

ARJAY OIL COMPANY

IBLA 77-246

Decided May 20, 1977

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offers Idaho 12978 through 12983.

Affirmed.

1. Oil and Gas Leases: Acreage Limitations

The record title holder of an oil and gas lease or offer is chargeable with the full acreage included in the lease or offer, even though another person, association, or corporation has a 50! percent interest in the lease or offer.

APPEARANCES: R. J. Hollber, Jr., President, Arjay Oil Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Arjay Oil Company has appealed from a decision of the Idaho State Office, Bureau of Land Management, dated March 10, 1977, which rejected noncompetitive oil and gas lease offers I-12978 ! 12983 for exceeding the acreage limitation imposed by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 184(d). The decision allowed appellant 30 days to reduce its acreage holdings, failing which the decision would become final and the rejected offers closed.

The facts are not in dispute. On January 20, 1977, Arjay filed 51 oil and gas lease offers totaling 113,739.76 acres. On January 21, 1977, it filed an additional 53 offers totaling 120,348.80 acres. Finally on January 26, 1977, it filed the six offers involved in this appeal totaling 15,320 acres. All the offers cover lands in the State of Idaho. The total acreage described in the leases is 249,408.56 acres.

The Mineral Leasing Act, supra, provides that:

No person, association, or corporation * * * shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, oil and gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty! six thousand and eighty acres in any one State other than Alaska * * *.

The pertinent regulation repeats the statute and adds that the acreage in applications and offers for leases shall be counted towards the total allowed. 43 CFR 3101.1-5. 1/

The regulation further provides that if a person files a group of applications or offers for land not subject to the simultaneous filing procedures (43 CFR Subpart 3112) any one of which causes him to exceed the acreage limitations, the entire group of applications or offers will be rejected. 43 CFR 3101.1-5(c)(3)(ii).

Since these six offers were all filed at the same time, the State Office treated them as a group and rejected them all.

Appellant contends that it is chargeable with only 50 percent of the acreage covered by the offers. Appellant points to the regulation which states that a party owning an undivided interest in a lease is chargeable with his proportionate share of the acreage. 43 CFR 3101.1-5(d). It points out that while these offers are in its name, each offer stated in response to item 6 on the offer, that Kent E. Peterson holds a 50! percent interest in it. A proper statement of interest was filed with each offer. Therefore, it argues, it and Peterson are each chargeable with only 50 percent of the acreage. Otherwise, it continues, if only the party in whose name the offer is submitted is chargeable and none is charged to the party having an interest in the lease, the acreage limitation would be easily violated.

Taking up the last point first, we note that appellant's assumption that a party at interest would not be charged is incorrect. On the contrary, he is charged for his proportionate

1/ See Shell Oil Company, A-30575 (October 31, 1966); Solicitor's Memorandum, M-36670, September 17, 1964, 71 I.D. 337 (1964); Yakutat Development Co., Alaska, 63 I.D. 97, 100 (1956); Albert C. Massa, 62 I.D. 339, 341 (1955); 2 Law of Federal Oil and Gas Leases, Supp. § 25.7, Rocky Mountain Mineral Law Foundation, 1971.

interest, here 50 percent, and is so charged without regard to the fact that a charge may also be made upon the record offeror.

The real issue is whether Arjay, as the offeror, is to be charged with 100 percent of the acreage, or whether it is chargeable only with the other 50 percent, or in other words, whether there is to be a "double charge" for the acreage. There are many situations in which acreage is charged to more than one person (or association or corporation) and this is one. Law of Federal Oil and Gas Leases, supra, § 25.11. The record title holder of a lease is charged with the entire acreage in a lease whether its interest is entire or partial or whether it is direct or indirect. Columbian Carbon Company, 68 I.D. 314, 319 (1961). In Skelly Oil Company, Montana 0639 (April 15, 1958), the Bureau of Land Management stated: "Thus, he who holds nothing but bare legal title to a lease is chargeable with the full acreage therein, and if all operating rights are held by another, that other is also chargeable with the full acreage * * *."

