

Editor's note: 88 I.D. 479; Appealed - aff'd, sub nom. Geosearch, Inc. v. Watt, Civ.No. C81-0208 (D.Wyo. Jan. 11, 1982); aff'd in part, rev'd in part, No. 82-1335 (10th Cir. Nov. 7, 1983); 721 F.2d 694, cert denied, 104 S.Ct. 2347, 466 US 972 (May 14, 1984); also appealed - aff'd, sub nom. Pagedas v. Watt, Civ.No. C81-226 (D.Wyo. May 3, 1982) -- same appeal history as Geosearch, Inc. v. Watt

HOME PETROLEUM CORP. ET AL.

IBLA 81-224

Decided April 23, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, canceling oil and gas lease W 60414, rejecting and returning drawing entry cards drawn with second and third priorities in the July 1977 drawing of simultaneous offers for the leased parcel, and voiding overriding royalty interests retained in the lease.

Affirmed in part, reversed in part, and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an

enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

3. Equitable Adjudication: Generally--Estoppel--Federal Employees and Officers: Authority to Bind Government--Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

4. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Bona Fide Purchasers

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

5. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First-Qualified Applicant

An undated DEC lease offer is defective and must be rejected.

6. Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Cancellation--Oil and Gas Leases: Overriding Royalties

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

7. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Bona Fide Purchaser

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for Home Petroleum Corporation and Enserch Petroleum, Inc.; Melvin E. Leslie, Esq., Salt Lake City, Utah, for M. T. McGregor and Geosearch, Inc.; David B. Kern, Esq., Milwaukee, Wisconsin, for Anthony C. Pagedas, Calvin J. Gillespie, Peter G. Sarantos, Tom Pagedas, Donald Albrecht, and Resource Service Company, Inc.; Harold J. Baer, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is the second time this matter has been before us. In Geosearch, Inc., 41 IBLA 291 (1979), we vacated a decision by the Wyoming State Office, Bureau of Land Management (BLM), which dismissed the protest of Geosearch, Inc. (Geosearch), against the validity of several oil and gas leases, including W-60414 held by Enserch Petroleum, Inc. (Enserch). BLM originally issued this lease to

Anthony C. Pagedas, et al., 1/ on September 27, 1977, after his offer for this parcel of land was drawn with first priority in BLM's July 1977 drawing of simultaneous noncompetitive oil and gas lease offer drawing entry cards (DEC's).

On November 9, 1977, Fred L. Engle, d.b.a. Resource Service Company, Inc. (RSC), filed an "Assignment of Royalty Payment" with BLM. This assignment, which Pagedas had executed, stated that he had assigned his interest in lease W-60414 to Enserch on August 30, 1977, 2/ and that he had retained the right "to receive certain overriding royalty payments," that is, the right to receive 5 percent of the total proceeds of any production from the lease. The assignment also stated that Pagedas had in turn assigned a percentage of this overriding royalty interest to Engle. Accordingly, Engle requested approval of this assignment of Pagedas' overriding royalty to him.

On November 30, 1977, 2 days after the 90-day period prescribed by 43 CFR 3106.3-1, Enserch filed a copy of the August 30, 1977, assignment from Pagedas to it for BLM's approval. As Engle had stated earlier, Pagedas assigned 100 percent of his record title to Enserch, but reserved a 5 percent overriding royalty interest in the lease.

1/ The offerors named on the DEC were Anthony C. Pagedas and Calvin J. Gillespie. Other parties in interest identified on the card were Tom Pagedas, Peter G. Sarantos, and Donald Albrecht. The statement of interests which accompanied the DEC indicated that each person held a 20 percent interest in the offer. For convenience, we shall refer to the DEC as though it were filed by Pagedas alone.

2/ On November 9, 1977, the record contained no reference to an assignment to Enserch. However, the 90-day period for Enserch to file this assignment for BLM's approval had not expired at this time.

Enserch requested that BLM approve the assignment despite the untimeliness of its submission, and BLM did so, effective December 1, 1977.

BLM apparently never approved the assignment of Pagedas' overriding royalty interest to Engle, as there is no notation so indicating on Engle's request for approval filed on November 9, 1977. BLM explained subsequently that it does not approve assignments of overriding royalties, but merely places notice of such assignments in the case file for record purposes only.

