

PAIUTE OIL AND MINING CORP.

IBLA 82-798

Decided September 3, 1982

Appeal from the decision of the Utah State Office of the Bureau of Land Management rejecting oil and gas lease offer U-50883.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Lands Subject to

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

3. Applications and Entries: Generally -- Bureau of Land Management -- Mistakes -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to -- Words and Phrases

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land

to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

APPEARANCES: R. Dennis Ickes, Esq., Salt Lake City, Utah, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Paiute Oil and Mining Corporation (appellant) filed its over-the-counter oil and gas lease offer U-50883 in the Utah State Office of the Bureau of Land Management (BLM) on April 9, 1982. The offer embraced the S 1/2 sec. 20, T. 9 S., R. 18 E., Salt Lake meridian. By its decision of April 30, 1982, BLM rejected the offer for the stated reason that the land is included in oil and gas lease U-10410.

In its appeal from that decision, appellant asserts that lease U-10410 issued for all of said sec. 20 "on or about December 30, 1969." (The record shows that the lease was effective January 1, 1970.) Following some incidental assignments, a drilling permit was issued to the owners of record and appellant became the lease operator, whereby, appellant says, "Paiute obtained an [unspecified] interest in the lease by drilling." The drillsite was designated Well No. 12-20. On April 17, 1980, Geological Survey's district engineer advised BLM that drilling operations were in progress on December 31, 1979 (the expiration date of the initial term), but that it had not yet been determined whether the work qualified pursuant to 43 CFR 3107.2-2 so as to extend the lease, and that BLM would be further advised when that determination was made. However, the record does not reflect that Geological Survey provided BLM with any followup information concerning the diligent drilling of the well or the achievement of any production until July 17, 1981, when it reported that Well No. 12-20 in the NW 1/4 NE 1/4 of sec. 20 had produced nothing and had been plugged and marked as a dry hole. However, this information did not serve to inform BLM whether the lease was or was not still viable by reason of diligent drilling at the end of the primary term. Accordingly, BLM could not alter its records at that time to reflect that lease U-10410 had expired.

Meanwhile, the north half of sec. 20 had been included in the Castle Peak-Monument Butte known geologic structure effective September 15, 1980.

At the time appellant's lease offer for the south half of sec. 20 was filed, BLM's records still reflected that the land was included in lease

U-10410, and there was nothing in the record to show that the lease was not still viable. For that reason, BLM rejected appellant's over-the-counter offer.

Appellant argues that even though drilling had commenced, any extension gained thereby would have been for 2 years only, because there was no production and no segregation from a unit which would serve to extend lease U-10410 beyond that time. Therefore, it maintains, the lease must have expired on December 31, 1981, and the land in the south half of sec. 20 was available for noncompetitive leasing when it filed its offer in April 1982. Therefore, appellant says, the issues presented by this appeal are: "1. Has U-10410 Lease Expired? 2. Is Paiute The First Qualified Applicant?"

Unfortunately, these are not the issues.

[1] Even if lease U-10410 had expired at the end of its primary term or after a 2-year extension, the regulation governing noncompetitive leasing of lands formerly included in oil and gas leases is 43 CFR Subpart 3112, which provides in pertinent part:

§ 3112.1-1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart.

Pursuant to 43 CFR 3112.1-1, all lands covered by leases which expire by operation of law at the end of their primary or extended terms shall be subject to filing of new lease applications only in accordance with simultaneous filing procedures. This is the procedure for determining the first-qualified applicant for a lease of such lands through a public drawing. An over-the-counter lease offer, such as appellant filed, is not acceptable in such case. Curtis Wheeler, 64 IBLA 239 (1982).

[2] With respect to applications for land embraced in an existing lease, the Board has repeatedly held that to the extent an offer to lease embraces lands presently under lease, the offer is properly rejected, regardless of whether the lease is void, voidable, or valid. Curtis Wheeler, 56 IBLA 58 (1981); David A. Provinse, 45 IBLA 111 (1980).

[3] Although, on the basis of appellant's statement, we may assume that lease U-10410 has expired, that fact was not officially a matter of record at BLM at the time appellant filed lease offer U-50883. Even were the lease offer not barred by reason of the fact that the land can only be made available through the simultaneous filing of applications pursuant to 43 CFR 3112.1-1, supra, the offer would still be unacceptable under what has become known as the "notation rule."

The notation rule was explained in an enclosure to a letter dated April 20, 1964, to the United States Attorney, Salt Lake City, from Attorney General Clark re Jay P. Nielson v. J. E. Keogh, Civ. No. C-158-63, as follows:

[I]t was held long ago that when a homestead entry is made, even though erroneously, the land is considered as withdrawn from further entry until such time as the entry has been cleared from the records. Bunker Hill Co. v. United States, 226 U.S. 548, 550 (1913); McMichael v. Murphy, 197 U.S. 304, 310-312 (1905); Hodges v. Colcord, 193 U.S. 192, 194-196 (1904); Hastings etc. Railroad Co. v. Whitney, 132 U.S. 357, 360-366 (1889); Putnam v. Ickes, 64 U.S. App. D.C. 339, 342, 78 F.2d 223, 226 (1935); Germania Iron Co. v. James, 89 Fed. 811, 814-817 (C.A. 8, 1898), app. dism. 195 U.S. 638.

Historically, then, no rights can be obtained in that part of the public domain which has been segregated by reason of a pre-existing appropriation--even one subsequently found to be invalid. This same principle has long been applied by the Secretary to oil and gas leases. Within two years of the enactment of the Mineral Leasing Act, it was held in Martin Judge, 49 L.D. 171, 172 (1922) that "until an outstanding permit is canceled by the Commissioner and the notation of the cancellation made in the local office, no other person will be permitted to gain any right to a permit for the same class of deposits by the filing of an application therefor, or by the posting of notice of intention to apply for such a permit." None of the numerous amendments of the Act since 1922 has questioned the Martin Judge decision which has been uniformly followed by the Department of the Interior. Joyce A. Cabot, 63 I.D. 122-123 (1956); R. B. Whitaker, 63 I.D. 124, 126-128 (1956); Albert C. Massa, 63 I.D. 279, 286 (1956). [Emphasis added.]

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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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James L. Burski  
Administrative Judge

