

Editor's note: appealed - aff'd Civ.No. C81-0267 (D. Wyo., Feb. 3, 1982); aff'd in part, rev'd in part No. 82-1438 (10th Cir. Nov. 7, 1983), 721 F.2d 694 , cert. denied, 104 S.Ct. 2347, 466 US 972 (May 14, 1984); also appealed - sub nom. Geosearch, Inc. v. Watt, Civ.No. C81-0266 (D. Wyo.) -- same history as above.

ROBERT E. BELKNAP ET AL.

IBLA 81-274

Decided June 16, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, sustaining in part protest against and canceling oil and gas lease W 60857; voiding overriding royalty interests in this lease; declaring that Marvin Davis is not a bona fide purchaser of 100 percent of record title; and rejecting drawing entry cards for the leased parcel drawn with second and third priority.

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 3100.5(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 who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, 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).

Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974), distinguished.

APPEARANCES: David B. Kern, Esq., et al., Milwaukee, Wisconsin, for the estate of Robert Belknap and Resources Service Company, Inc.; Melvin Leslie, Esq., Salt Lake City, Utah, for Geosearch, Inc., and Larry Glasnapp; 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 August 22, 1977, the simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) of Robert E. Belknap for parcel WY 82 was drawn with first priority by the Wyoming State Office, Bureau

of Land Management (BLM). The DEC, which was apparently completely filled out, bore Belknap's signed certification that he was the sole party in interest in the offer and lease, if issued. On September 19, 1977, BLM notified Belknap that he was entitled to an oil and gas lease for the parcel and that the first year's rental was due. On October 13, 1977, BLM issued Belknap a lease for this parcel, effective November 1, 1977.

On November 29, 1977, Marvin Davis filed a request for approval of an assignment to him of 100 percent of Belknap's record title to the lease. The assignment indicated that Belknap 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 February 2, 1978, BLM approved this assignment, effective December 1, 1977.

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 Belknap had retained. BLM did not approve this assignment, as it does not routinely approve assignments of overriding royalties, but merely puts them in its records for informational purposes.

On October 2, 1978, Geosearch, Inc. (Geosearch), filed a protest against the continued validity of 14 leases, including W 60857. Geosearch asserted an interest in the matter based on an agreement with Larry Glasnapp, whose DEC for this parcel had been drawn with second priority in the August 1977 drawing. Glasnapp apparently agreed to assign to Geosearch a percentage of whatever rights he still held to receive the lease.

Geosearch's protest asserted that BLM had issued this lease to Belknap in violation of 43 CFR 3100.0-5(b), 3102.7, and 3112.5-2, in that Fred Engle had had an interest in Belknap's 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 October 5, 1978, noting that the lease had been assigned to Davis effective November 1, 1978, and stating that it believed that the second drawee (Glasnapp) 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 the second drawee remained viable, as BLM had never rejected it. Geosearch, Inc., 41 IBLA 291, 293 (1979). We also remanded the matter to BLM to join Davis to the protest proceeding in order to give him the opportunity to show that he

held and acquired Belknap's 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 Belknap's offer, requesting a copy of any service agreement between him and Engle. On August 29, 1979, Belknap filed a copy of this service agreement, dated March 14, 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 Belknap.

On October 18, 1979, BLM directed Davis to advise it whether he had knowledge of a possible defect in Belknap's lease offer when he acquired Belknap's lease. On November 27, 1979, Davis replied asserting that he was without notice of any defect in the offer or the lease that resulted; that he had paid a substantial price; that he was unaware of any violation of regulations; that he had no knowledge of any interest claimed by Fred Engle; and that he therefore held the lease as a bona fide purchaser whose interest is protected by statute.

Geosearch responded on February 4, 1978, with an affidavit from Melvin Leslie, Esq., its attorney, asserting that consideration for Davis' purchase had been paid in November 1977, and that, at this time, he should have been alerted to the possibility that Belknap's 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 Belknap's service agreement with Engle. Geosearch asserted further that Davis is properly charged with constructive notice of the contents of this agreement, including the interest-creating provision, and so should have known that Belknap had violated the regulations by not disclosing the existence of this interest when making his offer.

On December 18, 1980, BLM held that Engle had held an interest in Belknap's offer at the time he filed it in August 1977; that Engle's unilateral filing of an amendment and disclaimer did not alter this fact; that Belknap's offer violated 43 CFR 3102.7 and 3112.5-2 (1979) because of Engle's interest; that Belknap had assigned his interest in the lease to Davis before the lease had issued, so that Davis was not a bona fide purchaser; and that the lease should therefore be canceled. BLM also held that the overriding royalty interests retained by Belknap and Engle were null and void ab initio. Finally, BLM held that Geosearch was not entitled to any interest in the lease and rejected and returned the DEC's that had been drawn with second and third priority for this parcel in August 1977. The estate of Belknap, RSC, Glasnapp, and Geosearch appealed BLM's decision.

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. Wilbur G. Desens,

54 IBLA 271 (1981); Inexco 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 Belknap's offer gave Engle an "interest" in this offer. 1/ This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to Belknap or receive any consideration from him to bind the contract. 2/

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreement between Engle and Belknap. This agreement was entered into on March 14, 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. Home Petroleum Corp., *supra* at 204; D. R. Weedon, Jr., *supra* at 382; Frederick W. Lowey, *supra* at 385-86. 3/

Belknap 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/ 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*.

