

JEAN OAKASON

IBLA 76-581

Decided September 22, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands oil and gas lease offer, U-29025 (Acq.)

Affirmed in part, set aside and remanded in part.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Solicitor to render a legal opinion regarding title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where applicant declines to provide such information.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Statement of Reasons -- Rules of Practice: Evidence

Where there is uncertainty regarding title to the oil and gas in an acquired land

tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

APPEARANCES: Sheridan L. McGarry, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Utah State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offer for the United States' mineral interest in certain acquired lands. The ground for rejection was that the evidence provided by appellant with respect to title to the oil and gas on the land was insufficient to enable the Regional Solicitor to prepare a legal opinion on the status of mineral title.

In the statement of reasons for appeal submitted herein, appellant's attorney sets forth an opinion that the United States holds title to a 50 percent interest in the oil and gas on a portion of the lands described in the offer -- all of Sec. 32, T. 3 N., R. 3 E., S.L.M., Morgan County, Utah. The opinion is based upon the attorney's search of the Morgan County land records and is supplemented by an abstract of the conveyances affecting the subject tract and photocopies of some of the instruments shown on the abstract.

Appellant's lease offer embraces all of the land in Sections 32, 33, 35 of the above-identified township. Reference to the survey plat discloses that all of the said lands were either patented or the subject to railroad grants. The BLM advised appellant by means of a decision dated September 18, 1975, that the title evidence in the State Office was not sufficient to prepare a title opinion and required appellant "to submit title information from the office of the County Recorder, Morgan County, demonstrating that the lands applied for are in federal ownership."

In response, appellant submitted a letter from J. W. Bloom in which it was asserted that the United States does not own the oil and gas rights to Sections 33 and 35. The author of the letter further ventured the opinion that "it is probable that the USA does own a 50% mineral interest" in Section 32. This letter was submitted

by the BLM to the Regional Solicitor with a request for a title opinion.

The Regional Solicitor responded with a memorandum indicating that the letter was not a sufficient basis for developing a legal opinion regarding the status of title to the land and provided the following guidance as to what kind of information is required:

The application should be accompanied by a pencil abstract made by a licensed abstractor with copies of the pertinent instruments of conveyance attached. Those attachments should include all conveyances of mineral interest in the subject land.

The file contains no indication that the BLM advised appellant of the type of information required. The BLM subsequently rejected the offer for failure of the appellant to provide adequate title information on which to base a legal opinion as to the status of title to the oil and gas in the subject land. This appeal resulted from that decision.

Uncertainty regarding the status of the ownership of mineral deposits is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. Don Jumper, 24 IBLA 218, 219 (1976); Gas Producing Enterprises, Inc., 15 IBLA 266, 268 (1974).

With respect to records concerning land title, the distinction between public domain and acquired land must be recognized. The BLM records reflect the current status of public domain land until the time it is patented. However, title records regarding acquired land which is purchased from private parties by the United States to be administered by a particular Government agency are usually held by that agency. Although the BLM may have the responsibility for administering the mineral laws upon such property, it is dependent upon other sources for title information.

[1] Where title to a tract of acquired land which is the subject of an oil and gas lease application is in doubt, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Don Jumper, *supra* at 219; *see Gas Producing Enterprises, Inc.*, *supra* at 268. Where the BLM has insufficient title information with respect to mineral title in acquired lands, it may properly require the lease offeror to furnish evidence from the county recorder's office in the nature of a title 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 application was filed. Jean Oakason, 22 IBLA 311, 312 (1975); Jean Oakason, 22 IBLA 33, 35 (1975). Further, rejection of the application for

lease is proper if the offeror fails to furnish information which helps to remove doubt as to title. Id.

[2] The decision of the BLM was not improper at the time that it was made in view of the insufficiency of the evidence of title provided by the appellant to the BLM and the consequent failure of appellant to meet her burden. However, appellant has filed additional evidence on appeal. This evidence, not previously submitted, tends to show the existence of fractional (50 percent) mineral title to Section 32 in the United States. It is not the function of this Board to adjudicate applications on the basis of evidence submitted for the first time on appeal. See United States v. Gary C. Fichtner, 24 IBLA 128, 130 (1976); United States v. C. V. Hallenbeck, 21 IBLA 296, 302 (1975). However, it may be appropriate to remand an application for further consideration where new evidence is presented indicating that appellant may be entitled to favorable action on his application. See Lon Philpott (On Reconsideration), 16 IBLA 285 (1974). Such a course of action is appropriate in this case where the correspondence in the case file indicates that appellant has provided information pertinent to mineral title when requested to do so and that appellant was not advised prior to the decision rejecting her offer of the specific nature of the title information required as outlined in the Regional Solicitor's memorandum of March 8, 1976. 1/

On remand, appellant should be advised of the specific title information required as outlined in the Solicitor's memorandum and given a reasonable period of time to submit such evidence. At the close of such period, the file, together with the evidence of title submitted on appeal and any other title evidence filed by appellant, should be transmitted to the Regional Solicitor for a title opinion.

The evidence presented in connection with this appeal pertained only to Section 32. Appellant's own evidence presented below asserts that the United States does not own any mineral title to the land in Sections 33 and 35. Therefore, the decision below is affirmed as to rejection of the lease offer for the lands in Sections 33 and 35.

1/ We note that there is no question of prejudice to the right of any subsequent applicant for an oil and gas lease on the subject tract because the question is one of the eligibility of the tract for leasing and not of appellant's qualifications.

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 affirmed in part as to rejection of the offer for the lands in Sections 33 and 35, and set aside and remanded in part for further action consistent with this decision as to the lands in Section 32.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Newton Frishberg
Chief Administrative Judge

