

**Editor's note: 87 I.D. 465; Modified -- See Frederick J. Schlicher, 54 IBLA 61 (April 10, 1981);
Appealed -- aff'd, sub nom. Landis v. Watt, Civ.No. 81-74-BLG (D.Mont. May 10, 1984)**

WAYNE E. DEBORD ET AL.

IBLA 80-209, etc.

Decided September 30, 1980

Appeals from decisions 1/ of the Colorado, Montana, and New Mexico State Offices, Bureau of Land Management, rejecting offers or cancelling 29 oil and gas leases.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

1/ Appendix A contains a list of the cases consolidated, the appellants and the 29 leases affected. In IBLA 80-584, Terrie K. Landis, BLM approved a lease assignment by appellant to the Champlin Petroleum Company, "as to the interest it acquired" as a "bona fide purchaser," and canceled the overriding royalty interest retained by the appellant. Similarly in IBLA 80-675, Vickie J. Landis, BLM recognized Public Lands Exploration, Inc., as a bona fide purchaser from the appellant and canceled the overriding royalty interest retained by appellant. In IBLA 80-265, Diane M. Weeks, BLM denied an assignment from appellant Weeks to Terrie K. DeBord. The conclusions herein apply also to those cases.

2. Oil and Gas Leases: Applications: Drawings

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

3. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible on the face of the card.

APPEARANCES: Lynn J. Farnworth, Esq., Moscow, Idaho, for appellants; Harold J. Baer, Jr., Esq., Office of the Solicitor, Denver Region, Denver, Colorado, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This case involves appeals from decisions of the Colorado, Montana, and New Mexico State Offices, Bureau of Land Management, rejecting appellants' offers to lease or cancelling appellants' leases because (1) they failed to comply with the disclosure requirements of 43 CFR 3102.7 2/ pertaining to "sole party in interest"; or (2) they violated the provisions of 43 CFR 3112.5-2 as to multiple filings; or (3) their drawing entry cards (DEC) were deemed not "fully executed" within the meaning of 43 CFR 3112.2-1(a). 3/

The State Offices rules there was a failure of interested parties to make the required disclosures because of the "Pool Agreement for the Filing of BLM Entry Cards" entered into by the appellants on March 18, 1978. Subsequent to that date, appellants' offers to lease

2/ 43 CFR Part 3100 was amended effective June 16, 1980. 45 FR 35156 (May 23, 1980). References herein are to 43 CFR Part 3100 (1979).

3/ The following cases were rejected for the reason that the drawing entry cards were deemed not "fully executed": IBLA Nos. 80-258, 260, 263, 264, 265, 266, 269, 270, 271, 528, 584, 601, 618, 675, and 786.

were drawn with first priority in simultaneous oil and gas lease drawings in the several State Offices and in a number of cases oil and gas leases were issued. The State Offices have since determined from the agreement that (1) "all of the parties would benefit from a lease when issued," (2) therefore they had a "joint interest" in each other's offers, and (3) Paul H. Landis had an interest in all their offers. Further, the New Mexico State Office based rejection on the fact that appellants had affixed their names and addresses to their DEC's by means of a rubber stamp applied so that the information was not inserted on the "appropriate" lines.

The "Pool Agreement" states that it was entered into for the purpose of "spread[ing] the expenses and costs incurred in filing entry cards and paying annual leases for oil and gas lotteries" and so that "Paul H. Landis [might] manage and advise as to the entering of said cards and selling of said leases and render other advisory services." The agreement provides for reimbursement of Landis as to all expenses deemed necessary and beneficial by him, including "all funds advanced" by him for filing entry cards or paying annual lease rentals, all consultant or expert fees, "all services rendered and all advice given" by him as to filing entry cards and negotiating the sale of leases and all office or clerical expenses incurred by him. All parties to the agreement "who may have their entry card drawn for annual leases * * * agree, jointly and individually, to pay all expenses that have been incurred by and through this Agreement * * * from the proceeds of the sale of any said lease, immediately upon receipt of said proceeds." (Emphasis added.)

Payment may also be made from receipts from the assignment of any lease or by "any other approved property or negotiable instrument" acceptable to Landis. Interest on funds advanced for the filing of entry cards and paying annual leases shall be paid at 12 percent per annum from the date of payment. Furthermore, the agreement provides that Landis can institute "liens or other legal means [to secure payment of] the debts incurred by and through this Agreement" if no payment is made "within thirty (30) days of the receipt of funds from the sale of any and all leases acquired by and through this Agreement." In addition, "any lease sold [is] subordinated to said lien or liens." Landis is to furnish detailed billings of all expenses on an annual basis.

Landis also has "the option of refusing payment of the annual lease fees * * * for the renewal of any lease he deems a high risk or otherwise unprofitable. In such event, Landis agrees to notify the winner-holder of the lease and to reassign said lease, thereby allowing said winner-holder to pay the annual lease fees and remove the lease from this Pool arrangement."

