

**Editor's note: appealed - aff'd, Civ. No. C81-0213 (D. Wyo. June 30, 1982); aff'd in part, rev'd in part, No. 82-2050 (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. Geosearch, Inc. v. Watt, Civ.No. 81-0214 (D.Wyo. June 30, 1982); same appeal history as above**

WILBUR G. DESENS ET AL.

IBLA 81-54

Decided April 28, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, sustaining in part protest against oil and gas lease W 58667; voiding overriding royalty interests in this lease; declaring that Gulf Oil Corporation is a bona fide purchaser of 100 percent of record title of this lease, and dismissing it from the proceeding; and declaring that W. A. Moncrief is not a bona fide purchaser of 50 percent of record title from Gulf.

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 sub-lease, 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 3100.5(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 Purchase

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 offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser 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 offer, provided that the purchaser had no actual knowledge of any defect in the offer.

5. 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).

6. 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.

APPEARANCES: David B. Kern, Esq., Milwaukee, Wisconsin, for Wilbur Desens and Resources Service Company, Inc.; Melvin Leslie, Esq., Salt Lake City, Utah, for Geosearch, Inc.; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 15, 1977, the simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) of Wilbur G. Desens for parcel WY 167 was drawn with first priority by the Wyoming State Office, Bureau of Land Management (BLM). The DEC, which was apparently completely filled out, bore Desens' signed certification that he was the sole party in interest in the offer and lease, if issued. On March 24, 1977, BLM notified Desens that he was entitled to an oil and gas lease for the parcel and that the first year's rental was due.

On March 31, 1977, before BLM took further action on Desens' DEC, Richard A. Mayer filed a protest against the offer. Mayer asserted that the address on the DEC was not Desens' true address and suggested that Desens was not an actual person. On April 1, 1977, BLM dismissed this protest, holding that he had not proven the allegations stated therein. BLM advised Mayer of his right of appeal to this Board, and the record shows that he received BLM's decision on April 4, 1977. Mayer never appealed, and his protest was disposed with finality.

On May 16, 1977, after the 30-day period in which Mayer could appeal had passed, BLM resumed its processing of Desens' offer, notifying him that the lands in the parcel were within a unit and requiring him to file either evidence that he had entered into a unit agreement or reasons explaining his failure to do so. On June 23, 1977, Desens complied, and, on September 27, 1977, BLM issued lease W 58667 to him effective October 1, 1977.

On December 7, 1977, Gulf Oil Corporation (Gulf) filed a request for approval of an assignment to it of 100 percent of Desens' record title to the lease. The assignment indicated that Desens would retain a 5 percent overriding royalty interest in the lease, that is, the right to 5 percent of any production which might be realized from the lease. On December 12, 1977, W. A. Moncrief, Jr., filed a request for approval of an assignment to him of 50 percent of Gulf's record title. On February 3, 1978, BLM approved these assignments simultaneously, effective January 1, 1978.

On January 16, 1978, Fred L. Engle, d.b.a. Resources Service Company (now Resource Services Company, Inc.) (RSC), filed a copy of an assignment to him of a percentage of the overriding royalty interest which Desens had retained. BLM did not approve this assignment, as it apparently does not routinely approve assignments of overriding royalties, but merely puts them in its records for informational purposes.

On October 27, 1978, Geosearch, Inc. (Geosearch), filed a protest against the continued validity of two leases, including W 58667. Geosearch asserted an interest in the matter based on an agreement

with Gilbert Mintz, whose DEC for this parcel had been drawn with second priority in the March 1977 drawing. Mintz apparently agreed to assign a percentage of whatever rights he still held to receive the lease to Geosearch.

Geosearch's protest asserted that BLM had issued this lease to Desens in violation of 43 CFR 3100.0-5(b), 3102.7, and 3112.5-2, in that Fred Engle had had an interest in Desens' 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 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 November 1, 1978, noting that the lease had been assigned to Gulf effective October 1, 1977, and reassigned in part to Moncrief, effective January 1, 1978, 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 Mintz, the second drawee, remained viable, as BLM had never rejected it. Geosearch, Inc., 40 IBLA 397, 398 (1979). We also remanded the matter to BLM to join Gulf and Moncrief to the protest proceeding in order to give them the opportunity to show that they held and acquired Desens' lease interest as bona fide purchasers and to allow Geosearch to present prima facie evidence to the contrary, as provided in 43 CFR 3102.1-2(c). Id. at 399.

