

JOHN BLOYCE CASTLE

IBLA 84-88

Decided May 22, 1984

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, revoking in part noncompetitive oil and gas lease. W-84942.

Reversed.

1. Contracts: Generally -- Oil and Gas Leases: Cancellation

Cancellation of a lease or portion of a lease is improper when it was not issued in violation of any statute or regulation.

APPEARANCES: A. J. Losee, Esq., and David R. Vandiver, Esq., Artesia, New Mexico, for appellant; Laura L. Payne, Esq., Denver, Colorado, for Aminoil, Inc., intervenor.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

John Bloyce Castle's simultaneous oil and gas lease application was drawn with first priority for parcel WY-226 in the March 1983 drawing. He returned the signed lease offer, stipulations and required rental, and was issued lease W 84942 effective September 1, 1983. On September 2, 1983, he assigned the lease to Aminoil, Inc., reserving a 5 percent overriding royalty. On September 14, 1983, the Wyoming State Office of the Bureau of Land Management (BLM) issued a decision that "revoked from this lease and returned to a pending status" 760 acres in the Fortification Creek Wilderness Study Area on the grounds that on January 24, 1983, "we were instructed by our Washington Office to withhold all lands in Wilderness Study Areas from leasing and hold them in pending status." Castle appealed and Aminoil has moved to intervene. 1/

Although it does not specify, BLM's decision was presumably based on Instruction Memorandum No. 82-237. 2/ That document does not constitute a

1/ Aminoil asserts bona fide purchaser status, citing 30 U.S.C. 184(h)(2) (1982) and Southwestern Petroleum Corp. v. Udall, 361 F.2d. 650, 656 (10th Cir. 1966). Its motion is granted.

2/ The memorandum, issued Jan. 7, 1983, stated in part: "Leases issued [in BLM wilderness study areas] after December 31, 1982, regardless of the effective date of the lease, should be canceled or revoked and returned to pending status."

withdrawal, however, and no other action of record has withdrawn the lands involved. ^{3/} Thus, it was within the Department's discretion to lease them to Castle when it did. Udall v. Tallman, 380 U.S. 1, 4 (1965). Since no statute or regulation was violated in doing so, the Department may not later revoke or cancel a portion of the lease. Beverly M. Harris, 78 IBLA 251 (1984); Carl J. Taffera, 71 IBLA 72, 76-77 (1983); Kerr McGee Corp., 46 IBLA 156 (1980). It is a contractual obligation that binds the Department. Barbara C. Lisco, 26 IBLA 340, 344 (1976). ^{4/}

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

^{3/} Procedures for withdrawal are set forth in 43 U.S.C. 1714 (1982).

^{4/} In our view our concurring colleague misapplies Ptasynski, misreads Harris, and ignores the cited cases holding that lease cancellation must be based on either administrative error or violation of law or regulation, neither of which occurred in this case. Unless it is void from the outset, when the Department issues a lease it creates a property right. See generally Bernard Kosik, 70 IBLA 373 (1983).

ADMINISTRATIVE JUDGE BURSKI CONCURRING IN THE RESULT:

The majority holds that BLM, as a matter of law, lacks any authority to cancel a lease issued in violation of an instruction memorandum, where such issuance is not also violative of either a statute or regulation. In so holding, the majority purports to follow this Board's recent decision in Beverly M. Harris, 78 IBLA 251 (1984). In fact, however, the majority decision herein effects a radical departure from that holding. Since it is my view that the instant decision misapplies agency law principles and also conflicts with other relevant Board precedents, I must respectfully note my disagreement with the rationale employed by the majority herein.

In order to place my objections in proper perspective, it is helpful to review two Board decisions which undermine the analysis espoused by the majority. Nola Grace Ptasynski (On Court Remand), 28 IBLA 256 (1976), involved the cancellation of an oil and gas lease by the New Mexico State Office, BLM. In that case, appellant's simultaneously filed offer had been drawn with first priority. On December 5, 1973, the authorized officer of the New Mexico State Office signed the lease. Under procedures then still followed by the New Mexico State Office, the lease was sent to Geological Survey (Survey) to obtain a clearlisting that the land was not within a known geologic structure (KGS) of a producing oil or gas field. Subsequently, Survey informed the New Mexico State Office that certain lands within the lease "are in KGS effective 9-9-72. Memo dated 11-9-73." Upon receipt of this notification, the authorized officer of the New Mexico State Office destroyed the old lease forms and caused new ones to be issued which embraced only 398.81 acres which were not within the KGS as defined by Survey.

Upon learning of the partial rejection of her offer, Ptasynski filed an appeal with the Board. It is important to note that, at the time of the Board's initial adjudication of her appeal, neither the Board nor appellant was aware that a lease offer, embracing the land found to be in the KGS, had actually been signed by the authorized officer. On the contrary, the adjudication proceeded on the assumption that the only lease ever signed by the authorized office and, hence, the only one ever issued to Ptasynski (see 43 CFR 3110.1-2), was the one limited to 398.81 acres, which excluded the land contended to be in a KGS. Thus, the only issue originally examined by the Board insofar as Ptasynski was concerned was whether or not the KGS was properly determined to be retroactive to September 9, 1973. 1/ In a

1/ Actually, the only reason that the Board considered the question of the effective date of the KGS in the context of the first Ptasynski appeal was the fact that the Ptasynski appeal had been consolidated with another appeal, by one Barbara C. Lisco, in which the lease had clearly issued prior to Survey's notification to BLM that the land was a KGS. Had the Lisco appeal not been consolidated with the Ptasynski appeal, it would not have been necessary to discuss the retroactivity of the KGS determination since, from the records then before the Board, there was no evidence that the Ptasynski lease had embraced the KGS acreage, and the law was well-settled that the determination that the land is within a KGS prior to lease issuance deprives the Department of authority to issue the lease noncompetitively.

decision styled Nola Grace Ptasynski, 19 IBLA 125 (1975), the Board affirmed rejection of appellant's offer.

