

MERLE C. CHAMBERS

IBLA 79-93 Decided March 29, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, canceling oil and gas lease U-38883.

Reversed.

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

An oil and gas lease issued for land available for leasing, but in violation of an administrative regulatory requirement, need not be canceled in the absence of an intervening qualified applicant or some overriding policy consideration.

APPEARANCES: C. M. Peterson, Esq., Poulsen, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Merle C. Chambers appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated October 31, 1978, canceling oil and gas lease U-38883. Appellant filed a noncompetitive offer to lease oil and gas on November 9, 1977, under the Mineral Leasing Act of 1920, as amended, covering the following described lands located in Box Elder County, Utah:

T. 8 N., R. 10 W., Salt Lake meridian

sec. 30: SE 1/4, SE 1/4 SW 1/4

sec. 31: lots 3, 4, 5, 6, E 1/2

sec. 4: all (Protraction Diagram #2)

sec. 5: all (Protraction Diagram #2)

containing 1,922.57 acres.

On January 18, 1978, the offer was accepted in part and a lease issued effective February 1, 1978, covering the following described lands:

T. 8 N., R. 10 W., Salt Lake meridian

sec. 30: SE 1/4

sec. 31: E 1/2

sec. 4: all

sec. 5: all

containing 1,760 acres.

Subsequently, on October 31, 1978, BLM canceled the lease on the grounds that (1) title to sections 4 and 5 is vested in the State of Utah and therefore was not available for leasing from the United States; (2) the SE 1/4 of section 31 is included in Reservoir Right-of-Way U-8474 and therefore can be leased only by the grantee of the right-of-way or his assignees; and (3) the lands remaining in the lease after the above lands were excluded included less than the minimum acreage of 640 acres, in violation of 43 CFR 3110.1-3.

Appellant concedes that the cancellation of the lease as to sections 4 and 5 as well as to the SE 1/4 of sec. 31 was proper for the reasons set forth by BLM. Nevertheless, appellant contends that cancellation of her lease as to the remaining 320 acres because the offer violated 43 CFR 3110.1-3 was not warranted, as the rights of third parties are not involved and there is no compelling basis in public policy or the administration of the Mineral Leasing Act to compel such action. As grounds for her position appellant asserts that decisions of the BLM have established the equitable policy that where a lease is issued by the BLM in violation of its own regulations and not of the statute, and where the rights of third parties are not involved, such violations are not a basis to invalidate a lease nor to warrant its cancellation.

The Secretary of the Interior is authorized by section 32 of the Mineral Leasing Act of 1920, 41 Stat. 450, as amended, 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).

[1] However, the Department has held repeatedly that an oil and gas lease, although improvidently issued in violation of regulatory requirements but for land available for leasing, ordinarily will be permitted to stand in the absence of intervening rights or some overriding policy consideration. John T. Stewart III, 25 IBLA 306,

83 I.D. 247 (1976); 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).

Oil and gas lease U-38883 should not have been issued. The offer should have been rejected as provided by 43 CFR 3111.1-1(d). However, as the lease did issue, under the policy discussed above it was not necessary for BLM to cancel the lease in its entirety merely because the lease offer violated a regulatory requirement. As a matter of law, there is no requirement that a lease must be canceled if a departmental regulation is violated. The record before us does not indicate that there were qualified intervening offers filed on the area in question before lease U-38883 was issued, or that issuance of the lease prejudiced the rights of any other person.

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 reversed.

Douglas E. Henriques
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