On October 3, 1978, Geosearch filed a protest against the continued validity of 14 leases, including W-60414. Geosearch asserted an interest in the matter based on an agreement with M. T. McGregor, whose DEC for this parcel had been drawn with second priority in the July 1977 drawing. McGregor apparently agreed to assign a percentage of whatever rights she still held in the lease offer to Geosearch.

Geosearch's protest asserted that BLM had issued this lease to Pagedas in violation of 43 CFR 3100.0-5(b), 3102.7, and 3112.5-2, in that Fred Engle had had an interest in Pagedas' offer at the time it was filed which was not disclosed and which effectively and illegally gave Engle an increased chance of success in the drawing. Geosearch sought a cancellation of all lease interests, including overriding royalty interests, remaining in the hands of persons who were not bona fide purchasers and requested that BLM issue such interests to it as

the successor second drawee. BLM dismissed this protest on October 5, 1978, noting that the lease had been assigned to Enserch effective December 1, 1977, and stating that it believed that the second drawee had no interest left to assign to Geosearch.

On appeal to this Board, we vacated BLM's denial of Geosearch's protest, noting that the offer of McGregor, the second drawee, remained viable, as BLM had never rejected her offer. Geosearch, Inc., supra at 293. We also remanded the matter to BLM to join Enserch to the protest proceeding in order to give it the opportunity to show that it held and acquired Pagedas' lease interest as a bona fide purchaser and to allow Geosearch to present prima facie evidence to the contrary, as provided in 43 CFR 3102.1-2(c). Id. at 294.

On remand, BLM inquired into the circumstances surrounding the filing of Pagedas' offer and requested a copy of any service agreement between Pagedas and Engle. On August 29, 1979, a copy of this service agreement, dated March 11, 1977, which apparently gave Engle a vested right for 5 years to a specific share in the proceeds of the sale of any lease won by Pagedas, was filed. Engle, through counsel, argued that he had disclaimed this interest by filing an amendment and disclaimer with BLM in January 1977 and requested that BLM suspend its proceedings until litigation on the efficacy of this waiver was completed.

On October 18, 1979, BLM joined Enserch to the proceedings and directed it to present evidence of its status as a bona fide purchaser of Pagedas' lease, on pain of cancellation of the lease. On November 13, 1979, Enserch responded, asserting that it acquired the lease as a bona fide purchaser without knowledge of any possible defect, and requesting accordingly that it be dismissed as a party to the proceedings. Enserch noted that it inquired into BLM's file, which revealed no defect in Pagedas' lease, as late as October 11, 1977, just before it paid him consideration for the lease interest as agreed on August 30, 1977.

On November 27, 1979, BLM afforded Geosearch 60 days in which to refute Enserch's assertion of bona fides by prima facie evidence. Geosearch responded with an affidavit from Melvin Leslie, Esq., its attorney, asserting that Enserch should have been alerted to the possibility that Pagedas' lease was defective in view of this Board's holdings concerning other of Engle's clients on August 19, 1977, in Lola I. Doe, 31 IBLA 394 (1977), and on September 12, 1977, in Sidney H. Schreter, 32 IBLA 148 (1977), and should have examined Pagedas' service agreement with Engle. Geosearch asserted that Enserch is properly charged with constructive notice of the contents of this agreement, including the interest-creating provision, and so should have known that Pagedas had violated the regulations by not disclosing the existence of this interest when making his offer.

On November 26, 1980, BLM, denying Engle's request for suspension, issued its decision in this matter. BLM held that Engle had held an

interest in Pagedas' offer at the time he filed it in July 1977; that Engle's unilateral filing of an amendment and disclaimer did not alter this fact; that Pagedas' offer violated 43 CFR 3102.7 and 3112.5-2 (1979) because of Engle's interest; that Pagedas had assigned his interest in the lease to Enserch before the lease had issued, so that Enserch was not a bona fide purchaser; and that the lease should therefore be canceled. BLM declared the overriding royalty interests held by Pagedas and Engle null and void ab initio, due to their regulatory violation. BLM also questioned the good faith of Home Petroleum Corporation (Home) in its purchase of one-half of the record title of Enserch, 3/ noting that Home had good reason to know of the defect in the underlying lease offer in 1978 when the assignment to it was executed. Finally, BLM held that Geosearch was not entitled to any interest in the lease.

