

**Editor's note: 83 I.D. 247**

JOHN T. STEWART, III  
HARLAN C. ALTMAN, JR., TRUSTEE

IBLA 76-284

Decided June 28, 1976

Appeal from decision of the New Mexico State Office, Bureau of Land Management,  
canceling oil and gas lease NM-22172.

Set aside and remanded.

1. Oil and Gas Leases: Acreage Limitations--Oil and Gas Leases:  
Cancellation

An oil and gas lease issued for 2,960 acres in violation of  
administrative regulations need not be canceled in its entirety, in the  
absence of an intervening qualified applicant.

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

25 IBLA 306

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John T. Stewart, III, and Harlan C. Altman, Jr., Trustee, appeal from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated September 16, 1975, canceling oil and gas lease NM-22172. The lease, effective July 1, 1975, was originally issued to Mr. Stewart. His assignment of the lease to Mr. Altman as Trustee of the Stewart Venture Trust was approved by BLM effective July 1, 1975.

BLM canceled the lease because it was issued in error for an area greater than the maximum acreage per lease of 2,560 acres allowed by 43 CFR 3110.1-3(a). BLM based its decision on 43 CFR 3111.1-1(e)(2) which allows approval of lease offers covering not more than 10 percent over the maximum allowable acreage, provided that the acreage is reduced. Lease offer NM-22172 stated that the total area was 2,320 acres and was approved as such. In fact, the land described in the offer and lease totals approximately 2,960 acres, an excess greater than the 10 percent curable defect.

Appellants argue that the BLM decision should be reversed for two reasons. First, they assert that the present lessee, Harlan C. Altman, Jr., Trustee, is a bona fide purchaser entitled to the protection of 30 U.S.C. § 184(h) (1970). Second, they argue that when

a violation of regulations governing lease offers is discovered after the lease has issued, and no rights of third parties are involved, the equitable policy of the Department of the Interior allows the lease to stand.

The Secretary of the Interior is authorized by section 32 of the Mineral Leasing Act of 1920, 41 Stat. 450, 30 U.S.C. § 189 (1970), to promulgate rules and regulations to carry out the purposes of the Act. The Secretary has issued various regulations governing the content of oil and gas lease offers. Offers which are not filed in accordance with these regulations must be rejected. 43 CFR 3111.1-1(d). The question here is what action should the Department take when an oil and gas lease is erroneously issued on an offer which should have been rejected.

[1] The Department has developed a policy in some circumstances of not canceling oil and gas leases issued in violation of regulatory requirements, in the absence of intervening qualified applicants. Claude C. Kennedy, 12 IBLA 183 (1973). This policy has been applied to leases which do not comply with the limitations on total area and minimum acreage now set out at 43 CFR 3110.1-3(a). Senemex, Inc., A-29195 (June 10, 1963); Arnold R. Gilbert, 63 I.D. 328 (1956); Earl W. Hamilton, 61 I.D. 129 (1953). However, when a qualified applicant files a lease offer for the same land prior to the issuance of the defective lease, the Department will

cancel the lease when it discovers the error. Boesche v. Udall, 373 U.S. 472 (1963); Hugh E. Pipkin, 71 I.D. 89 (1964); R. S. Prows, 66 I.D. 19 (1959); Lynn Nelson, 66 I.D. 14 (1959).

Oil and gas lease NM-22172 should not have been issued. The offer should have been rejected as provided by 43 CFR 3111.1-1(d). However, under the policy discussed above, it may not be necessary to cancel the lease in its entirety merely because the lease offer violated regulatory requirements. Therefore, we set aside the BLM State Office decision and remand the case for further consideration.

On remand, the BLM State Office should first examine its records to determine whether any qualified applicants filed oil and gas lease offers for the land in appellants' lease prior to June 12, 1974, the date lease NM-22172 was issued. <sup>1/</sup> If there were such applicants, the BLM State Office should then consider whether appellant Altman qualifies as a bona fide purchaser pursuant to 30 U.S.C. § 184(h). Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966).

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<sup>1/</sup> Appellants have pointed out that two lease offers were filed on September 10, 1975, for the land covered by their lease. Since these offers were filed subsequent to the issuance of appellants' lease, they were not filed by intervening applicants and do not constitute grounds to cancel NM-22172. Arnold R. Gilbert, *supra*; see Stephen Dillon, 66 I.D. 148 (1959).

In their statement of reasons, appellants have offered to relinquish from the lease the necessary acreage to bring it in compliance with 43 CFR 3110.1-3(a). No rental has been paid for the excess acreage (appellants tendered only enough back rental to cover 2,560 acres) and the actual acreage in the lease is more than the 10 percent allowed as a curable defect. Therefore, the State Office should require this relinquishment in the event there is no intervening qualified offeror.

Accordingly, 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 set aside and the case remanded for action consistent with this opinion.

Administrative Judge

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Joan B. Thompson

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Frederick Fishman  
Administrative Judge

