

Editor's note: appealed - aff'd sub nom. Morgan and Engle v. Watt, Civ.No. 81-0279 (D.Wyo. Feb. 3, 1982), aff'd in part, rev'd in part, No. 82-1439 (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 v. Watt, Civ.No. 81-0276 (D.Wyo.) - same history as above

WOODS PETROLEUM CORP. ET AL.

IBLA 81-223

Decided June 26, 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 59245; voiding overriding royalty interests in this lease; declaring that Woods Petroleum Corporation is not a bona fide purchaser of 100 percent of record title and that Howard Marlo and Ronald Hando are bona fide purchasers of a 3 percent overriding royalty interest; 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 3100.0-5(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 Purchase

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested

approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, 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).

APPEARANCES: David B. Kern, Esq., et al., Milwaukee, Wisconsin, for Burton Morgan and Resources Service Company, Inc.; Melvin Leslie, Esq., Salt Lake City, Utah, for Geosearch, Inc., and Herbert Maslan; 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 25, 1977, Burton D. Morgan filed a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel WY 57 which was drawn with first priority by the Wyoming State Office, Bureau of Land Management (BLM), in the May 1977 drawing. The DEC, which was apparently completely filled out, bore Morgan's signed certification that he was the sole party in interest in the offer and lease, if issued. On May 16, 1977, BLM notified Morgan that he was entitled to an oil and gas lease for the parcel and that the first year's rental was due.

On May 18, 1977, a Mrs. D. Belknap inquired of BLM whether Morgan (and five others) was a client of Fred Engle, d.b.a. Resource Service Company (now Resource Services Company, Inc. (RSC)), of Milwaukee, Wisconsin, as suggested by the fact that his DEC apparently bore RSC's address. Belknap alleged that, in the past, RSC's customers were subject to a binding service agreement whereby RSC had an interest in any lease issued to the customer, owing to an exclusive 5-year sales right clause in this agreement. Belknap noted that RSC had filed an affidavit with BLM seeking to remove the objectionable portion of this contract obligation, but questioned whether this affidavit could legally amend the service contract if the customer had not endorsed it. She also questioned the validity of Morgan's DEC if the original contract was still in effect, noting that Engle apparently had held an undisclosed interest in the DEC at the time it was filed under the terms of the original contract.

On June 29, 1977, BLM responded to Belknap's letter, advising her that Morgan 1/ was a client of Engle and that no lease would be issued to him until it received a decision from this Board as to whether Engle's exclusive sales agency, for which RSC's service agreement with Morgan provided, gave him an interest in Morgan's offer. BLM observed that, if Engle had held such an interest, the regulations would have been violated because it had not been disclosed and because Engle had similar interests in other offers for the same parcel.

However, BLM also described to Belknap the terms of an accommodation which, at that time, it had 2/ agreed to make to Engle, at his insistence. BLM stated to Belknap that it was prepared to regard the exclusive agency provision "as a nullity," even if this Board found that it gave Engle an interest, provided that Engle would notify any of his clients whose DEC's were selected that he had renounced this exclusive agency provision and that they would be free to enter into any new contract they wished, as Engle had stated he would do in the affidavit to which Belknap had referred.

On August 29, 1977, BLM advised Engle that the offer of Morgan, inter alia, had been suspended and would not be issued until it received the Board's decision concerning whether the exclusive-agency provision gave Engle an interest in his client's offers.

Previously, on August 19, 1977, we had issued Lola I. Doe, 31 IBLA 394 (1977), holding that the exclusive sales and commission

1/ BLM's letter actually addressed all of the six offerors addressed in Belknap's letter, but, for simplicity, we shall refer only to Morgan.

2/ We subsequently held that the accommodation was inadequate to remove the defect in Engle's clients' offers. Frederick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314 (D.D.C. May 28, 1981).

provision did give Engle an interest in his clients' offers and that the failure to disclose this interest at time of filing required rejection of such offer under 43 CFR 3102.7. Evidently, it took until after August 29 for BLM to become aware of this decision.

