

SPACE INVESTORS

IBLA 83-109

Decided August 22, 1983

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers for acquired lands. ES 30097 and ES 30098.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject to

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

APPEARANCES: Douglas A. Pugh, Esq., Alpena, Michigan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Space Investors has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated September 28, 1982, rejecting its noncompetitive oil and gas lease offers for acquired lands, ES 30097 and ES 30098.

On September 9, 1981, appellant filed two noncompetitive oil and gas lease offers for 1,913.19 acres of land situated in Chippewa County, Michigan, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976). The land is situated within the Hiawatha National Forest. By letter dated September 2, 1982, the Forest Service, U.S. Department of Agriculture, informed BLM that "all of the minerals [covered by appellant's lease offers] are reserved either by the vendor or third party." In its September 1982 decision, BLM rejected appellant's lease offers because the "mineral rights in the requested lands are not Federally owned."

In its statement of reasons for appeal, appellant contends that "[a]lthough the original grantors to the United States reserved * * * [the] mineral rights," those rights are now "by virtue of the Michigan Dormant Minerals Act" vested in the United States.

The Michigan Dormant Minerals Act requires the owner of subsurface oil and gas rights which are severed from surface ownership to do one of certain enumerated acts in order to avoid a statutory presumption of abandonment. Those acts are the sale, lease, mortgage or transfer of the oil and gas interest, issuance of a drilling permit, actual production or withdrawal of oil or gas, the use of such interest in underground gas storage operations, or recordation of a claim of interest. Mich. Comp. Laws § 554.291 (Mich. Stat. Ann. § 26.1163(1) (Callaghan 1982)). Where the oil and gas interest is deemed abandoned, it "shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership." *Id.*

[1] It is well established that BLM must reject an oil and gas lease offer where the land is not available for oil and gas leasing because the mineral estate is not owned by the United States. *See, e.g., Golden Eagle Petroleum*, 67 IBLA 112 (1982). This holding arises most often where land has been patented without a mineral reservation to the United States, but applies equally where land has been reconveyed to the United States and the grantor has reserved the mineral estate. *Douglas H. Willson*, 58 IBLA 115 (1981).

Appellant, however, asserts that the owners of the mineral estate were divested of that estate by virtue of the Michigan Dormant Minerals Act and that the mineral estate vested in the current surface owner, the United States.

We have held that where title to land is in dispute, the Secretary may properly exercise his discretion to reject an oil and gas lease offer for such land, without reference to the merits of the dispute or the quality of title asserted by the United States. *Lee E. McDonald*, 68 IBLA 272 (1982); *Samson Resources Co.*, 55 IBLA 51 (1981), and cases cited therein. The burden to "establish the eligibility of the tract for leasing" is on the lease offeror. *Don Jumper*, 24 IBLA 218, 219 (1976).

In other cases where title to land is in dispute, the Board has remanded the cases to BLM "to reexamine whether the subject land is in fact available for oil and gas leasing." *Douglas H. Willson*, *supra* at 116, and cases cited therein. In such cases, the offeror has submitted certain evidence that indicates that title to the mineral estate may be in the United States. *See, e.g., A. N. Henderson*, 30 IBLA 8 (1977).

In the present case, however, appellant has presented no facts in support of its assertion that the mineral estate has vested in the United States through operation of the Michigan Dormant Minerals Act. In such circumstances, we must conclude that appellant failed to demonstrate that the previously severed title to the mineral estate is now in the United States. We conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offers.

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.

Gail M. Frazier
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