On remand, BLM joined Gulf and Moncrief and granted RSC's petition to intervene, and inquired into the circumstances surrounding the filing of Desens' offer, requesting a copy of any service agreement between Desens and Engle. On August 30, 1979, Desens filed a copy of this service agreement, dated April 16, 1976, 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 Desens. Both Gulf and Moncrief subsequently filed statements that they had acquired their interests in this lease without knowledge of any defect in Desens' offer. Gulf stated therein that it had completed its agreement with Desens on March 16, 1977.

Geosearch responded with an affidavit from Melvin Leslie, Esq., its attorney, asserting that consideration for Gulf's and Moncrief's purchases had been paid in November 1977, and that, at this time, Gulf and Moncrief should have been alerted to the possibility that Desens' 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 Desens' service agreement with Engle.

Geosearch asserted further that Gulf and Moncrief are properly charged with constructive notice of the contents of this agreement, including the interest-creating provision, and so should have known that Desens had violated the regulations by not disclosing the existence of this interest when making his offer.

On September 23, 1980, BLM held that Engle had held an interest in Desens' 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 Desens' offer violated 43 CFR 3102.7 and 3112.5-2 (1979) because of Engle's interest; and that the overriding royalty interests retained by Desens and Engle were null and void ab initio. BLM also held that Gulf was a bona fide purchaser of its interest and dismissed it from the proceeding, but held that Moncrief was not a bona fide purchaser. Finally, BLM held that Geosearch was not entitled to any interest in the lease. Moncrief, Desens, RSC, and Geosearch appealed BLM's decision. 1/

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. Inexo Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194 (1981); 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. 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 Desens' offer gave Engle an "interest" in this offer. 2/ This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to Desens or receive any consideration from him to bind the contract. 3/

Desens failed to disclose Engle's interest at the time he made his offer as required by 43 CFR 3102.7, and it must therefore be rejected because it violates this regulation. 4/

1/ Moncrief filed a notice of appeal, but did not perfect the appeal, as he never filed a statement of reasons in support of it.

2/ 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.

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

4/ 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; B. F. Sandoval, supra.

[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.

Similarly, in D. R. Weedon, Jr., supra at 383-84, 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 Desens' in which Engle had an undisclosed interest. We adhere to our holding there as well.

[4] Even though Desens' 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 Gulf, to which Desens assigned title to lease W 58667, was a bona fide purchaser. We agree.

In order to determine whether an assignee is a bona fide purchaser, it is necessary to examine the state of his knowledge, both actual and constructive, at the time of the assignment. Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980); O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977); 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). 5/ Nevertheless, the Tenth Circuit stated in Winkler that the critical determination time was instead when the agreement was formed, but did not need to resolve this issue, as the result was the same in either case. Here, as in Winkler, it is immaterial whether the time is the date the parties agreed to the assignment or the date consideration was paid.

On March 16, 1977, prior to the issuance of the lease to Desens, Gulf agreed to purchase his 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

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5/ See discussion in Home Petroleum Corp., supra at 206 n.8.

drawees and the fact that BLM had not yet issued a lease to Desens might have given Gulf some reason to speculate that BLM might still reject Desens' offer, there was nothing in the record suggesting that it would have any basis to do so. There was no unresolved protest appearing in the record. The DEC was apparently completely and accurately filled out. Gulf had no way to tell from BLM's file that Engle actually had an undisclosed interest in the offer.

It is not clear exactly when Gulf paid Desens the consideration for the purchase of its interest, but it was probably no later than November 7, 1977, the date on which Desens executed the formal assignment document. As of this date, it appeared even more certain that Desens' interest was valid. The protest by Richard Mayer had been dismissed by BLM, and the time for him to appeal this dismissal had passed, thus insuring that the protest was a closed question. Mayer's protest did not mention the flaw in Desens' DEC, and so did not serve to put Gulf on notice of this defect. BLM's records still revealed no flaw in the offer, and BLM had issued the lease, thereby investing Desens with a leasehold interest which was prima facie valid. Any small room for doubt which might have faced Gulf in March was erased, and there was no longer any reasonable basis to disbelieve that Desens had a legitimate oil and gas lease interest. We hold that at all times in question, the record gave Gulf a firm basis to conclude in good faith that it was buying valid title to an oil and gas lease from Desens.