The addition of parties to the agreement is done only with Landis' written consent. Withdrawal by any member "as to the filing of entry cards" may be done "at any time."

Finally, Landis "makes no guarantee that those parcels or lots advised to be profitable for filing will be productive or saleable to any oil company or other person."

[1] The Departmental regulation as to "sole party in interest," 43 CFR 3102.7, provides that a separate statement signed by "other interested parties" and the offeror, "setting forth the nature and extent of the interest of each in the offer," and a copy of their written agreement must be filed "not later than 15 days after the filing of the lease offer." Failure to comply will result in rejection of the lease offer or cancellation of any lease issued pursuant to the offer. Mildred A. Moss, 28 IBLA 364 (1977), sustained, Moss v. Andrus, Civ. No. 78-1050 (10th Cir. Sept. 20, 1978).

The question for decision is whether in the case of each appellant there were "other interested parties" so that the appellant should have complied with the disclosure requirements of the regulation. "Interest" is defined as:

Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed.

43 CFR 3100.0-5(b).

In their statements of reasons for appeal, appellants contend that they do not have a "joint interest" in each other's offers and that the only advantage of the pool agreement is that "their cost of offering per lease is less because they have spread these costs." Furthermore, they argue that Landis has a "non-interest" in all their offers because he does not partake of the "speculative value" of a lease but is merely reimbursed for his expenses under a "credit arrangement." Appellants cite Board decisions involving leasing services wherein the leasing service was authorized by the offeror as sole and exclusive agent to negotiate the sale of any lease obtained, with an enforceable right to share in the profits of any sale. E.g., Frederick W. Lowey, 40 IBLA 381 (1979), appeal docketed, Civ. No. 79-3314 (D.D.C. Dec. 7, 1979). In each of these cases we concluded that the leasing service held an "interest" in the lease offers. Appellants conclude that the pool agreement gave "no enforceable right * * * against any lease" to Landis or any party to the agreement and that therefore each of the named offerors is a sole party in interest. Appellants also cite several Board decisions involving leasing services wherein the leasing service selected lands, filed offers, and advanced funds on behalf of clients, entitling it to

reimbursement. See, e.g., Geosearch, Inc., 39 IBLA 49 (1979); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). In each of these cases we held that the offeror was a sole party in interest because the offeror was not obligated to transfer any interest in any lease issued to the leasing service.

In the cases herein, Landis has an interest in each of the lease offers made pursuant to the pool agreement. He advances funds for filing entry cards and paying annual lease rentals under the terms of the agreement. He is also entitled to impose an unspecified charge on the pool as a "consultation fee," plus a general charge for office and clerical expenses. He is entitled to be reimbursed with interest from the proceeds of the sale or assignment of any lease issued, for which he may secure payment by "liens or other legal means." This is participation in the issues or profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).

This case is distinguished from such cases as D. E. Pack, *supra*, and Geosearch, Inc., *supra*, by the fact that under the agreement Landis has a contractual right to be reimbursed with interest from the proceeds of the sale of any lease issued, and not a general right of repayment. The cumulative debt owed to Landis by the pool is not required to be apportioned to the specific lease or offer or particular pool member for which it was incurred. The proceeds from any lease of any member can be used by Landis to reduce or discharge the debt owed to him by all the members for services rendered in connection with all the offers and leases involved.

Further, the parties to the pool agreement have a joint interest in each other's offers made pursuant to the agreement by virtue of the fact that under the agreement Landis is reimbursed for the expenses incurred in filing their entry cards and paying their rentals from the proceeds of the sale of any lease issued, for which he may secure payment by "liens or other legal means." The proceeds from the sale of any lease issued constitute a central pool in which each party participates. This clearly is participation in the profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).

Appellants' contention that the pool agreement gave no enforceable right against any lease to Landis or any party to the agreement is incorrect. Pool members may withdraw only as to the filing of new entry cards. The definition of "interest" is broad. It includes legally enforceable rights, claims, see H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979), and participation in profits. 43 CFR 3100.0-5(b).

Accordingly, appellants should have complied with the disclosure requirements of 43 CFR 3102.7 as to "other interested parties" when they filed their lease offers, and the State Offices were required to reject their lease offers and cancel their leases.

[2] The regulation as to "multiple filings," 43 CFR 3112.5-2, provides:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or partly [sic] acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bonafide [sic] purchaser as provided for in § 3102.1-2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

In their statements of reasons for appeal appellants contend that Landis is not an "agent or broker" filing offers to lease on behalf of others but merely "a supplier of information and a lender of funds." The pool agreement, however, provides for reimbursement of Landis' expenses of filing entry cards, payment of rentals, administration and sale of leases, and a consulting fee for his services, with accrued interest. The interest of Landis comes within the intent of the regulation. By virtue of more than one offer filed pursuant to the agreement for a particular parcel, he has a "greater probability of success in obtaining a share in the proceeds" of any lease issued. Furthermore, Landis "will participate in any proceeds derived from" any lease issued.