On November 26, 1980, BLM also rejected the DEC's of M. T. McGregor and James G. and Eugene J. D'Amico, which had been drawn with second and third priorities, respectively, in the July 1977 drawing, stating that the lease had been issued to the first qualified offeror.

Anthony Pagedas, et al., RSC, Enserch, Home, M. T. McGregor, and Geosearch appealed BLM's decision. On January 30, 1981, we granted a joint motion by appellants Enserch and Home to expedite our consideration of this matter, in order to limit possible drainage of the area

3/ BLM alludes to "a pending assignment in the file which, if approved will transfer 50% of the record title from Enserch to Bridger Petroleum Corporation now Home Petroleum Corporation (Home)." We are unable to locate this document.

by producing wells on adjacent private leases and to minimize any loss of Federal royalty oil and/or gas.

We have considered the question of the validity of offers filed by RSC clients in these circumstances many times in the past and have held consistently that they must be rejected. Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981); D. R. Weedon, Jr., 51 IBLA 378 (1980); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980); Frederick W. Lowey, 40 IBLA 381 (1979) (appeal pending); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, *supra*; Lola I. Doe, *supra* at 394. ^{4/} We have also affirmed BLM's rejection of offers in which other leasing services held similar undisclosed interests at the time their clients' offers were filed. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). We adhere to these holdings.

[1, 2] The service agreement in effect at the time Engle filed Pagedas' offer gave Engle an "interest" in this offer. ^{5/} This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waive to Pagedas or receive any consideration from him to bind the contract. ^{6/}

^{4/} This appeal marks the fifth opportunity Engle has had to litigate the identical issues before this Board. See Donald W. Coyer (On Judicial Remand), *supra* at 312 n.6; D. R. Weedon, *supra* at 381 n.2. However, we need not consider whether he is estopped from doing so here, as several additional issues are presented.

^{5/} Donald W. Coyer (On Judicial Remand), *supra* at 312; Frederick W. Lowey, *supra* at 383; Alfred L. Easterday, *supra* at 198; Sidney H. Schreter, *supra*; Lola I. Doe, *supra*.

^{6/} Donald W. Coyer (On Judicial Remand), *supra* at 313; Frederick W. Lowey, *supra* at 384-92; Alfred L. Easterday, *supra* at 199.

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreement between Engle and Pagedas. This agreement was entered into on March 11, 1977, well after January 13, 1977, the date of the amendment and disclaimer, which clearly applies only to agreements extant on January 13. Thus, the purported disclaimer, even if legally effective, would not apply to these offers. D. R. Weedon, Jr., supra at 382; Frederick W. Lowey, supra at 385-86.

Pagedas failed to disclose Engle's interest at the time he made his offer as required by 43 CFR 3102.7, and the offer should therefore have been rejected because it violated this regulation. 7/

[3] The question of whether the Department is estopped from rejecting Engle's client's offers was fully considered in Donald W. Coyer (On Judicial Remand), supra at 313-14. We adhere to our holding there that the Department is not estopped to reject these offers in toto.

Similarly, we adhere to our holding in D. R. Weedon, Jr., supra at 383-84, wherein we considered and rejected the suggestion of Engle and his clients that it is unfair to give retroactive effect to our decision to reject offers such as Pagedas' in which Engle had an undisclosed interest.

7/ Donald W. Coyer (On Judicial Remand), supra; Gertrude Galauner, supra; Marty E. Sixt, supra; Alfred L. Easterday, supra; Sidney H. Schreter, supra; Lola I. Doe, supra.

[4] Even though Pagedas' offer was defective, the lease issued pursuant to this offer may not be canceled if it has been assigned to a bona fide purchaser. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2. BLM held that Enserch, to which Pagedas assigned title to lease W 60414, was not a bona fide purchaser, citing Winkler v. Andrus, 494 F. Supp. 946 (D. Wyo. 1980), and it accordingly canceled this lease. We reverse BLM's holding and reinstate the lease.