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

3/ In Frederick W. Lowey, *supra* at 386, we observed that "[i]t would have been a very simple matter for Engle to manifest his alleged actual intention not to create [the right to a percentage commission of any sale of their lease rights and any royalties for 5 years] by striking the language from [the agreements entered into after January 13, 1977,] before signing them." The facility with which Engle could make such a change is well illustrated by the fact that he added the note "Lease Rental Fee Increased to \$1.00 Per Acre Effective 2-1-77" to the standard service agreement form prior to submitting it to Belknap for approval. Clearly, if Engle had been sincerely interested in eliminating his interests in his clients' offers, he could have amended the agreement to do so at the same time he made this change.

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*.

[3] The question of whether the Department is estopped from rejecting Engle's clients' 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 Belknap's in which Engle had an undisclosed interest. We adhere to our holding there as well.

[4] Even though Belknap's 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 Davis, to whom Belknap assigned 100 percent of record title to lease W 60857, 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 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 October 28, 1977, prior to the issuance of the lease to Belknap, Davis agreed to purchase Belknap's 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 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

^{5/} See discussion in Home Petroleum Corp., *supra* at 206 n.8.

Belknap might have given Davis some reason to speculate that BLM might still reject Belknap's 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. An examination of BLM's file would not have revealed that Engle actually had an undisclosed interest in the offer.

On November 18, 1977, Davis paid Belknap the consideration for the purchase of his interest. As of this date, it appeared even more certain that Belknap's interest was valid. BLM's records still revealed no flaw in the offer, knowledge of which could be imputed to Davis, and BLM had issued the lease, thereby investing Belknap with a leasehold interest which was prima facie valid. Any small room for doubt which might have faced Davis in October was erased, and there was no reasonable basis for Davis to disbelieve that Belknap had a legitimate oil and gas lease interest. We hold that at all times in question, the record gave Davis a firm basis to conclude in good faith that he was buying valid title to an oil and gas lease from Belknap.

BLM's holding that Davis was not a bona fide purchaser because he purchased Belknap's interest prior to the issuance of the lease was based on the rule set out in Winkler. Geosearch supports the propriety of this conclusion on appeal. As we held in Wilbur G. Desens, *supra* at 278, Inexco Oil Co., *supra* at 267-69, BLM's and Geosearch's reliance on this rule is misplaced here, as, unlike in Winkler, there was no climate of adversity surrounding Belknap's interest evident from BLM's records during the period when Davis was purchasing this interest. Moreover, the assignee's purchase of an offer was expressly contemplated by Departmental regulations when Davis purchased this interest. 43 CFR 3106.3-4. 6/

Geosearch further contends that Davis should have known that Engle had an interest in Belknap's offer, as our decision in Lola I. Doe, *supra*, issued on August 19, 1977, operated to put Davis 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.

Finally, Geosearch cites our opinion in Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974), in support of its position that a purchaser of an interest in a lease offer may not be afforded protection as a bona fide purchaser. We expressly distinguish this case.

Keller's DEC was drawn with first priority in a drawing which was subsequently invalidated because BLM had left out a DEC. On redrawing, another offeror's DEC was drawn with first priority, displacing Keller,

6/ The regulations have since been revised to provide that no offer may be transferred or assigned prior to issuance of the lease, and no agreement to transfer or assign an offer shall be made prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. 43 CFR 3112.4-3.

who appealed. Keller argued that BLM could not terminate his interest because he had assigned 50 percent of his offer to a bona fide purchaser before BLM had invalidated the drawing. We held that the bona fide purchaser protection did not apply, as no lease had yet been issued. The fact that an interest in an offer has been assigned, even to a bona fide purchaser, we held, does not prevent the Department from rejecting it if it is defective or otherwise invalid.

Once the Department actually issues the lease, the bona fide purchaser protection applies, and it becomes necessary to inquire into whether the purchase of the lease offer was in good faith before the lease may be canceled. In this way, a purchaser a defective DEC will not be protected in the offer stage because he has no assurance that the offer will be accepted and a lease will issue. However, a purchaser of an interest in a DEC which is prima facie proper, in the absence of a showing of actual or constructive knowledge of the hidden defect, will be protected after the offer is adjudicated by BLM and a lease has issued.

In the instant case, unlike in Keller, supra, BLM had issued the lease, so that it is necessary to examine Davis' good faith. We conclude that the record does not show that Davis had any knowledge, actual or constructive, of the defect in Belknap's DEC. Accordingly, we reverse BLM's holding that Davis was not a bona fide purchaser.

BLM properly rejected and returned the DEC's of Larry R. Glasnapp and Erwin and Ricky Graef, which were drawn with second and third priority, respectively, in the August 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). The lease has been issued to a superior offeror and may not now be canceled because of any defect in that superior offer, because it 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., supra; see Geosearch, Inc., 41 IBLA at 293.

[5] While we disagree with BLM's holding that the retained overriding royalty interests now held by Belknap and Engle were null and void ab initio and find instead, as discussed in Home Petroleum Corp., supra, that these interests are merely voidable, we hold that BLM properly canceled the overriding royalties retained by Belknap and RSC, for the reasons set out in Wilbur G. Desens, supra at 279-80; Inexco Oil Co., supra at 269-70; Wayne E. DeBord, 50 IBLA 216 n.1, 87 I.D. 465 n.1 (1981) (appeal pending).

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.

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

