 3101.2-3(a), that the Land Office thus erred in accepting the offers, and that their offers properly describing the lands by metes and bounds and being accompanied by a map showing the relation of the tracts sought to the federal project made them the first qualified offerors; accordingly, they should have been granted the leases pursuant to their statutory preference right.

Appellee asserts the lands are within an area which was patented as a private land claim and is surveyed within the meaning of the statute; that the lands have been re-acquired by the United States as the "Forbes Purchase" by deeds describing the individual parcels by aliquot subdivisions of sections, township and range similar to the designation employed by the Rectangular System of Public Land Surveys; that the descriptions of land in his offers are identical to those in the deeds of acquisition by the United States and are complete and accurate descriptions from which the tracts can be identified on the ground. He further contends that the offers of the appellants were filed later in time than his offers, that they have "no rights" for the same reasons that they cite as the basis for their appeals against his leases, and that there is no compelling reason to cancel his leases in the circumstances.

The files show that the Lynn offers were received by the Land Office on February 20, 1970, as over-the-counter filings. Each offer described the land sought by subdivision, section, township and range, based on the Tallahassee Meridian, as though the lands had been properly surveyed under the rectangular system of public land surveys. The Meinhart-Rubenstein offers were received on February 26, 1970, each offer describing the land sought by metes and bounds, giving course and distance between the successive angle points and giving a connection to an official corner of the public

land surveys, as though they were unsurveyed lands, and each offer was accompanied by a copy of a United States Forest Service map of the Wakulla Ranger District, Apalachicola National Forest, upon which the desired lands were clearly marked. <sup>1/</sup>

For a discussion of tracts within the Forbes Purchase, see Arthur E. Meinhart, 6 IBLA 39 (1972). The Board adheres to the conclusions expressed in that decision. Even though the Forest Service map indicates a sectional grid compatible to the Tallahassee Meridian, the lands in the Forbes Purchase have not been marked by a public land survey conducted by the Department of the Interior and, thus, under the construction of the regulations as consistently applied by this Board, they are "unsurveyed" within the context of 43 CFR 3101.2-3(a), and are so designated on the records of the Eastern States Land Office. That office erred in issuing leases based on the defective offers. Absent any disqualifying factor in the junior offers of Meinhart and Rubenstein, it must be held that the leases issued to Lynn were in derogation of the statutory rights of Meinhart and Rubenstein, as first qualified applicants, and so they must be cancelled. F. W. C. Boesche, A-27997 (August 5, 1959), aff'd Boesche v. Udall, 373 U.S. 472 (1963); Beard Oil Co., 77 I.D. 166, 1 IBLA 42 (1970).

Appellee suggests that appellants have not been injured, as their offers are themselves violative of the regulations, especially 43 CFR 3101.2-3(a), which provides, inter alia, that in describing unsurveyed lands, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

Appellee concedes that appellants described the tracts on which they have filed offers to lease by metes and bounds, but he argues that the tie between the tract applied for and the public land survey corner is not to a reasonably nearby corner. He develops this point by showing that there are established surveyed corners of the public land surveys closer to the land than those used by the appellants. The difficulty with this analysis resides in its implicit assumption that "reasonably nearby corner" means "the nearest corner." If such an exact standard had been the intent of the drafters of the regulation they easily could have indicated that requirement in the regulation. They chose not only to allow a tie to a "nearby" rather than "nearest" corner, but further

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<sup>1/</sup> Each case file has a "mineral leasing status report" which shows the lands applied for to be "unsurveyed." These status reports in the Lynn cases apparently were disregarded in the adjudication process in the Land Office.

liberalized the standard by providing that the connection must be to a "reasonably" nearby corner. A reasonableness test thus is the prerequisite, and like all such standards it takes color and hue from its surrounding circumstances. Given the facts in this case, the Board cannot say that the ties employed by appellants were not to a reasonably nearby corner.

Appellee further argues that the maps provided by the appellants were so reduced in scale as to vitiate their utility in fulfilling the requirement of the regulation that each offer must be accompanied by a map upon which the described lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part. Suffice it to say that while in an extreme case a map might be submitted on such a minute scale as not to fulfill the regulatory requirement, we do not find the maps with the appellants' offers to fall in that category.

