

JOHN OAKASON, JEAN OAKASON

IBLA 75-346 Decided July 25, 1975

Appeals by John Oakason from decisions of the Utah State Office, Bureau of Land Management, rejecting his oil and gas lease offers (U-29020 and U-29021). Appeal by Jean Oakason from a decision rejecting her oil and gas lease offer (U-29025).

Reversed and remanded for further proceedings.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interest Leases

The failure of the offeror for a noncompetitive oil and gas lease to complete that part of item 2 of the lease offer form calling for the extent of the interest of the United States in oil and gas if less than 100 percent does not by itself necessitate rejection of the offer as the offer is held to include "any and all" lands described therein and whatever mineral interest the United States owns in said lands and thus becomes an offer for whatever interest is available.

2. Applications and Entries: Generally -- Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Amendments -- Oil and Gas Leases: Future and Fractional Interest Leases

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

APPEARANCES: John Oakason and Jean Oakason, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

These three cases consolidated on appeal present similar factual contexts and issues. In each case noncompetitive oil and gas lease offers were filed for the alleged fractional mineral interest of the United States in certain tracts of land pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970). It appears from the record that the mineral interest of the United States is fractional, but that there is some question as to the actual extent of that mineral interest. That part of item 2 of the lease application form marked "U.S. interest if less than 100 percent" was left blank on all of the applications. In addition, the offers as initially filed were not accompanied by any statement with respect to the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in the lands described in the lease offers.

Subsequent to the filing of the offers and prior to the adjudication of the offers, a supplemental statement was filed by the offeror in each case to the effect that the offeror held no interest in the operating rights to the mineral interest not owned by the United States in said lands. Later, in separate decisions dated January 8, 1975 (U-29025), and January 9, 1975 (U-29020 and

U-29021), each of the offers was rejected for failure of the offeror to provide a statement regarding his interest in the operating rights to the fractional mineral interest not owned by the United States. ^{1/} In U-29021 and U-29025 an additional reason for the rejection was given -- the failure of the offeror to complete item 2 of the lease offer form showing the percentage of the United States' interest.

Appellants raise two principal grounds for this appeal. Initially, appellants cite the case of Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974), as precedent for their contention that their statements regarding ownership of the operating rights to the fractional mineral interest not owned by the United States, which were filed subsequent to the filing of the lease offers, should be allowed as amendments of the offers, that their statements cure the defects in the offers, and that their offers should be granted priority as of the date of the filing of said curative material. Secondly, appellants allege that they should not be penalized by rejection of their offers for failure to state the percentage of the United States' mineral interest in the lands where neither the appellants nor the BLM know for a fact the percentage of the oil and gas rights owned by the United States.

Appellants' contentions have merit. On the latter point, this Board has held that the failure of an offeror for an oil and gas lease to state accurately the extent of the United States' mineral interest is not itself fatal to the offer because, by its terms, it is an offer to lease "any or all" (see first paragraph of lease offer form) of the lands described in the lease offer form. This includes the total extent of the federal mineral interest in such lands as there is no authority for leasing any lesser interest. Irwin Rubenstein, 3 IBLA 250, 253 (1971); see also, James H. Scott, 18 IBLA 55, 57-58 (1974).

^{1/} It appears from the records in the file that the adjudicator was not aware that the statement regarding ownership of the operating rights to the fractional mineral interest not owned by the United States had been filed at the time of his decision. Subsequently, when the statements came to the attention of the adjudicator, notes were drafted to the offerors on January 23, 1975 (U-29025), and January 27, 1975 (U-29020 and U-29021), indicating that the BLM declined to change its prior decisions because the statements should have been filed simultaneously with the offers.

The regulations with respect to fractional mineral interest leases, 43 CFR Part 3130, are silent regarding the provision by the offeror on the lease form of the extent of the interest owned by the United States, although they do require offers to be filed on a form approved by the Director (BLM) and they require the applicant to provide a statement with respect to his ownership of the operating rights to the fractional mineral interest not owned by the United States. 43 CFR 3130.4-4 (1974).

[1] Although the offeror is generally obligated to complete the lease application form including the part of item 2 calling for a description of the interest of the United States in oil and gas if less than 100 percent, the omission of any designation of a percentage interest, standing alone, does not necessitate the rejection of these oil and gas lease offers where the extent of the mineral interest of the United States in the oil and gas is uncertain. Of course, the applicant must have sufficient rental for the United States' interest in the offered lands. If the rental is less than the amount sufficient to include a 100-percent interest in the total acreage, an applicant runs the risk of having his offer rejected for insufficient rental if the rental submitted does not cover the interest owned by the United States. Irwin Rubenstein, supra. We mention this point because appellants submitted rental which would only cover a 50-percent interest in the acreage applied for in the offers. The BLM Office has indicated that the United States owns a 50-percent interest in the lands, but it was uncertain of the extent of the ownership. This is a matter for further adjudication by the State Office.

[2] On the other ground for appeal, it is clear from the regulations that an offer for a fractional interest noncompetitive lease must be accompanied by a statement disclosing 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 described in the lease offer. 43 CFR 3130.4-4 (1974). This requirement is mandatory and where no such statement is filed the offer must be rejected. John R. Anderson, 15 IBLA 286 (1974); Michigan Wisconsin Pipe Line Co., supra, at 283.

However, over-the-counter noncompetitive oil and gas lease offers (as distinguished from simultaneous oil and gas lease offers) may have their deficiencies cured by subsequent submission of the required material prior to a final Departmental decision. R. C. Bailey, 7 IBLA 266, 268 (1972), aff'd, Burglin v. United States,

Civ. No. F-15-73 (D. Alaska, June 11, 1973), appeal pending. We have held that the offer, if otherwise valid, would gain priority from the time of the filing of the curative material. M. P. Shiflet, 15 IBLA 112 (1974); A. M. Shaffer, 73 I.D. 293 (1966). Where the statement as to the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is filed subsequent to the filing of the offer itself, the offer will, if otherwise valid, gain priority from the time that the curative statement is filed. Michigan Wisconsin Pipe Line Co., supra at 283-4; James H. Scott, supra. The BLM State Office should have recognized the offers as having priority when the statements were filed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Utah State Office are reversed and the cases are remanded for further adjudication of the lease offers.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

