

JERRY CHAMBERS

IBLA 74-268

Decided November 26, 1974

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, requiring submission of additional evidence regarding oil and gas lease offer NM-A-20404 (Okla.).

Affirmed as modified.

1. Oil and Gas Leases: Future and Fractional Interest Leases

In accordance with the policy established by 43 CFR 3130.4-4, the Department ordinarily issues oil and gas leases only to offerors who, upon issuance of the lease, will own at least 50 per cent of the operating rights of a lease. Neither loss of receipt of rental by the government, nor purported inapplicability of the policy because the lands in the lease offer are in Oklahoma, justify making an exception to the policy in the regulation.

APPEARANCES: C. M. Peterson, Esq., Paulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jerry Chambers' simultaneously filed oil and gas lease offer NM-A-20404 (Okla.) for parcel 125 1/ was given third priority in the January 15, 1974, drawing held by the New Mexico State Office, Bureau of Land Management (BLM). The United States owns 25% of the operating rights to parcel 125. BLM rejected the two lease offers drawn before Chambers' offer. On March 27, 1974,

1/ The Notice of Lands Available for Oil and Gas Filings described Parcel No. 125 as the N 1/2, SW 1/4, sec. 17, T. 13 N., R. 26 W., Indian Meridian, Oklahoma.

BLM sent Chambers a notice informing him that his offer would be rejected unless he submitted a statement showing the extent of his ownership of the operating rights to the fractional mineral interest not owned by the United States. To support the request for information, the BLM's decision referred to 43 CFR 3101.2-5(a) and quoted 43 CFR 3130.4-4.

The quoted regulation requires a person who submits an offer for a fractional interest noncompetitive oil and gas lease to submit with the offer a statement of the extent of his ownership of operating rights in the fractional interest not owned by the United States. The regulation also states the Departmental policy that, except in unusual circumstances, BLM will not issue an oil and gas lease unless the prospective lessee owns at least 50% of the operating rights to the leased land. 43 CFR 3101.2-5(a), 3130.4-4. BLM's decision stated in particular,

Jerry Chambers must submit evidence that he owns operating rights to at least 25% or more of the operating rights to the fractional mineral interest not owned by the United States.

Chambers appealed.

Chambers contends that issuance of the lease to him would be in the public interest even though he will not own a majority interest in the operating rights in the lease when it is issued. He also alleges that the BLM made procedural errors in both the Notice of Lands Available for Oil and Gas Filings posted on December 17, 1973, and the March 24, 1974, notice requesting additional information. Because we find, below, that issuance of the lease to Chambers would not be in the public interest, we do not rule on his allegations of procedural error nor do we consider the propriety of other procedural aspects of this case.

Chambers has submitted the reasons why he feels the issuance of the lease in this case would be in the public interest despite his lack of ownership of any operating rights to the oil and gas: i.e., loss of receipt of rental by the Government and purported inapplicability of the general policy established by 43 CFR 3130.4-4 because the lands in the lease offer are in Oklahoma, a state whose regulations "insure that interests can be developed and the various owners' interests equitably protected."

[1] The Department ordinarily issues oil and gas leases only to offerors who own at least 50 per cent of the operating rights to the lease. 43 CFR 3130.4-4. The rule ensures Federal control

over the operation of the lease. An exception to the rule will be made, however, where the public interest would be better served by issuing the lease even though the prospective lessee does not own a majority interest in the lease. Sun Oil Co., 67 I.D. 298, 299-300 (1960); Celia R. Kammerman, 66 I.D. 255, 262 (1959); Solicitor's Opinion, M-36570 (August 10, 1959). Such circumstances would arise in a case involving drainage, in a case involving a binding agreement between a prospective lessee and the holder of a non-Federal fractional mineral interest or in a case where ensuring unified development of a large block of the Government's oil and gas rights is in the public interest. Sun Oil Co., supra at 299-300.

Both of the reasons suggested by Chambers have been considered by the Department and rejected as reasons for making an exception to the general policy in the regulations. David A. Provinse, A-30162 (July 6, 1964); Robert E. Boling, NM-A 2035 (Okla.) (September 22, 1967).

Actually, all that appellant has shown are ordinary circumstances which may be shown by all prospective leases in Oklahoma. He has shown nothing comparable to the situation in Sun Oil Co., supra, where the fractional interests were leased to one who owned no other interests but had leased the surrounding block of lands. Also, there is no showing that the lands are being drained or that appellant has a binding agreement with some other owner of mineral interests. We have considered all of the reasons offered by appellant, but nothing demonstrates that the public interest would be enhanced by leasing the Government's 25 percent interest to him. The reasons offered by appellant do not warrant a departure from the general policy of the regulation not to issue a lease to one who would own less than 50 percent of the operating rights. We reject Chambers' lease offer because it does not meet the requirements of the regulations.

Therefore, pursuant to the authority granted the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed for the above reason. 2/

2/ As indicated previously, our affirmance of the Bureau's decision should not be considered as any ruling on the propriety of affording the offeror the opportunity to make a showing after a simultaneous filing drawing has been made. Compare Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), and James H. Scott, 18 IBLA 55 (1974), with Arthur E. Meinhart, 11 IBLA 139, 80 I.D. 395 (1973).

Joan B. Thompson
Administrative Judge

We concur.

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