Although the record does not indicate, we speculate that BLM, after learning of Doe, supra, contacted Morgan in order to determine whether Engle had informed him that he had renounced the interest-creating provision, as he had agreed to do. The next document in the file was filed by Morgan on September 6, 1977, and is a photocopy of a letter from Engle to Morgan dated May 9, 1977, shortly after Morgan's DEC was selected. This letter falls far short of an explicit "renunciation" of Engle's right to a commission from any sale of Morgan's interest. ^{3/} Rather, it is couched in terms which suggest that BLM had insisted Morgan needed to sign a new agreement in order to cure a minor technical failure. Nevertheless, it evidently satisfied BLM that Engle had renounced his interest, as it proceeded to process Morgan's offer.

On January 16, 1978, Woods Petroleum Corporation (Woods) filed a request for approval of an assignment to it of 100 percent of Morgan's record title to the lease. The assignment which was executed by Morgan on November 18, 1977, and by Woods on January 5, 1978, indicated that Morgan 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 17, 1978, BLM approved this assignment, effective February 1, 1978.

On January 16, 1978, Engle filed a copy of an assignment to him of a percentage of the overriding royalty interest which Morgan 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 3, 1978, Geosearch, Inc. (Geosearch), filed a protest against the continued validity of 14 leases, including W 59245. Geosearch asserted an interest in the matter based on an agreement with Herbert Maslan, whose DEC for this parcel had been drawn with second priority in the May 1977 drawing. Maslan 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 Morgan in violation of 43 CFR 3100.0-5(b), 3102.7, and 3112.5-2, in that Fred Engle had had an interest in Morgan's offer at the time it was filed which was not disclosed, and which effectively and illegally

^{3/} The U.S. District Court for the District of Columbia recently observed that "[i]t is apparent that the word's 'waiver' and 'disclaimer' did not appear in the letters" to Engle's clients, including Morgan. Lowey v. Watt, supra.

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 Woods effective December 1, 1977, and stating that it believed that the second drawee (Maslan) had no interest left to assign to Geosearch.

On October 10, 1978, Howard E. Marlo and Ronald E. Hando filed with BLM assignments by Woods of operating rights and of a 3 percent overriding royalty.

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 Woods to the protest proceeding in order to give it the opportunity to show that it held and acquired Morgan'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. ^{4/}

On remand, BLM inquired into the circumstances surrounding the filing of Morgan's offer, requesting a copy of any service agreement between him and Engle. On August 29, 1979, Morgan filed a copy of this service agreement, dated May 10, 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 Morgan.

On October 18, 1979, BLM directed Woods to advise it whether it had knowledge of a possible defect in Morgan's lease offer when it acquired Morgan's lease. On November 26, 1979, Woods replied asserting as follows:

Woods Petroleum Corporation acquired said lease in good faith by assignment dated November 10, 1977 from Burton D. Morgan for a cash consideration of \$220,000.00.

In acquiring said lease, Woods Petroleum Corporation relied on the Land Office records showing that the lease had been duly issued to Burton D. Morgan, subject to no contests, protests, or appeals of record. Woods Petroleum Corporation had no knowledge or notice, in fact or in law, of any defect in the lease offer or the lease.

^{4/} This procedure was recently considered and approved by Judge Kerr in connection with an appeal from our decision on another of Geosearch's protests. Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981).

Woods Petroleum Corporation alleges that it acquired and holds said lease as a bona fide purchaser.

Geosearch responded on February 4, 1978, with an affidavit from Melvin Leslie, Esq., its attorney, asserting that consideration for Woods' purchase had been paid in December 1977 or January 1978, and that, at this time, it should have been alerted to the possibility that Morgan'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, supra, (1977), and on September 12, 1977, in Sidney H. Schreter, 32 IBLA 148 (1977), and should have examined Morgan's service agreement with Engle. Geosearch also asserted that Woods had had previous dealings with Engle on behalf of another of his clients in June 1977 and, so, must have been familiar with "the pattern and the manner in which these dealings were commenced and concluded." Geosearch asserted further that Woods is properly charged with constructive notice of the contents of this agreement, including the interest-creating provision, and so should have known that Morgan had violated the regulations by not disclosing the existence of this interest when making his offer.