In order to determine whether Enserch was a bona fide purchaser, it is necessary to examine the state of its knowledge, both actual and constructive, at the time of the assignment. Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees of Federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment. Winkler v. Andrus, *supra* at 713; Southwestern Petroleum Corp. v. Udall, *supra* at 655-56. An assignee is not required to go outside those BLM records relating to the particular parcel of land assigned. Ibid.

We must first determine whether the conclusion is influenced by the date when the assignment occurred. The general rule is that the relevant date is the date that the consideration for the assignment was paid. Winkler v. Andrus, 614 F.2d at 712, citing 77 Am. Jur. 2d,

Vendor & Purchaser § 706 (1975). 8/ In Winkler, the Tenth Circuit nevertheless stated that the critical time was instead when the agreement was formed. However, here, as in Winkler, it is immaterial whether the critical time is regarded as the date the parties agreed to the assignment or the date consideration was paid.

On August 30, 1977, Enserch agreed to purchase Pagedas' offer to lease, and lease if issued. BLM's records showed the DEC to be entirely proper on its face with no indication of, nor means to discover, its actual infirmity at that time. Although the presence of the DEC's of the second and third drawees and the fact that BLM had not yet issued a lease to Pagedas might have given Enserch some reason to speculate that BLM might still reject Pagedas' offer, there was nothing in the record suggesting that it would have any basis to do so. The DEC was apparently completely and accurately filled out.

8/ The parties in Winkler v. Andrus, 614 F.2d 707, apparently disagreed on whether the relevant date was the date of the assignment agreement or the date of payment of consideration. The Court, while citing the general rule favoring the latter, announced its support for the former, but did not actually have to choose, as it found that the result was the same in either case. Id. at 712.

The question of what point in time must be the focus of the determination of a purchaser's bona fides may be resolved by hypothetical analogy. On May 1 "B" contracts to purchase an estate from "A" subject to A's ability to demonstrate that he has merchantable title. At that point B may not contend that any equitable interest held by him by reason of the contract enjoys the protection afforded to a bona fide purchaser, because the adequacy of the vendor's title is still the subject of B's inquiry and doubt. But when, on June 1, A produces satisfactory evidence that he indeed is invested with merchantable title, and nothing appears of record to refute or dispute A's showing, B may conclude the transaction by paying the consideration and assert thereafter that he acquired the title as a bona fide purchaser.

Enserch had no way to tell from BLM's file that Engle actually had an undisclosed interest in the offer. On August 30, 1977, the first decision issued by this Board which pointed out the illegal practice in which Engle and his clients had engaged, Lola I. Doe, *supra*, had not yet been distributed publicly, so that Enserch could not have been put on inquiry by familiarity with Doe.

Moreover, by the time Enserch completed its transaction with Pagedas by paying him for the lease on October 28, 1977, it appeared even more certain that it was valid. BLM's records still revealed no flaw in the offer, and BLM had issued the lease, thereby investing Pagedas with a leasehold interest which was prima facie valid. Any small room for doubt which might have faced Enserch in August was erased, and there was no longer any reasonable basis to disbelieve that Pagedas had a legitimate oil and gas lease interest. We conclude that, at all times in question, the record gave Enserch a firm basis to conclude in good faith that it was buying valid title to an oil and gas lease from Pagedas.

In its decision and on appeal, BLM argues that Enserch was not a bona fide purchaser under the rule set out and applied in the Winkler cases. BLM's reliance on this rule here is misplaced, as in Winkler, unlike the instant case, BLM's file gave the would-be bona fide purchaser very good reasons to question whether he was purchasing a valid lease, both at the time he agreed to purchase and at the time he paid for the

interest. His assignor's DEC had been drawn only with second priority, and, while both BLM and this Board had concluded that the first DEC was invalid (Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)), this question had not been finally resolved as of July 12, 1976 (the date of assignment), or July 26, 1976 (the date the assignee paid for the assignment), because the 90-day statutory time period for filing a petition for judicial review of our decision had not run. Thus, as the assignee was imputed to have had constructive knowledge both of the 90-day appeal period and of the contents of BLM's file, he knew that litigation about the validity of the first-drawn DEC was still in prospect, and that this first priority interest possibly could be revitalized by such proceedings. Accordingly, he could not have taken the second priority interest without some uncertainty as to its validity, and so did not qualify as a bona fide purchaser, either on the date of the agreement or when he paid the assignor. Winkler v. Andrus, 494 F. Supp. at 949. At all times during the assignment negotiations, BLM's records gave notice to the purchaser of a climate of adversity surrounding the interest he was purchasing. As discussed above, the present case is quite different.

