

Editor's note: Modified in part by 80 IBLA 49 (March 28, 1984)

WILFRED PLOMIS

IBLA 80-571

Decided March 8, 1982

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting appellant's lease offer. ES 21249.

Affirmed as modified, case files remanded with instructions.

1. Oil and Gas Leases: Future and Fractional Interest Leases

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

2. Oil and Gas Leases: Applications: Generally

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

APPEARANCES: Wilfred Plomis, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Wilfred Plomis has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 29, 1980, rejecting his over-the-counter lease for a 50 percent fractional interest in the acquired oil and gas deposits underlying the E 1/2 SW 1/4 NW 1/4 and the W 1/2 SW 1/4 sec. 4, T. 22 N., R. 4 W., Louisiana meridian. Plomis' offer was filed on April 24, 1979.

In its decision, the Eastern States Office merely noted that the land sought had formerly been embraced within oil and gas lease ES 11112 which had terminated on August 1, 1978. The Eastern States Office held that such lands were subject to the filing of new offers only in accordance with 43 CFR

CFR 3112.1-1, and further noted that the land had been posted to a simultaneous list in August 1979, and that one Horace H. Alvord IV, was the successful drawee. ^{1/} Accordingly, the Eastern States Office rejected appellant's offer. Plomis timely appealed.

A review of this appeal shows that the Eastern States Office has so totally misread the issues involved herein that this appeal can only be sorted out by a detailed analysis of both the factual and legal issues presented.

The lands embraced by Plomis' offer were originally acquired by the United States, under warranty deed dated April 24, 1969, from William H. Barber and Alma Barber. In this conveyance, the Barbers reserved "1/2 of all mineral rights for a period of 10 years from date of deed, or so long as oil, gas or other minerals may be produced therefrom." As we shall subsequently make clear, this reservation created two separate 50 percent interests -- one in the United States and one in the grantors, with the latter interest being of a 10-year duration unless production was had during that time. In order to obviate confusion, we will refer to the 50 percent interest which the United States received in 1969 as the "A" interest and the 50 percent which was reserved as the "B" interest.

On July 9, 1973, Getty Oil Company (Getty) was issued lease ES 11112, with an effective date of August 1, 1973, for the "A" interest. At this time, Getty also owned the operating rights to the "B" interest. The Getty lease terminated for nonpayment of rental effective August 1, 1978. On April 24, 1979, pursuant to the terms of the warranty deed, the "B" interest vested in the United States. On the same date, appellant filed an over-the-counter offer to lease the 50 percent "B" interest. His offer was accompanied by a copy of the warranty deed from the Barbers to the United States with the reservation language underlined.

It seems apparent, however, that the Eastern States Office assumed that appellant was attempting to lease the "A" interest and was seemingly unaware that the United States now owned the "B" interest as well. In its August 1979 posting, the State Office solicited simultaneous offers for only the 50 percent "A" interest. When BLM rejected appellant's offer for the "B" interest, it erroneously premised its action on the theory that appellant was seeking to lease the "A" interest. This was not correct. As we shall show, numerous other actions undertaken by the Eastern States Office in this matter were also in error.

[1] In the first place, BLM should have realized, since Plomis had drawn its attention to the warranty deed, that the formerly reserved mineral interest ("B") had now merged with the original granted interest so that the United States owned the full 100 percent mineral interest.

There is, of course, no statute authorizing the United States to issue fractional leases when it does, in fact, hold the entire mineral interest. See 30 U.S.C. § 354 (1976). Indeed, inasmuch as 43 CFR 3130.2-1 expressly _____

^{1/} This decision failed to mention that the lease had already been issued to Alvord on Feb. 14, 1980. We will return to this point later.

prohibits proration of rentals for fractional leases, issuance of two 50 percent leases would result in doubling the rentals prescribed for leasing an undivided 100 percent interest. We doubt that such an approach was ever even contemplated as a means of increasing the Government's revenues. The first mistake of the Eastern States Office, therefore, was not to realize that the two 50 percent interests had merged into a unitary Federal ownership.

Then, too, it was error for the Eastern States Office to actually issue the lease to Alvord before adjudicating Plomis' application. Inasmuch as it is clear that the State Office was of the view that Plomis was seeking to lease the "A" interest, formerly leased to Getty, there seems no reason to have delayed rejection of his offer for over 10 months. Moreover, having delayed rejection, the State Office should not then have issued the lease to Alvord before rejecting Plomis. Had the State Office either rejected Plomis earlier or, finally having determined to reject Plomis' offer, had it waited to issue Alvord a lease, we would not now be faced with the situation of a fractional interest lease for land in which 100 percent of the minerals are owned by the Federal Government, and were so owned at the time the lease was issued.

[2] With respect to Plomis' offer, while we agree that it must be rejected, our rationale is considerably different from that used below. As we have indicated above, when Plomis filed his offer, the 50 percent "B" interest, which had vested that day in the United States, had merged eo instante with the 50 percent "A" interest. 2/ Thus, Plomis' application could only be treated as an application for the total 100 percent mineral interest. See Irwin Rubinstein, 3 IBLA 250 (1971). Plomis, therefore, must be deemed to be seeking the 50 percent interest which had been the subject of the Getty lease, ES 11112.

The applicable regulation, 43 CFR 3112.1-1, provides that "all lands which are * * * covered by * * * leases which automatically terminate for non-payment of rental * * * are subject to leasing only in accordance with [the simultaneous leasing system]." (Emphasis added.) Inasmuch as there can be no question that the land sought by Plomis had been subject to terminated lease ES 11112, Plomis' over-the-counter application was properly rejected. 3/

However, as we noted above, BLM had no authority to issue a fractional interest lease where the entire interest was already in the United States. Thus, both the August posting and the lease issuance were in error, since there was no longer any authority to issue a fractional interest lease. BLM is therefore directed to cancel the lease issued to Alvord and to refund

2/ While we hold that the two separate estates merged upon the vesting of the retained mineral interests, our holding herein is limited to the facts of the present case where the original mineral interest of the United States was unleased at the time that the retained interest vested in the United States.

3/ Even if the 50 percent vesting interest was not deemed to merge with the outstanding interest, lease ES 11112 would still have covered the land sought by Plomis, and thus, could still only be leased under the simultaneous system.

all rentals and filing fees obtained therefrom. See Weyerhaeuser Co. (On Reconsideration), 34 IBLA 244 (1978); American Pozzolan Corp., 17 IBLA 105 (1974); Robert B. Ferguson, 9 IBLA 275 (1973). If BLM is desirous of leasing the subject land it must post the full 100 percent interest now in Federal ownership.

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 as modified, and the case files are remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