On November 24, 1980, BLM held that Engle had held an interest in Morgan's offer at the time he filed it in April 1977; that Engle's unilateral filing of an amendment and disclaimer did not alter this fact; that Morgan's offer violated 43 CFR 3102.7 and 3112.5-2 (1979) because of Engle's interest; and that Morgan had assigned his interest in the lease to Woods before the lease had issued, so that Woods was not a bona fide purchaser; and that the lease should therefore be canceled. BLM also held that the overriding royalty interests retained by Morgan and Engle were null and void ab initio, but that Hando and Marlo (who had acquired overriding royalty interests from Woods) were bona fide purchasers and were therefore entitled to be dismissed from the proceeding. 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 May 1977. Woods, RSC, Morgan, Maslan, 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. Robert E. Belknap, 55 IBLA 200 (1981); 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) (appeal pending); D. R. Weedon, Jr., 51 IBLA 378 (1980) (appeal pending); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Civ. No. C80-370K (D. Wyo. May 5, 1981) (appeal to 10th Cir. pending); Frederick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314 (D.D.C. May 29, 1981); 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 Morgan's 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 waiver to Morgan or receive any consideration from him to bind the contract. 6/

As Judge Pratt recently held in *Lowey v. Watt*, *supra*, concerning the same putative disclaimer: [I]t was * * * invalid because not mutually consented to or supported by consideration. Although authorities are split as to the requirements for an effective disclaimer of a contract right, the common law and majority rule hold a disclaimer valid only if given under seal or in exchange for consideration. Absent a seal or consideration, the disclaimer was ineffective unless the obliged party relied on it to his detriment. Since RSC's disclaimer was not under seal, nor supported by consideration, nor communicated to RSC's clients until after a first place drawing, it did not eliminate its interest in its clients' lease offers. [Footnote omitted.]

Morgan failed to disclose Engle's interest at the time he made his offer, as required by 43 CFR 3102.7, and the lease must therefore be canceled because the offer violated this regulation, absent a showing that it is protected under the bona fide purchaser provisions of the statute and regulations. 7/

[3] The question of whether the Department is estopped from rejecting Engle's clients' offers was fully considered in *Lowey v. Watt*, *supra*; and *Donald W. Coyer (On Judicial Remand)*, *supra* at 313-14, *aff'd*, *Coyer v. Andrus*, *supra*. We adhere to the holdings there that the Department is not estopped to reject these offers.

Judge Pratt, after observing that, in order for estoppel to be appropriate, there must be "affirmative misconduct on the part of Government officials," held as follows in *Lowey v. Watt*, *supra*, concerning this identical issue:

The BLM officials' actions do not approach the requisite level of "affirmative misconduct." Although the officials erred in agreeing to accept RSC's disclaimer, they

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

6/ *Lowey v. Watt*, *supra*; *Donald W. Coyer (On Judicial Remand)*, *supra* at 313; *Alfred L. Easterday*, *supra* at 199.

7/ *Lowey v. Watt*, *supra*; *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*.

did so at RSC's request and to protect RSC's clients until RSC could put a revised service agreement into effect. Further, it would be a misstatement to assert that RSC is without blame. It had notice as early as December of 1976 that its exclusive agency provision was improper and was in clear violation of the regulations, yet it refused to change its service agreement for fifteen months. RSC could have entered new service agreements with its existing clients but declined to do so. Plaintiffs have no entitlement to the leases for which they submitted offers, but a mere hope or expectation. Schraier v. Hickel, 419 F.2d 663, 666 (D.C.Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C.Cir. 1974). Against these considerations we must balance the public interest in fair administration of the noncompetitive lease program. All offerors are entitled to assurance that the government will impartially enforce its regulations. Plaintiffs' claim of governmental estoppel is without merit. [Footnote omitted.]

