

GEORGE P. WOLTER, JR.

IBLA 80-474

Decided May 22, 1980

Appeal from decisions of the Idaho State Office, Bureau of Land Management, cancelling oil and gas lease I-13830 and cancelling assignment of this lease.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases Cancellation -- Oil and Gas Leases First Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be canceled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

APPEARANCES: George P. Wolter, Jr., pro se.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

George P. Wolter, Jr. (appellant), has appealed two decisions of the Idaho State Office, Bureau of Land Management (BLM), dated March 6, 1980, cancelling his oil and gas lease, I-13830, and withdrawing its approval of an assignment of his interest therein. BLM held that this lease was erroneously issued to appellant, as the lands therein are included in prior-issued leases I-13954, I-13956, I-13957, and I-13958.

The record shows that appellant filed a noncompetitive over-the-counter offer for 2,556.41 acres with BLM on September 19, 1977. 1/ Subsequently, on October 17, 1977, Lewis H. Larsen filed four noncompetitive over-the-counter offers including, inter alia, all of the land which appellant had previously applied for. 2/

Although appellant's offer was senior and, as such, legally superior to Larsen's offers for the same lands (see below), BLM issued four leases covering all of these lands to Larsen effective August 1, 1979. Larsen, in two separate transactions, subsequently assigned an undivided half of his interest in approximately 640 acres of the lands

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1/ Appellant's offer was for all lands in secs. 2, 11, 13, and 24, T. 16 S., R. 31 E., Boise meridian. Secs. 13 and 24 each have slightly less than 640 acres.

2/ Larsen's offers included the following sections for which appellant had previously applied: I-13958, sec. 2; I-13956, sec. 11; I-13957, sec. 13; and I-13954, sec. 24.

which appellant had applied for; approximately 320 acres to Ralph Daniels and approximately 320 acres to Fairie Marie Coats. <sup>3/</sup> BLM approved these assignments, effective December 1, 1979, and January 1, 1980, respectively.

Effective March 1, 1980, BLM issued a lease to appellant for these 2,556.41 acres, thus creating a conflict with Larsen's previously issued leases. Simultaneously, BLM approved an assignment of appellant's lease interest to IGC Production Co. (IGC), effective March 1, 1980. On March 6, 1980, BLM, apparently having discovered this conflict, issued decisions cancelling appellant's lease and the assignment of this lease interest to IGC, from which decisions this appeal follows.

[1] BLM's treatment of appellant's lease offer, and its decision cancelling the lease issued to him, were erroneous. The statute governing oil and gas leasing of lands such as these, which are not on known geologic structures of producing oil and gas fields, 30 U.S.C. § 226(c) (1976), dictates that the person first making application for the lease shall be entitled to receive it, provided that the applicant is qualified to hold it. The record shows clearly that appellant was the first person to apply for an oil and gas lease of these lands. Thus, in the absence of some defect in his offer, appellant, not Larsen, should have received the lease, and BLM erred by issuing it to Larsen.

Faced with these two conflicting leases, the proper course of action for BLM was to cancel Larsen's leases insofar as they conflict with appellant's lease, thus leaving appellant's lease in effect. However, we do not direct this course of action immediately, as Larsen and his assignees have not had the opportunity to defend their interests, in that BLM did not join them to its proceedings or name them as adverse parties so as to give them status as parties in this appeal. Accordingly, we simply vacate BLM's decisions cancelling appellant's lease and the assignment thereof and remand the matter with instructions to allow Larsen to show cause why his leases should not be cancelled insofar as they conflict with appellant's senior and apparently superior offer. If Larsen is unable to so show, BLM should cancel his leases insofar as they cover his 100 percent interest in secs. 2 (I-13958), 11 (I-13956), and 24 (I-13954), and his 50 percent interest in sec. 13 (I-13957) remaining after his assignments to Daniels and Coats. BLM should immediately take steps to denote Larsen's lease interests as being under challenge on its public records.

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<sup>3/</sup> Owing to the irregular shape of sec. 13, it contains slightly less than 640 acres. The assignment to Daniels was of 319.77 acres (Lots 3 and 4, W 1/2 SE 1/4, and SW 1/4, sec. 13, T. 16 S., R. 31 E., Boise meridian), and the assignment to Coats was of 319.92 acres (Lots 1 and 2, W 1/2 NE 1/4, and NW 1/4, sec. 13), which lands had been leased to Larsen in I-13957. In addition to these two assignments, Larsen has also assigned other lands covered by his four leases, but none of these lands conflict with appellant's offer.

BLM is advised that it may be impossible to cancel the undivided one-half interests in sec. 13 which Daniels and Coats hold via these assignments, owing to the protection afforded to bona fide purchasers of oil and gas lease interests by 30 U.S.C. § 184 (1976) and 43 CFR 3102.1-2, 4/ even though the underlying lease may have been erroneously issued. As they have not been joined as parties, Daniels and Coats have not alleged that they are bona fide purchasers. On remand, BLM should join them to the proceeding and give them the opportunity to show that they acquired and hold these one-half interests as bona fide purchasers, and to give appellant the opportunity to present evidence to the contrary. See Geosearch, Inc., 41 IBLA 291 (1979); Duncan Miller, A-30600 (Dec. 1, 1966).

We do not direct BLM to vacate its decision cancelling the assignment of appellant's apparent lease interest to IGC, but leave this matter for BLM and appellant to resolve when the extent of appellant's interests is determined.

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 vacated in part and the matter remanded for further proceedings consistent herewith.

Edward W. Stuebing  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

James L. Burski  
Administrative Judge

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4/ 43 CFR 3102.1-2(a) provides that

"the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease \* \* \* or an interest therein \* \* \* which \* \* \* interest \* \* \* was acquired and is held by a qualified person in conformity with those provisions, even though the holdings of the person \* \* \* from [whom] the \* \* \* interest \* \* \* was acquired \* \* \* may have been subject to cancellation or forfeiture for any such violation." See also Geosearch, Inc., 41 IBLA 291 (1979); Geosearch, Inc., 40 IBLA 397 (1979); and Geosearch, Inc., 39 IBLA 49 (1979).