BLM attempts to analogize Winkler to the present situation, stressing that here, as in Winkler, the validity of the assigned interest had not yet been finally established at the time of the assignment. It argues that a challenge to the validity of Pagedas' offer was still possible even after the lease issued, because the second and third drawees could have protested the issuance of the lease to Pagedas or

could have appealed the rejection of their offers. ^{9/} We do not think that the rule in Winkler extends so far as to dictate that one may not purchase an oil and gas lease interest in good faith simply because there is a possibility that the validity of the lease someday might be subject to challenge. As discussed above at n.9, one may never be entirely certain that a protest will not be filed against a lease, even long after it is issued. See, e.g., Beard Oil Co., 1 IBLA 42, 77 I.D. 166 (1970), where the protest was filed 4 years after the lease issued. Accordingly, we hold that, in the absence of a climate of adversity surrounding the interest, which is evident from BLM's records, such as was present in Winkler, one may be a bona fide purchaser even where the validity of the lease might be subject to some future attack. That is, if there is nothing in the record suggesting that an adverse claim may be asserted and prevail, such as a protest or apparent defect

^{9/} We note two pertinent practical difficulties with this argument. First, there is no specific time period within which to protest. For instance, Geosearch waited over a year from the date of issuance of the lease to protest on behalf of the second drawee. Second, BLM did not routinely reject and return second and third DEC's in 1977, and did not start doing so until recently. For example, in this case, BLM did not reject the second and third offers until over 3 years after issuance of the lease. Moreover, we believe that there are hundreds of ongoing oil and gas leases issued under the DEC system in which BLM has never rejected these second and third DEC's. In these circumstances, the effect of adopting BLM's suggestion would be that no assignee of any of these hundreds of leases could be a bona fide purchaser, as BLM's records would have shown the assignee that it was still possible for the second or third drawee to protest the validity of the lease, because their offers were still extant despite the fact that the lease has long since issued. This result is clearly at odds with the congressional purpose in enacting the bona fide purchaser provision (cited infra), as it would virtually eliminate this protection and throw lease ownership into chaos.

in the lease, the lease may be purchased in good faith. This is particularly true where, as here, the assignee's purchase of the offer was expressly contemplated by the Departmental regulations governing assignments. 43 CFR 3106.3-4; see Barbara J. Niernberger (concurring opinion), 53 IBLA 112, 119-21 (1981).

Therefore, in the absence of anything in the record showing that Enserch had actual knowledge of the defect in Pagedas' offer, we conclude that it was a bona fide purchaser, as there is no basis for imputing to it constructive knowledge of the defect.

We affirm BLM's decision of November 26, 1980, to reject and return the DEC's of M. T. McGregor and James G. and Eugene J. D'Amico, which were drawn with second and third priority, respectively, in the July 1977 drawing. BLM draws DEC's with subordinate priority in order not to have to relist a parcel for offers if the first DEC is rejected. If BLM had not previously rejected them, the second- or third-priority DEC might be recognized as a valid offer in the event that a lease issued to a superior offeror was canceled. Estate of Glenn F. Coy, *supra* at 194-95, 242; Geosearch Inc., 51 IBLA 59, 61 (1980). In the instant case, the lease has been issued to a superior offeror, and this lease may not now be canceled because of any defect in that superior offer, because the lease has been assigned to a bona fide purchaser. In these circumstances, the second- and third-priority DEC's are

properly rejected, as there is no longer any interest at stake to which they apply. See Geosearch, Inc., 41 IBLA at 293.

[5] Even disregarding the above, the DEC of McGregor was defective and must be rejected, as it was not dated. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978); Donald E. Monington, 42 IBLA 380 (1979), aff'd Monington v. Andrus, Civ. No C-79-366K (D. Wyo. Apr. 11, (1980).