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 Morgan's in which Engle had an undisclosed interest. We adhere to our holding there as well.

[4] Even though Morgan'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 Woods, to which Morgan assigned 100 percent of record title to lease W 59245, 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; O'Kane v. Walker, supra at 212; 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/ 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.

This lease was issued to Morgan on November 7, 1977, the date on which BLM's authorized officer signed it. Mobil Oil Corp., 35 IBLA 375, 379, 85 I.D. 225, 227 (1978). According to Wood's statement, which is uncontroverted, Morgan and it agreed to the assignment on November 10, 1977, and Morgan executed the official assignment form on November 18, 1977. 9/ It is not clear exactly when Woods paid Morgan the consideration for the assignment, although it was probably before January 16, 1978, the date on which it filed the official assignment form with BLM.

The official BLM record was in exactly the same state from November 10, 1977, to January 16, 1978, so that Woods is properly regarded as having the same constructive knowledge throughout this period.

We conclude that while the record did contain information which raised some doubt as to the validity of Wood's offer, BLM's issuance of the lease erased this doubt. Belknap's letter of inquiry which pinpointed the fatal flaw in Morgan's arrangement with Engle was in the record. However, so was a letter from BLM to Belknap expressly stating (incorrectly) that Engle had taken steps to cure this flaw. Moreover, BLM stressed therein, and in a letter to Engle as well, that it would withhold issuing a lease to Morgan until this Board had decided whether Engle's service agreement did give him an interest, and, if we did so, until BLM had checked to see that Engle had complied with the agreed disclaimer procedure. Clearly, viewed objectively, BLM's proceeding to issue the lease to Morgan was a signal that it had decided that Morgan was entitled to a lease because any and all doubts concerning his qualifications had been addressed and resolved in his favor.

Belknap's letter of inquiry was not framed as a formal protest, nor regarded by BLM as such. Accordingly, it was not necessary for BLM to issue a formal decision with a right of appeal in order to set the matter to rest, and its letter to Belknap was adequate to do so. Thus, there was no unresolved protest appearing in the record to surround the proceeding in a climate of adversity.

We conclude that Woods could reasonably have relied on the indication in the record that Engle had cured any defect in his clients' offers, including Morgan's. In the absence of any evidence showing

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

9/ We note that the statement in BLM's decision that Morgan executed the assignment prior to the issuance of the lease is incorrect.

that Woods had actual knowledge of the defect, we hold that Woods reasonably believed that a valid lease had been issued to Morgan, and that Woods is therefore, a bona fide purchaser of this interest. ^{10/}

Geosearch further contends that Woods should have known that Engle had an interest in Morgan'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.

BLM properly rejected and returned the DEC's of Herbert Maslan and Charles M. Fox, which were drawn with second and third priority, respectively, in the May 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 Morgan 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 Morgan and RSC, for the reasons set out in Wilbur G. Desens, supra at 279-80; Inexco

^{10/} We expressly note the distinction between Woods' right to rely on BLM's erroneous decision that the defect in Morgan's offer had been cured, and the absence of a right in Engle to assert his reliance on this decision as a basis for estopping the Government, discussed above. To Woods, all that was apparent was that a question about the validity of Morgan's offer had been raised and duly resolved by BLM. No appeal of this resolution was pending or foreseeable. Accordingly, in the absence of an apparent challenge to the correctness of this decision, Woods could rely on it in good faith, and so become a bona fide purchaser.

The adequacy of Engle's reliance on BLM's erroneous decision as a basis for his invoking the extraordinary relief of equitable estoppel is measured by different, and much stricter, standards. As an insider to the dealings with BLM, Engle understood more clearly than could Woods the possibility that it would ultimately be found to have violated the regulations, yet he took no steps to secure its position.

Oil Co., *supra* at 269-70; and 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 30 U.S.C. § 184(h)(2) (1976) and 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