We do not find any merit in the appellee's contentions that the appellants' offers are violative of the regulations. 2/

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2/ The record shows that on April 30, 1970, Meinhart and Rubenstein filed a protest against the 15 offers by Lynn, asserting noncompliance by Lynn with the regulatory requirements as to land description and map for unsurveyed lands; and that on September 24, 1970, the protest was withdrawn. This latter action certainly was obfuscatory, but did not remove their conflicting offers. The Land Office did not treat the offers as relinquished by the filing of the protest. The rental payment was not refunded and the offers were otherwise considered as subsisting offers until the rejection which is the subject of this appeal. Suppose the Land Office had recognized the defect in the appellees' offers and rejected them instead of issuing a lease? Would appellants' offers have no standing ahead of any other conflicting offers? As between the parties, the issue as to whether the withdrawal of the protest constituted a withdrawal of appellants' offers or any kind of estoppel has not been raised. We cannot see how the withdrawal of appellants' protest could in some way confer upon the Land Office the right to accept defective offers. It is not necessarily inconsistent to withdraw a protest against an existing offer and retain an existing conflicting oil and gas lease offer. It may very well have been desired as a means to expedite final action by the Land Office on the offers. In any event, we believe any speculation into the motivations of appellants as to their protest and withdrawal of the protest is untoward here. We cannot rule sua sponte that a statutory preference right was lost merely because of some ambiguity and questioning into the motivations of the appellants in their actions, when they did not expressly withdraw their offers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the land office decisions are set aside, the leases ES 6955-6969, inclusive, issued to Homer Lynn are canceled, and the cases are remanded to the Bureau of Land Management for further appropriate action on the offers ES 6981-6994, inclusive, consistent with this decision.

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Martin Ritvo, Member

We Concur:

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James M. Day, Director

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Newton Frishberg, Chairman

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Frederick Fishman, Member

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Joan B. Thompson, Member

Edward W. Stuebing, dissenting:

The majority opinion constitutes a correct and adequate statement of the law insofar as it relates to the facts recited. However, the issue which precipitated serious dissension among the members of this Board, caused the case to be considered en banc, resulting in a four-to-four division of opinion, and culminated in the participation of the Director as an ex-officio member of the Board, is mentioned, in abbreviated form, only in footnote 2 of the majority opinion.

These are the facts concerning that issue. As related in the majority opinion, Lynn filed his offers on February 20, 1970. Meinhart and Rubenstein filed conflicting offers on February 26th and 27th. On April 30, 1970, Meinhart and Rubenstein addressed a letter to the Manager of the Eastern States Land Office in which they protested the granting of priority of Lynn's offers on the ground of his alleged non-conformity with the regulations governing land descriptions. At this point all was regular. But then Meinhart and Rubenstein sent another letter, dated September 22, 1970, to the Land Office Manager, by which they explicitly withdrew their protest against Lynn's prior filed offers. The letter quite simply stated, "We withdraw the protest against the captioned lease offers." The Land Office, accordingly, proceeded to issue the lease to Lynn, whereupon Meinhart and Rubenstein filed this appeal.

Therefore, the issue which concerned several members of this Board is not the efficacy of the land descriptions employed by Lynn, but rather whether Meinhart and Rubenstein can bring and maintain this appeal. In our opinion their action withdrawing their protest against the Lynn offers can only be construed as an expression of their acquiescence 1/ in the issuance of the leases to Lynn. There is simply no other explanation for their taking the time and trouble to formally withdraw their protest. If they intended to continue to assert that Lynn's offers were deficient for the reasons alleged in their letter of protest, they need not have done anything.

The withdrawal of the protest could only be interpreted as indicating either their belief that their objection to Lynn's offers was not well founded or that they were willing for Lynn to have the leases because they were no longer interested in receiving them. There is no other reasonable explanation.

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1/ ac.qui.esce; to accept or consent without protesting.  
ac.qui.es.cence; unprotesting assent or consent.  
Webster's New World Dictionary, College Ed. (1960).

