

DOROTHY LANGLEY

IBLA 84-40

Decided June 25, 1984

Affirmed.

1. Mineral Leasing Act: Combined Hydrocarbon Leases -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Lands Subject to -- Tar Sands

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

APPEARANCES: Dorothy Langley, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Dorothy Langley has appealed from the September 2, 1983, decision of the Utah State Office, Bureau of Land Management (BLM), canceling noncompetitive oil and gas lease U 45424 which had been issued effective May 1, 1983. The State Office determined that the land was within the San Rafael Swell Designated Tar Sand Area established by Geological Survey effective November 10, 1980. The State Office pointed out that the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), requires competitive bidding in leasing special tar sand areas.

Appellant's simultaneous oil and gas lease application had been drawn with first priority for parcel UT 27 in the January 1980 drawing. The parcel included three sections of land. By decision dated January 28, 1982, the Utah State Office rejected her application with respect to two of the three sections for the stated reason that those two sections were within the San Rafael Swell Designated Tar Sand Area. Appellant appealed this decision, but the Board affirmed the State Office, holding that the Combined Hydrocarbon

Leasing Act of 1981 amended the Mineral Leasing Act of 1920, 30 U.S.C. § 226(b) (1982), to require competitive bidding in the leasing of lands within special tar sand areas, and that a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. Dorothy Langley, 70 IBLA 324 (1983). A lease was then issued for the remaining section of land described by appellant's offer. However, in determining that this parcel of land was available for leasing, BLM failed to note that this parcel was also within the San Rafael Swell Designated Tar Sand Area. Thus, BLM erroneously issued a lease to appellant. When BLM became aware of its error after the lease was issued, the State Office issued its decision canceling the lease which is the subject of the present appeal.

Appellant states that the lands included in the lease were carefully reviewed by BLM prior to issuance of the lease and were determined to lie outside the San Rafael Swell Designated Tar Sand Area. Appellant also points out that the lands were closely scrutinized because of her prior appeal. This contention is not correct. Had BLM carefully reviewed the status plat for the land involved in appellant's lease at the time it issued the decision that was the subject of appellant's prior appeal, BLM would have noticed that the land involved in the present appeal was also included in the tar sand area.

Appellant contends that in other instances where BLM has determined that its internal procedures required correction or modification, previously issued leases affected by the procedure in question were not unilaterally rescinded and canceled, but allowed to remain effective as issued. In support of this assertion, appellant refers to a newsletter stating that leases issued through BLM's lottery system would not be canceled solely because BLM's procedure for delineating known geologic structures of proven reserves is not as efficient as it should be. Nothing in the newsletter states, however, that noncompetitive leases would be allowed to remain in effect if they were issued for lands already classified as within a known geologic structure on the date the leases were issued. Thus, the circumstances mentioned in the newsletter are not analogous to those of the instant appeal.

[1] Appellant notes that in Dorothy Langley, *supra* at 327, we stated that "it is the signing of the offer by the authorized BLM officer which constitutes acceptance of the applicant's offer and creates a binding contract." No binding contract results, however, if the BLM officer signs a lease in circumstances where he has no authority to do so. In Boesche v. Udall, 373 U.S. 472 (1963), the Supreme Court held that the Department has the authority to cancel administratively a noncompetitive oil and gas lease if the lease was issued in violation of the Mineral Leasing Act or regulations promulgated thereunder. As we pointed out in Dorothy Langley, *supra*, BLM has no authority to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after enactment of the Combined Hydrocarbon Leasing Act of 1981 in violation of that Act's requirements is properly canceled upon discovery of the error. Larry E. Clark, 66 IBLA 23 (1982).

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:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