[6] We disagree with BLM's holding that the retained overriding royalty interests now held by Pagedas and Engle were null and void ab initio. We regard these interests as merely voidable and subject to cancellation. Were such interests wholly void from their inception, they would be nonexistent, and no administrative action would be necessary to dispose of them. Moreover, if such interests never existed as a matter of law, it well might be argued that the entire leasehold estate passed to the bona fide purchaser without reservation, so that the interests retained by the assignor could not be recovered and returned to Federal control, and the purchaser would have received more than bargained for. Such a result clearly is not what is contemplated by the statute.

The retained overriding royalty interests are voidable and must be canceled. Where an offeror has filed a DEC which violates 43 CFR 3102.7 because it does not contain the names of all parties in interest; where BLM, not knowing of this defect, has issued a lease to the offeror;

and where the lessee has assigned the lease to a bona fide purchaser and retained an overriding royalty interest, BLM, upon discovering the defect in the offer, properly cancels the overriding royalty interest retained by the offeror. Wayne E. DeBord, 50 IBLA 216 n.1, 87 I.D. 465 n.1 (1980) (appeal pending). It is entirely proper to deny both Pagedas (et al.) and Engle (RSC) a share in any benefit which may result from production on this lease. Pagedas failed to comply with the sole party in interest requirement, and Engle took an assignment of a portion of the interest which Pagedas retained with full knowledge of the defect in Pagedas' DEC, as Engle himself held the objectionable interest.

Engle and Pagedas challenge the Department's authority to cancel their overriding royalty interests. The regulations require that any underlying interest in a lease be canceled or forfeited to the Government where the interest was acquired in violation of governing provisions, notwithstanding the fact that there may be other valid interests in the same lease which are not subject to cancellation. 43 CFR 3102.1-2(b). This provision is adopted directly from the governing section of the Mineral Leasing Act, as amended, 30 U.S.C. § 184(h)(2) (1976), as part of the long-recognized Departmental authority to cancel leases administratively for violation of the Mineral Leasing Act. Boesche v. Udall, 373 U.S. 472 (1963). In McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955), the Court held that the Secretary must cancel an oil and gas lease interest acquired in violation of a Departmental regulation.

Having canceled these overriding royalty interests, on remand, BLM should comply with the terms of 43 CFR 3102.1-2(b) and sell these interests as provided therein.

[7] Finally, we consider the status of the interest of Home to which Enserch apparently reassigned half of its interest on November 3, 1978. ^{10/} In its decision, BLM questioned whether Home was a bona fide purchaser of this interest under Winkler, as by the time of assignment to Home in November 1978, BLM's records revealed that Geosearch had challenged the validity of Pagedas' offer. We conclude that it is irrelevant that Home may have known of the possibility of a defect in Pagedas' offer in November 1978. Home is a "remote purchaser" from Enserch, that is one entitled to protection as a bona fide purchaser and, as such, takes the same full title which Enserch had:

It is a general rule that a remote purchaser of real estate whose purchase does not fulfil all the requisites for protection due a bona fide purchaser may nevertheless be accorded protection because of his purchase from one who is entitled thereto. The purpose of this rule is to prevent a stagnation of property and to protect the first purchaser who, being entitled to hold and enjoy, must be equally entitled to sell. Otherwise, a bona fide purchaser might be prevented from selling his property for full value. In other words, the vendee of the bona fide purchaser is not favored on his own account, but for the sake of him from whom he purchased. It is wholly immaterial of what nature the outstanding interest is, whether it is a lien or encumbrance, or a trust, or any other claim. [Footnotes omitted.]

^{10/} We assume that this assignment was not completed until November 1978 in the absence of specific details about it in the record.

77 Am. Jur. 2d, Vendor & Purchaser § 718 (1975). It is appropriate to apply this rule to the Federal bona fide purchaser statutory provision as the announced intent of Congress in enacting these provisions was in part to encourage purchase of lease interests without hesitancy or reluctance. H.R. Rep. No. 1062, 86th Cong., 1st Sess. 2, reprinted in [1959] U.S. Code Cong. & Ad. News 2620, 2621.

Therefore, 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, reversed in part, and remanded for further proceedings in accordance herewith.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