In discussing the oil and gas acreage limitation the BLM Manual (Vol. VI, BLM Manual 2.1.50) says:

50. No person, association, or corporation shall take, hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through the ownership of leases or interests in leases or indirectly as a member of an association, or as a stockholder of a corporation, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State (except Alaska) of which no more than 200,000 acres may be held under option. * * *

A. A direct holding is a record title interest. Indirect holdings may include royalty interests, and other interests as may be shown from the statement of interest.

B. The record title holder of a lease is always chargeable with the full acreage included in said lease. Any other parties who may be shown to have any interest in said lease are also charged with the full extent of their interest. Thus, it is possible that the acreage in a lease may be charged more than once.

Thus, as the record title holder of the offer Arjay is chargeable with all the acreage in the offers. Since the filing of these six offers placed him in excess of the allowable limit, the offers were properly rejected.

We would also point out that even if the acreage were chargeable 50-50 to Arjay and Peterson, as joint owners or tenants in common, the acreage limitation still would be exceeded. Here all of the offers covering the 249,408.56 acres were held in Arjay's name with a 50! percent interest in Peterson. The pertinent regulation states: "No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee of the particular mineral deposit so held will be permitted." 43 CFR 3101.1-5(c)(6).

Accordingly, as a unit Arjay and Peterson are limited to 246,080 acres, even if as individuals each were only charged with half. Law of Federal Oil and Gas Leases, supra, § 25.11. Thus, even if the offers were considered as appellant would have them, they would nonetheless have had to be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING IN THE RESULT:

The contention of the appellant (Arjay Oil Co.) is that each and every oil and gas lease offer filed by it in the State of Idaho contained a statement on the face of the offer that one Kent E. Peterson owned a 50! percent interest in the offer, and that each such offer was accompanied by a separate statement of interest in which it was provided that Arjay Oil Company (Arjay) owned 50! percent interest and Kent E. Peterson owned 50! percent interest. Appellant alludes to 43 CFR 3101.1-5(d), which reads, in pertinent part, as follows: "(d) Computation. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. * * *"

Thus, appellant argues that since Arjay owned only an undivided 50! percent interest in 249,408.56 total acres and Peterson owned the remaining undivided 50! percent interest, the regulation dictates that each party shall be charged only with such party's proportionate share, or 124,704.28 acres each.

Although I concur in the majority's holding to the effect that they cannot hold more acreage in common than either could alone, I do not agree that in these circumstances Arjay should be individually accountable for 100 percent of the total acreage while Peterson is charged, individually, with only 50 percent.

Here we have two distinct parties; one a Utah corporation, the other an individual citizen; each with an undivided 50! percent interest in the total acreage chargeable to them in Idaho. The regulation clearly states that in computing acreage holdings or control in such cases the accountable acreage shall be such party's proportionate part of the total lease acreage. What could be more plainly stated?

The purpose of the requirement that all parties in interest and the amounts of their several interests be disclosed is predicated, at least in part, upon the Bureau's obligation to properly apportion the accountability for acreage in its administration of the Mineral Leasing Act.

In the instant case it is apparent that neither Arjay nor Peterson could assign an entire lease without the joinder of the other, but either could assign their respective 50! percent interests individually.

The Mineral Leasing Act, at 30 U.S.C. § 184(d)(1) (1970), provides in part: "No person, association, or corporation * * * shall

* * * hold * * * at one time * * * oil or gas leases * * * exceeding in the aggregate two hundred forty! six thousand and eighty acres in any one State other than Alaska * * *." (Emphasis added.)

Note that the words "person, association or corporation" all refer to single entities. But Arjay and Peterson, as they appear here, are two separate entities. This brings us to the majority's concern for "the record title holder." Presumably the majority's use of this term refers to the name listed in Item 1 of the lease form, since both Arjay and Peterson have made their respective interests a matter of official record, as they were obliged to do by 43 CFR 3102.7.

If both Arjay and Peterson had listed their names in Item 1 of the lease form they would have undoubtedly been regarded, and treated as an "association," a single entity, and both would have to have been chargeable with the total as single entity, although each individual, as such, would be charged with his proportionate 50 percent.