This obviously was the way the Land Office understood the withdrawal of the protest, for it immediately issued the leases to Lynn in the apparent belief that Meinhart and Rubenstein had no objection. Having precipitated the issuance of the leases to Lynn by their own expressed acquiescence, Meinhart and Rubenstein should be estopped from asserting that the Land Office erred.

In a somewhat analogous situation the Board of Contract Appeals held that where a notice of appeal stated that certain findings of fact were erroneous but a letter accompanying the appeal advised that there was, in fact, no objection to the findings, the appeal must be dismissed. Appeal of Geo Prospectors, Inc., IBCA 494-5-65 (February 25, 1966).

It seems evident that the letter of September 22, 1970, withdrawing the protest, withdrew as well the lease offers on which the protest was premised. This is particularly apparent when read in light of the letter of protest filed on April 30, 1970. Thus the letter begins, "In behalf of our Oil and Gas Lease Offers ES-6981 to ES-6994 inclusive, \* \* \* we enter our protest \* \* \*," and in closing declares, "\* \* \* we respectfully submit that priority for an oil and gas lease should be awarded to our Oil and Gas Lease Offers ES-6981 to ES-6994, inclusive."

The rule is settled that withdrawal of an application to lease requires the dismissal of an appeal based thereon. See Black Canyon City Commerce Ass'n., 3 IBLA 414 (1971); Chevron Oil Company, 3 IBLA 401 (1971). Although the Department has consistently held that an oil and gas lease issued for land which was not described in the application in the manner prescribed by Departmental regulations must be canceled in so far as it encompasses lands which were properly described in a junior offer, F.W.C. Boesche, A-27997 (August 5, 1959), aff'd, Boesche v. Seaton, 373 U.S. 472 (1963); Arthur E. Meinhart, 6 IBLA 39 (May 12, 1972); Jacob Wasserman, 74 I.D. 392 (1967); Duncan Miller, A-30600 (December 1, 1966), it has, at the same time, been the consistent holding of the Department that a defect in land description for an oil and gas lease will not justify cancellation of an issued lease when there was no pending application by a third party at the time the lease was issued. Stephen P. Dillon, 66 I.D. 148 (1959); D. Miller, 63 I.D. 257 (1956). Therefore, any defect in the land descriptions in the Lynn leases are curable.

As a person has no standing to appeal with respect to action taken on an oil and gas lease offer against which he has no present conflicting offer, the appeal should be dismissed. Cf. John J. Farrelly, 62 I.D. 1 (1955).

Even were we to adopt the more liberal view of the matter and conclude that Meinhart and Rubenstein did not intend the withdrawal

of their protest to constitute a withdrawal of their offers, there can be no doubt that they did withdraw their objection to Lynn's offers for the reasons stated in their original protest. Having protested on the specific issue of the alleged deficiencies in the property descriptions and then affirmatively acted to revoke that protest, they now endeavor to revive the very issue on appeal that their own actions had previously laid to rest, insofar as they were concerned. This is the perfect manifestation of an estoppel situation.

A party will not be permitted to maintain inconsistent positions or take a position in a matter which is directly contrary to, or inconsistent with, one previously assumed by him with regard to the same matter where he had full knowledge of the facts. 28 Am. Jur. 2d Estoppel and Waiver, § 68. This rule applies generally in respect to inconsistent positions assumed in judicial actions and proceedings, as well as to proceedings supplemental thereto, including proceedings for review. § 69 Id., and cases therein collected.

The filing of the protest on one specific ground, the withdrawal of that protest, and the bringing of an appeal from the consequent action on the same ground alleged in the original protest are inconsistent and mutually exclusive positions, and we deem it error to permit the appellants to benefit from this course of conduct. Moreover, any ambiguity created by appellants' actions must be resolved against them. 50 Comp. Gen. 302 (1970).

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Edward W. Stuebing, Member

We concur:

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Joseph W. Goss, Member

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Anne Poindexter Lewis, Member

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Douglas E. Henriques, Member

