

R. L. MULHOLLAND

IBLA 81-990

Decided September 3, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring oil and gas lease null and void. M 41881 (Acq.).

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Cancellation

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

APPEARANCES: H. R. Obert, Esq., Sidney, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated July 27, 1981, by the Montana State Office, Bureau of Land Management (BLM), declaring oil and gas lease M 41881 (Acq.) null and void. The lease was issued effective February 1, 1981. The decision recites:

The lease is hereby declared null and void in its entirety because the oil and gas rights are not owned by the United States. The Memorandum of Title which you submitted shows the United States as the record owner through Quitclaim Deed from Peder Storholm and Christine Storholm dated April 21, 1939, filed May 11, 1939, and recorded in Book A-44 of Deeds, Page 306. However, the United States quitclaimed the lands to the Storholms by Quitclaim Deed dated November 22, 1948, filed April 7, 1960, and recorded in Book A-89 of Deeds, Page 238. The oil and gas rights were not reserved to the United States. A certified copy of said Quitclaim Deed was furnished by Kubik, Bogner, Bleth and Ridl on behalf of their client, Everett Drilling Ventures.

In the statement of reasons appellant contends that:

[T]he description in the applicant's original offer to lease contains some lands that were conveyed to the United States Government which were not included in the quit claim deed back to the landowners dated November 22, 1948, recorded in Book A89, page 238, Richland County, Montana, records. This is a strip of land along the westerly portion of the tract and should be leasible [sic] to the applicant. Our contention is that Oil and Gas Lease Montana 41881 should remain validly issued covering the tract of land omitted in the aforementioned conveyance. The only thing lacking is the ammended [sic] description and acreage total. We are having a surveyor prepare this and it will be presented when it is done.

Aside from the statement of reasons, filed with the Board on September 15, 1981, no supplementing information has been received from appellant.

Cadastral Survey's metes and bounds description of the parcel in question is as follows:

A parcel of land situated in the SW 1/4 NE 1/4 of sec. 13, T. 23 N., R. 59 E., P.M.M., described as follows: Beginning at a point N. 61 degrees 05' 25" E., 334.59 ft. from the point for the center 1/4 sec. cor. of sec. 13; thence N. 15 degrees 05' E., 281 ft.; thence N. 18 degrees 20' E., 188 ft.; thence N. 3 degrees 04' W., 145 ft.; thence N. 10 degrees 05' E., 582 ft. To a point on the E-W center line of the NE 1/4 of sec. 13; thence on the E-W center line of the NE 1/4 of sec. 13, N. 89 degrees 56' E., 795.76 ft. To the point for the NE 1/16 sec. cor. of sec. 13; thence on the N-S center line of the NE 1/4 of sec. 13, SOUTH, 295.72 ft.; thence S. 40 degrees W., 1325.36 ft.; thence N. 50 degrees 04' W., 222 ft. To the point of beginning. This parcel contains 17.16 acres.^[1/]

The record contains the 1939 quitclaim deed from the Storholms to the United States, the 1948 quitclaim deed from the United States back to the Storholms, and a 1960 quitclaim deed from Margaret Storholm to Richland County, Montana. It also contains a memorandum from the Chief, Branch of Cadastral Survey, dated July 22, 1981, in which he states that the metes and bounds description in the 1948 deed describes the same tract of land described in the lease application.

We must admit some difficulty in crediting the total accuracy of this statement. Appellant's original application embraced 19.36 acres. However, prior to lease issuance 2.20 acres in the northeast were excluded from the lease. Thus, the lease issued for only a total of 17.16 acres. Exhibit 2, which was sent to Cadastral Survey, was a copy of the quitclaim deed from the United States to the Storholm's. It describes a tract of land aggregating

^{1/} Memorandum dated June 13, 1980, from Chief, Branch of Cadastral Survey.

18.37 acres. Thus, while all of the lands within the lease might well be lands in which the United States had no mineral interest, not all of the lands quitclaimed by the United States could possibly be in the issued lease.

We think an essential problem in this case is based on the fact that the quitclaim from the Storholms to the United States is different from the quitclaim which they subsequently received back from the United States. Thus, their quitclaim described a parcel of land aggregating 19.36 acres. The quitclaim deed they obtained described only 18.37 acres. The discrepancy occurs in the northeast quadrant of the tract. Whereas the Storholm's quitclaim had a description of the northern boundary of the claim as North 89 degrees 56' east for a distance of 1,050 feet, thence south 40 degrees west for a distance of 1,720 feet, the quitclaim which the Government provided the Storholms had north 89 degrees 56' east for a distance of 800.7 feet, then south along the east line of the SW 1/4 NE 1/4 for a distance of 296.8 feet, and thence south 40 degrees west for a distance of 1,332.2 feet. Thus, the .99 acre which was arguably not returned to private ownership, was located in the northwest corner of the tract. But, it is also clear that this was part of the 2.20 acres excluded from the lease prior to lease issuance. Thus, all of the lands leased had been returned to private ownership without a mineral reservation being retained.

[1] Since the record shows that the mineral interests in the lands in question were not owned by the United States, BLM's action in voiding the lease issued for these lands was proper. It is well settled that if mineral interests are not owned by the United States, the lease embracing these interests must be canceled. Duncan Miller, 32 IBLA 137 (1977).

Accordingly, 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.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