Subsequent to this decision, as well as others involving this same KGS determination, a number of court suits were initiated. In Skelly Oil Co. v. Morton, No. 74-411 (D.N.M. July 16, 1975), the district court reversed the Board's decision in Skelly Oil Co., 16 IBLA 264 (1974), and expressly held the date of ascertainment of the KGS to be November 9, 1973. It was also subsequently disclosed in the course of a suit styled Lisco v. Hathaway, No. 75-281 (D.N.M. filed May 23, 1975) that the authorized officer had actually signed the original Ptasynski offer which embraced land both within and without the KGS. Accordingly, by order dated April 6, 1976, the district court remanded the Ptasynski appeal to the Department for a determination of the facts relative to the authority of the authorized officer to execute the undelivered lease.

In its decision in Nola Grace Ptasynski (On Court Remand), *supra*, the Board noted that Secretarial Order No. 2948, dated October 6, 1972, had directed, *inter alia*, that "all applications for noncompetitive oil and gas * * * leases filed with the Bureau of Land Management will, prior to the issuance of a lease, be referred to the Geological Survey for a determination as to whether the lands are within a known geological structure (KGS) * * *." (Emphasis supplied.) This, the Board held, was a valid Secretarial policy directive, binding on the Department. Since it was in effect on November 5, 1973, when the undelivered lease was signed, the signing was ineffective to cause the lease to issue since the authorized officer was without authority to issue the lease prior to the KGS determination. Accordingly, the Board expressly held that such undelivered lease was therefore "voidable" and, in that case, ordered cancellation of the lease. 28 IBLA at 262. This decision was affirmed in Ptasynski v. Hathaway, No. 75-282-M (D.N.M. May 5, 1977).

In United States v. Alexander, 41 IBLA 1 (1979), the Board applied the Ptasynski analysis to another case in which the lease had been signed prior to the obtaining of a clearlisting and again held that where a lease was signed in contravention of a Secretarial order the lease was voidable and ineffective to bind the Department since the authorized officer lacked authority to issue the lease. This decision was itself affirmed in Alexander v. Andrus, No. 79-603-B (D.N.M. July 7, 1980). Both Alexander and Ptasynski clearly stand for the proposition that, where an officer of BLM acts beyond the scope of his authority in issuing an oil and gas lease, such action is incapable of binding the Department and any lease so issued is "voidable."

Such has been the general rule, at least until the instant decision. The majority herein, however, based on its reading of our recent decision in Beverly M. Harris, *supra*, now makes an express ruling that the Department lacks authority to cancel a lease, even where the lease is issued in clear contravention of applicable instruction memoranda. But, when correctly analyzed, the Harris decision does not support the construction placed upon it by the majority.

In Harris, as in the instant case, the authorized officer issued leases for lands within a wilderness study area (WSA). In both cases, issuance of

the lease occurred after the promulgation of Instruction Memorandum 83-237, which instructed BLM field offices that, until further notice, no leases or permits should issue for lands within BLM administered WSA's. In Harris, the Board noted that issuance of the lease did not violate "any statute or regulation." The Board further stated that "the record fully supports that Aminoil is a bona fide purchaser." Accordingly, the Board held that the cancellation of the lease was not efficacious.

It is important to point out that, while the Board did mention that issuance of the lease did not violate any statute or regulation the Board did not hold that this fact, in and of *itself, rendered nugatory any cancellation of the lease. Rather, the decision expressly continued beyond this statement to note that the assignee of the lease did possess bona fide purchaser status. This is the essential predicate of the Harris decision, and with this conclusion, I concur.

The importance of the statement by the Board in Harris that no statute or regulation was violated relates directly to the question of bona fides. If, in fact, a statute or a duly promulgated regulation had been violated, any assignee would be charged with constructive knowledge of the statute or regulation. In such a situation, the question of bona fides would have required a more rigorous analysis to determine whether an assignee should have known the facts of the violation. In the instant case, if we assume that a regulatory provision expressly prohibited leasing in a WSA, the question would be whether the assignee knew or should have known that the lease embraced lands in a WSA. Since, however, the instruction memorandum was unpublished, and the assignee expressly denied all knowledge of its existence, the fact that the assignee knew that the land was in a WSA was immaterial to the question of whether he was a bona fide purchaser. This is the relevancy of the statement in Harris that the proscription of the instruction memorandum was not the result of either a statute or regulation.

The effect of the majority's ruling in the instant case, however, is vastly different than that of the Harris decision. The majority holds, in effect, that the unauthorized action of a subordinate official may, in fact, bind the Department. This is not only contrary to express regulation, 43 CFR 1810.3, but is equally inconsistent with out past precedents.

I would hold herein that Aminoil, Inc., has established that it purchased the original lessee's interests for value, without knowledge that the issuance of the lease was unauthorized. I would, as the Board did in Harris, deem Aminoil to be bona fide purchaser, and would, accordingly, reverse cancellation of the lease now held by Aminoil on this basis. To the extent, however, that the majority asserts that cancellation of such a lease, where the lease remained in the hands of the original offeror, is beyond the authority of the Department, I must note my firm disagreement.

James L. Burski
Administrative Judge

