

JUDITH WALKER,  
GINGER LAWHON

IBLA 75-146

Decided February 10, 1975

Appeal from decisions (C-21718 Acq.) of August 6, 1974, Colorado State Office, rejecting acquired lands oil and gas lease offers.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Mineral Leasing Act for Acquired Lands: Generally

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

APPEARANCES: Judith Walker and Ginger Lawhon, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Judith Walker and Ginger Lawhon have appealed from decisions of the Colorado State Office, dated August 6, 1974, rejecting their acquired lands oil and gas lease offers.

The decisions recited in applicable portion as follows:

The United States owns only a 9/32nds interest in the land.

Regulation 43 CFR 3130.4-4 requires that an offer for a fractional interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights not owned by the United States.

The regulation also states that it would not be in the public interest to issue such a lease to one who, upon such issuance would own less than 50% of the operating rights. No evidence was submitted with your offer to show that you would own 50% of the operating rights in the land upon lease issuance.

Appellants filed their oil and gas lease offers pursuant to a simultaneous filing notice. <sup>1/</sup> The notice provided for filings from July 15, 1974, at 10:00 a.m. to July 22, 1974, at 10:00 a.m. The notice also recited in part:

The following acquired lands are subject to filings in the manner specified in the applicable portions of the regulations in 43 CFR, Parts 3100 and 1820. [On] offers for lands in which the United States owns less than 100% interest, offeror must submit a statement as to whether he does or does not own any oil & gas operating rights in the "interests not owned by the United States." If the United States interest is less than 50%, offeror must submit evidence of his ownership of outstanding operating rights to make his ownership combined with the United States interest total 50%. See 43 CFR 3101.2-5 and 3130.4-4.

Parcel 003, C 21718, was listed under the foregoing as follows:

PARCEL NO. 003 (94.381 A. Net)  
WELD COUNTY 123

C-21718

T. 8 N., R. 59 W., 6th P.M.  
Sec. 31: East 335.58 acres  
U.S. Interest 9/32%

(Lease No. Acquired C-14324)

[1] The applicable regulation, 43 CFR 3130.4-4, provides as follows:

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<sup>1/</sup> The notice was issued pursuant to 43 CFR Subpart 3112.

## § 3130.4-4 Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

Judith Walker's card was drawn first for the tract and Ginger Lawhon's third.

The statements of reasons filed by appellants are virtually identical. They assert that there is insufficient room on the drawing card 2/ to indicate who owns the fractional balance of the interests not owned by the United States. However, 43 CFR 3130.4-4 requires an offeror for fractional present interests to show "the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease." Moreover, this showing may be made on a separate piece of paper accompanying the drawing card.

Appellants also advert to 43 CFR 3101.2-5, Present Interest, which reads as follows:

(a) Full and fractional. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

Appellants urge that the word "ordinarily" is very important and that an exception for them should be made. We need not attempt

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2/ However, there is considerable space on the back side of the card under "Statement of Interests." This space could have been utilized.

to delineate the exceptional circumstances under which a fractional offer by one who does not meet the 50 per cent requirement would proceed to lease. Suffice it to say that appellants have not demonstrated any compelling reason, and indeed no reason, why the rule should be departed from.

There are essentially two bases for the rejection of the offers: (1) the failure to file a proper offer showing the extent of the offeror's ownership of the operating rights not owned by the United States, James H. Scott, 18 IBLA 55, 58 (1974); and (2) each of the appellants has not established that she owns sufficient operating rights together with the 9/32nds interest owned by the United States, to constitute 50 per cent of the operating rights. See 43 CFR 3101.2-5 and 43 CFR 3130.4-4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

