

JEAN OAKASON

IBLA 75-440
IBLA 75-509

Decided September 10, 1975

Appeals from decisions of the Utah State Office, Bureau of Land Management, requiring an applicant for a noncompetitive acquired lands oil and gas lease to produce certain title evidence.

Affirmed in part, set aside in part, and remanded.

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

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

2. Applications and Entries: Filing -- Oil and Gas Leases: Applications:
Filing

It is improper for the Bureau of Land Management to require an applicant having partially conflicting noncompetitive acquired lands oil and gas lease offers filed in the regular over-the-counter procedure at different times to withdraw either his senior or junior offer simply because of the conflict.

3. Administrative Practice -- Appeals -- Oil and Gas Leases:
Applications: Generally -- Rules of Practice: Appeals: Effect of

A Bureau of Land Management Office has no jurisdiction to take further action

on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

APPEARANCES: John Oakason for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

These appeals have been consolidated because they raise the same basic issue. By decisions dated February 27, 1975, pertaining to noncompetitive acquired lands oil and gas lease offers U-29256 and U-29392, and March 17, 1975, pertaining to offer U-29136, the Utah State Office, Bureau of Land Management (BLM), required the offeror, Jean Oakason, to submit a "pencil abstract" from the Office of the County Recorder. The decisions stated that there was insufficient title evidence in the office for the Regional solicitor to prepare a title opinion.

Appellant objects to this requirement as being inconsistent with "basic land law adjudication." She contends the Utah BLM Office, not the offeror, should determine the status of the ownership of the oil and gas resources. She requests the applications be suspended until that office determines whether the United States owns the resources. Also, she asserts that "if there is a burden of doubt of the ownership, the application should not be rejected until the ownership is resolved."

[1] The lease offers were all filed under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.* (1970). The only information the offeror furnished regarding title to the oil and gas resources was a statement in the offers that the United States' interest was 50 percent. The oil and gas status plats only reflect that the land was patented by the United States. It appears, however, from deeds in the record that the lands involved in the offers were acquired by the Federal Farm Mortgage Corporation, which subsequently conveyed the land to the third party, subject to a reservation of an undivided one-half interest "in and to all oil, gas, petroleum * * *." Even to ascertain whether the United States still retains a 50 percent interest in oil and gas, it would be essential to know whether there were any conveyances by it of that interest. An abstract of title might also reveal whether the United States ever re-acquired any other interest in the oil and gas deposits.

If the lands had never been conveyed from the United States and retained the status of public lands, most matters affecting

the status of the oil and gas deposits would be reflected upon the public land records maintained by BLM. ^{1/} With acquired lands, however, the status question sometimes becomes complex. Lands, including oil and gas resources therein, may be acquired by other federal agencies without any knowledge by the BLM and without any notation ever appearing on BL, status records. It may seem anomalous that BLM has little or no title information about resources it may be authorized to lease under the Mineral Leasing Act for Acquired Lands, but such title information is often only available in the local governmental recording office, or possibly in the records of the agency which acquired the lands.

We mention this distinction between public lands and acquired lands because it puts into better perspective BLM's requirement that the offeror furnish an abstract from the county recorder's office. If BLM has insufficient title information, we believe BLM, in administering the Secretary's discretionary authority to lease acquired lands, may properly require an offeror to furnish information from the county recorder's office as a precondition to lease issuance in order to help it to ascertain title status. As stated in Gas Producing Enterprises, Inc., 15 IBLA 266, 268 (1974):

* * * an appellant cannot impose on the Board the burden of searching the county records in an endeavor to ascertain the chain of title and to establish appellant's entitlement to favorable action on its appeal.

An oil and gas lease offer for acquired lands may properly be rejected in the exercise of discretion if there is doubt concerning federal title to the oil and gas. Gas Producing Enterprises, Inc., *supra*, and cases cited therein. If appellant refuses to furnish information which would help remove the doubt, BLM may properly reject the offer and not hold it in suspense. *Id.* BLM may give appellant an additional 30 days within which to submit the required information. If she fails to do so, her offer will be finally rejected.

[2, 3] In order to clarify the record, we shall comment on another matter raised by statements in the BLM decisions concerning offers U-29256 and U-29392. These offers conflict in part with prior-filed offers U-29020 and U-29021 which were on appeal to this Board at the time offers U-29256 and U-29392 were being adjudicated in the BLM office. ^{2/} With respect to U-29256

^{1/} An exception might be the location of a valid unpatented mining claim recorded only in the county recording office.

^{2/} The decision on appeal involving offers U-29020 and U-29021 issued July 25, 1975, John Oakason, 21 IBLA 185.

the decision stated: "Unless you withdraw this offer, we will consider it to be a withdrawal of U-29020 as to Sec. 5, & U-29021 as to Secs. 17 & 19 (now on appeal)." Similarly, the decision regarding U-29392 stated: "Unless a partial withdrawal as to Sec. 9 is filed, we will consider this offer to be a withdrawal of Sec. 9 in U-29020 (now on appeal)."

These statements by the BLM office were improper. First, the conflicting offers mentioned were filed by John Oakason, not Jean Oakason.

Second, even if Jean Oakason had some interest in the conflicting offers, we know of nothing in the law and regulations which would require the action taken by BLM where the offers are filed regularly, over-the-counter. Priority of filing would depend upon which offer was the first qualified offer. This is unlike the simultaneous filing system where an offeror may only have an interest in one offer in the filing and a drawing is held to determine the priority of the offers filed. Here no drawing is required to determine priorities. The rights of a junior applicant would be ascertained only after the senior application is adjudicated. Simply because an offeror may file two applications at different times, which conflict, is no reason to require the applicant to withdraw one or the other prior to final adjudication. Duncan Miller, A-29426 (July 22, 1963).

Third, the BLM office should not purport to take adjudicative action affecting offers or other applications which are on appeal to this Board. When an appeal is filed from a BLM decision, that office loses jurisdiction over the case. It has no authority to take further adjudicative action on a matter pending before this Board. John J. Sexton (On Reconsideration), 20 IBLA 187 (1975); Utah Power & Light Co., 14 IBLA 372 (1974); see Humble Oil & Refining Co., 65 I.D. 257 (1958); Ruby E. Huffman, 64 I.D. 57 (1957).

Therefore, 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 to the extent that they require the applicant to provide evidence of title in the nature of an abstract sufficient to allow the Regional Solicitor to determine the status of title to the oil and gas in the lands for which the lease applications were filed. 3/ The decisions in U-29256 and U-29392 are vacated and set aside to the extent that they held that the failure to withdraw the conflicting portions of those applications would be construed as a partial withdrawal of the

3/ The term "pencil abstract" is neither widely understood nor self-defining.

prior applications already on appeal (U-29020 and U-29021). The applications are remanded for further action in accordance with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