It is the majority's theory that Arjay, as the lessee "of record" must be charged with 100 percent of all of the acreage held, but Peterson may invoke 43 CFR 3101.1-5(d) and be charged only his "proportionate part of the total lease acreage." This is the way I interpret the BLM Manual instruction VI BLM 2.1.50, which says: "B. The record title holder of a lease is always chargeable with the full acreage included in said lease. Any other parties who may be shown to have any interest in said lease are also charged with the full extent of their interest * * *." (Emphasis added.)

But this leads to an absurd result, in that Arjay will be barred from obtaining any further federal oil and gas interests in Idaho, while Peterson can proceed to acquire an additional 123,040 acres there, despite the fact that each now holds identical interests in the same lands.

However, BLM Manual instructions do not have the force of law or regulation, but are advisory only, and do not mandate this result.

Similarly, Skelly Oil Co., cited by the majority, cannot be relied upon as precedent. It is a BLM decision which was not approved or affirmed by the Secretary, and which was not indexed, published or made available to the public in the manner prescribed in the "Freedom of Information Act," 5 U.S.C. § 552 (1970).

I agree with the majority that there are circumstances where the same acreage must be charged to more than one interest. It

appears to me that these situations arise most frequently where there is a single lessee who subsequently creates interests in others by contracting with reference to the leasehold, e.g., by option or operating agreement.

Columbian Carbon Company, 68 I.D. 314 (1961), cited by the majority, is such a case. There the land office charged Columbian with 100 percent of the leases of which it was the sole titleholder, and with 66-2/3 percent of the other leases in which Columbian held an undivided two-thirds interest. This was affirmed on appeal, with a minor irrelevant modification relating to the special conditions which attended a very complex and unusual operating agreement in that case. This, standing alone, would tend to support my view of proper division. However, in construing the forerunner of 43 CFR 3101.1-5(d) (then 43 CFR 192.3(b)), the decision recites the regulation, as follows, and states at 68 I.D. 319:

In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest of a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage. (43 CFR 192.3(b).)

This regulation seems to constitute authority for charging a record titleholder of a lease with the entire acreage of its interest in that lease whether that interest is entire or partial and whether it is direct or indirect. * * * [Footnote omitted.]

For the life of me, I am unable to comprehend how the quoted regulation "seems to constitute authority" for anything remotely resembling the meaning attributed to it. Accordingly I would ignore the stated proposition as unfounded.

This is not to say that I fail to recognize that the majority's treatment of this case comports with the rule of acreage accountability which has obtained in this Department for many years. I simply feel that the rule is wrong. It is both unfair and unnecessary. It is the product of administrative interpretation (or misinterpretation). The application of this method of acreage accountability is not required by any provision of statute or regulation. To the contrary, a strict application of 43 CFR 3101.1-5(d) would provide the basis for parity.

To illustrate the absurdity, as matters now stand, although Arjay and Peterson own identical interests in the same Idaho lands, Arjay (without some divestiture) can acquire no additional federal oil and gas interests in Idaho, while Peterson is free to acquire an additional 123,040 acres there, as noted above. This is because Arjay's name appears at Item 1 of the lease forms while Peterson's name appears at Item 6. But if, by assignment by Arjay to Peterson of 50 percent of the so-called "record title," Peterson's name figuratively could be moved up with Arjay's to Item 1 of all of the lease forms, then Arjay and Peterson would each be at liberty to acquire an additional 123,040 individually. Of course, this would entail a great deal of paperwork and expense (including a \$ 25 filing fee for assignment of each lease), and would be purely pro forma, since each party would still have the same 50 percent that they started with. But then, instead of Arjay being charged with 100 percent while Peterson is charged with only 50 percent, suddenly by this astonishing feat of bureaucratic legerdemain, each would be charged, individually, with only 50 percent. Of course, neither could acquire any additional interest in combination with the other, since as a unit they cannot hold in common more than the maximum specified by law for any one lessee. 43 CFR 3101.1-5(c)(b).

Accordingly, I concur in the majority's affirmation of the rejection of the subject lease offers. The common holdings of Arjay and Peterson have reached the maximum, and new offers in common may not be entertained.

But I would apply the regulation so as to charge both Arjay and Peterson individually as the interest of each appears of record, i.e., 50 percent of the total.

Edward W. Stuebing
Administrative Judge