Geosearch also suggests that Gulf was not a bona fide purchaser under the rule set out and applied in the Winkler cases. We adopt the discussion of the Winkler rule as set out in Home Petroleum Corp., supra, and Inexco Oil Co., supra. The situation in Winkler was distinguishable from the present matter, as here, unlike in Winkler, BLM's records did not advise Gulf of a climate of adversity surrounding Desens' interest. As there was nothing in BLM's records suggesting that an adverse claim might be asserted and prevail, Gulf could purchase the interest in good faith. Nothing indicates that Gulf had actual knowledge of the defect in Desens' DEC. Accordingly, we hold that Gulf was a bona fide purchaser of its interest in Desens' lease.

Geosearch contends that Gulf should have known that Engle had an interest in Desens' offer, as our decision in Lola I. Doe, supra, issued on August 19, 1977, operated to put Gulf on notice that Engle had undisclosed interests in his clients' offers. We reject this argument for the reasons set out in Inexco Oil Co., supra at 267.

First, there is no finding in our Doe decision that all of Engle's clients had the same contractual relationship with him, or that all applications filed by him on their behalf were to be regarded as defective.

Second, if Gulf was aware of the Doe decision, it had a right to presume that BLM was aware of it also and was processing offers of RSC clients so as to insure that no other such undisclosed interests were represented by such offers. It is, after all, BLM's responsibility to evaluate and adjudicate lease offers, not Gulf's. Moreover, Gulf had a right to presume that BLM had properly discharged this responsibility in this instance, as there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926).

Third, the Tenth Circuit has held assignees to have only such imputed knowledge of the status of the lease as is contained in the official title records maintained in the BLM office. (It goes without saying, of course, that a purchaser would also be charged with notice of filings in the lis pendens records of the court of competent jurisdiction, or matters of record in the county where the land was situated.) Winkler v. Andrus, *supra* at 713; O'Kane v. Walker, *supra* at 211-12; Southwestern Petroleum v. Udall, *supra* at 655-56. BLM's case file contained no reference to the Doe decision, nor any indication that the circumstances which were addressed in the Doe case also obtained in this instance.

On remand, BLM should reject and return the DEC's of Gilbert Mintz and Elmer Beck, which were drawn with second and third priority, respectively, in the March 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 previously rejected them, the holders of the second- or third-priority DEC's could not be recognized 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. Inexco Oil Co., *supra*; Home Petroleum Corp.; see Geosearch, Inc., 41 IBLA at 293.

[5] We disagree with BLM's holding that the retained overriding royalty interests now held by Desens and Engle were null and void ab initio. As discussed in Home Petroleum Corp., *supra*, we regard these interests as merely voidable and subject to cancellation. 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. Inexco Oil Co., *supra*; Home Petroleum Corp., *supra*;

Wayne E. DeBord, 50 IBLA 216 n.1, 87 I.D. 465 n.1 (1980) (appeal pending). It is entirely proper to deny both Desens and Engle (RSC) a share in any benefit which may result from production on this lease. Desens failed to comply with the sole party in interest requirement, and Engle took an assignment of a portion of the interest which Desens retained with full knowledge of the defect in Desens DEC, as Engle himself held the objectionable interest.

We adopt the discussion of the Department's authority to cancel overriding royalties set out in Home Petroleum Corp., supra.

Having canceled these underlying 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 W. A. Moncrief, Jr., d.b.a. Moncrief Oil Interests (Moncrief), to which Gulf reassigned half of its interest on November 17, 1977. In its decision, BLM concluded that Moncrief was not a bona fide purchaser of this interest because "he executed the instrument purporting to transfer an interest to him only ten (10) days after his predecessor/assignor executed a similar instrument." We are unable to see how this fact bears on Moncrief's good faith, and BLM has not offered any explanation on appeal.

Even if Moncrief knew of the defect in Desens' offer, which does not appear from the record, he would nevertheless prevail as a "remote purchaser" from Gulf, which is entitled to protection as a bona fide purchaser. As such, he takes the same full title which Gulf had. Home Petroleum Corp., supra at 213.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed in part, reversed in part, and remanded for further proceedings in accordance herewith.

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Edward W. Stuebing  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

