

DUNCAN MILLER

IBLA 74-263

Decided September 12, 1974

Appeal from a decision by the Eastern States Office, Bureau of Land Management, dismissing appellant's protest against the rental rate on noncompetitive oil and gas lease on acquired lands ES 12945.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Land Leases--Oil and Gas Leases: Future and Fractional Interest Leases--Oil and Gas Leases: Rentals

Where the United States owns 100 percent of the gas and 50 percent of the oil in a tract of acquired land, rental for an oil and gas lease on such land will be based on the larger fractional interest owned by the United States, and not on

an average of the separate fractional interests.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The drawing entry card filed by Duncan Miller in the October 1973 simultaneous filing procedure, List 73-10, of the Eastern States Office, Bureau of Land Management, was granted first priority to Parcel 11 containing 1,189.98 acres of acquired lands within Kisatchie National Forest, Natchitoches Parish, Louisiana. Within the allotted time after notice that payment of the first year's rental of \$ 595 was due, Miller, under protest because of the United States having only 50 percent of the oil in the leased tract, submitted the required payment of \$ 595. Lease ES 12945 was issued as of February 1, 1974, for the described area of 1,189.98 acres in which it was stated the United States interest as to oil is 50 percent and as to gas is 100 percent.

On February 14, 1974, Miller reiterated his protest, which the Eastern States Office, by decision dated April 1, 1974, dismissed. An appeal to this Board followed.

Appellant argues essentially that the rental charge should be based only on the 50 percent interest of the United States in the oil because oil is the most reasonably expected potential production from the leased lands. He gives no authority to support his contention.

The Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), provides that oil and gas deposits in acquired lands shall be leased under the same conditions as contained in the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970). Section 17 of that Act, 30 U.S.C. § 226(d) (1970), provides that all leases of oil and gas lands shall be conditioned upon payment of rental of not less than 50 cents per acre annually.

[1] The regulations, at 43 CFR 3103.3-3, provide that rentals and royalties payable for land in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals and royalties provided by the regulations as the undivided fractional interest owned by the United States in the oil and gas is to the full interest. We construe this to mean that if the United States owns 50 percent of both the oil and the gas, the rental charged for a noncompetitive oil and gas lease would be 50 percent of the 50 cents per acre annually. But in the situation where the United States owns 50 percent of the oil and 100 percent of the gas, we do not construe the regulation to mean that the rental should be based on an average of the different

interests owned by the United States. Where the United States owns 100 percent of either the oil or the gas, the rental will be charged at the regular per acre rate of 50 cents annually. Authority does not exist under the mineral leasing laws to issue leases for oil interests separate and apart from gas interests. Cf. Continental Oil Company, 74 I.D. 229 (1967).

Furthermore, we point out that where horizontal segregation has been made in oil and gas lease, the resulting leases are chargeable with rental based on the surface acreage, even though this entails double rental payment for the land involved. Buttes Gas & Oil Company, 13 IBLA 125 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