Moreover, by virtue of the joint interest which all the parties to the pool agreement have in each other's lease offers, the filing of

any two offers for the same parcel by any parties to the agreement constituted multiple filings within the meaning of 43 CFR 3112.5-2. The profits from any lease acquired could be used to reduce the debt owed collectively to Landis by all members of the pool. The agreement gave them a greater probability of success in obtaining an interest in any lease issued.

Under the multiple filing regulation, the State Offices were required to reject the lease offers and cancel the leases issued.

[3] Regarding appellants' drawing entry cards, it was recently held in Bessie B. Landis, 48 IBLA 354 (1980), that a drawing entry card for a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible on the face of the card. This is the case here. Until required by additional use of computers, efficient administration of the leasing program is not jeopardized thereby. Accordingly, we hold to our decision in Landis and modify the applicable decisions. ^{4/} See Brick v. Andrus, Civ. No. 79-1766 (D.C. Cir. June 6, 1980); Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979).

Appellants have also raised a number of other peripheral issues. They indicate that Judith A. Lawton and Willis L. Lawton, Jr., were never signatory parties to the pool agreement. The Colorado State Office notes that it was informed by these parties that "their filings were pursuant to oral agreements" and that when asked as to the nature of such agreements they submitted copies of the pool agreement. BLM accordingly "assumed" that the Lawton's filings were made pursuant to the pool agreement. In the alternative, the State Office would reject the Lawton's offers for failure to "completely and accurately" respond to requests for additional information prior to issuance of the leases.

By their own admission the Lawtons apparently orally agreed to be bound by the written pool agreement, in which they were named parties. The fact that the agreement was oral makes no difference in deciding whether there has been a violation of the regulations. H. J. Enevoldsen, *supra* at 82.

Appellants also state that lease NM 33390 was issued to Wayne E. DeBord prior to his entrance into the pool agreement. The State Office decision indicates that the lease was issued as a result of a drawing on May 5, 1978, while the pool agreement is dated March 18, 1979. This was a typographical error as is evident from the correct date -- March 18, 1978 -- on the face of the agreement included in the record. We also note that an agreement entered into by the parties on September 10, 1979, identical to the March 18, 1978, agreement, confirms "the oral agreements which have been in existence since the 1st day of August 1976."

^{4/} The modified decisions are listed in n.3.

Appellants also point out that the lease offer for lease NM 33424 made by Diane M. Weeks was rejected before a copy of the pool agreement had been submitted to the State Office. A "Notice" dated June 19, 1979, sent to the offeror drawn with third priority indicated that the lease would be issued to the offeror drawn with second priority. The record shows that the lease was erroneously issued "to the No. 2 drawee prior to the conclusion of the adjudication of the No. 1 drawee's offer to lease." This lease was properly canceled pursuant to the decision dated July 17, 1979.

Lease NM 36319 was canceled partly because Paul H. Landis' filings as attorney-in-fact for Bessie B. Landis and on his own behalf were held to constitute a multiple filing. The mere fact that Landis filed as attorney-in-fact for someone else and on his behalf does not per se constitute a multiple filing. He must have had an "interest" within the meaning of 43 CFR 3100.0-5(b) in the offer which he filed as attorney-in-fact. We have held, supra, that Landis had an interest in each of the lease offers made pursuant to the pool agreement. We also note that there is some question as to whether there has been compliance with 43 CFR 3102.6-1(a)(1) and (2).

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 affirmed as modified.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX A

<u>IBLA No.</u>	<u>Name of Appellants</u>	<u>Lease Nos.</u>
80-209	Wayne E. DeBord Ilean M. Landis Judith A. Lawton Willis L. Lawton, Jr.	C 27969 C 28092 Acq. C 28108 Acq. C 28142 C 28150
80-210	Vincent J. Landis Henry E. Cobb	M 44841 M 45104
80-258	Terrie K. DeBord	NM A 38354 NM 25868 NM 35891
80-260	Kristie R. Cobb	NM 36154 NM 33930
80-263	Vickie Landis	NM 36569
80-264	Paul H. Landis	NM 35366 NM 36319
80-265	Diane M. Weeks Terrie K. DeBord	NM 33424 NM 36568
80-266	Wayne E. DeBord	NM 33390
80-269	Dan L. Morgan	NM A 35616
80-270	Vincent J. Landis	NM 33435
80-271	Henry E. Cobb	NM 33678
80-528	Judith A. Lawton	NM 37859
80-584	Terrie K. Landis	NM 33914
80-601	Wayne E. DeBord	NM 39092
80-609	Judith A. Lawton	NM A 39654 TX
80-618	Vickie J. Landis	NM 39090
80-675	Vickie J. Landis	NM 36410
80-786	Paul H. Landis Wayne E. DeBord	NM 39088 NM 39089

