

WILLIAM L. AHLS

IBLA 84-156

Decided February 11, 1985

Appeal from a decision of the Colorado State Office, Bureau of Land Management, cancelling, in part, oil and gas lease C-34549.

Affirmed.

1. Act of May 21, 1930 -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Rights-of-Way Leases
Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1982), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1982).

2. Oil and Gas Leases: Applications: Generally

A successful applicant in a simultaneous oil and gas lease drawing does not acquire a vested right to obtain an oil and gas lease but merely obtains the right for priority of consideration should a noncompetitive oil and gas lease ultimately issue.

APPEARANCES: William L. Ahls, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William L. Ahls has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 4, 1983, cancelling in part oil and gas lease C-34549. We affirm.

Oil and gas lease C-34549 issued effective June 1, 1982, pursuant to appellant's simultaneous oil and gas lease application which had been drawn with first priority in the December 1981 simultaneous drawing. As issued, the lease described 40 acres of land identified as the SW 1/4 NW 1/4 sec. 29, T. 6 S., R. 94 W., sixth principal meridian. On June 10, 1982, appellant assigned 100 percent of the record title interest in the above lease to Aeon Energy Company (Aeon), reserving only a 10 percent overriding royalty interest

in himself. This assignment was approved on December 15, 1982, effective July 1, 1982. Annual rental for the year commencing June 1, 1983, was timely submitted by Aeon.

In the interim, however, on April 11, 1983, Northwest Exploration Company (Northwest) filed an application to lease under the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1982), for various lands underlying a right-of-way grant held by the Denver and Rio Grande Western Railroad Company (C-093824). Included in this application were various lands within the N 1/2 sec. 29, T. 6 S., R. 94 W., sixth principal meridian.

This application, serialized as C-37488, was rejected in its entirety by decision of June 27, 1983. Noting that grants under the General Railroad Right-of-Way Act of 1875, 43 U.S.C. § 934 (1970) (repealed by section 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793), were mere easements rather than limited fees, the State office held that, inasmuch as all of the land applied for had been patented without a mineral reservation, the United States had no mineral interests subject to leasing. However, by decision of July 8, 1983, that decision was partially vacated. The State office noted that subsequent research had shown that the railroad had been incorrectly noted on the BLM plats. When it was correctly platted it was discovered that not all lands over which the railroad right-of-way traversed had, in fact, been patented. Accordingly, the State office reinstated the application to the extent that it embraced certain lands including, inter alia, lands within the S 1/2 SW 1/4 NW 1/4 sec. 29, T. 6 S., R. 94 W., sixth principal meridian.

Subsequent to that decision, the Colorado State Office issued the decision which is the subject of this appeal. Noting that it had only recently discovered that it had misplatted railroad right-of-way C-093824, and that as correctly platted it included lands within the SW 1/4 NW 1/4 sec. 29, the State office informed appellant that it had no authority to lease the subject tract except under the provisions of the Right-of-Way Leasing Act of 1930, supra. Accordingly, it cancelled oil and gas lease C-34549 to the extent of the conflict, i.e., 6.59 acres. It noted that when the decision became final a refund of \$6 per lease year would be authorized. Appellant timely took this appeal.

[1] In his statement of reasons for appeal, appellant makes a number of arguments directed generally to the inequities which he perceives in the situation. While we agree that it is unfortunate that BLM did not discover sooner that right-of-way C-093824 was incorrectly platted, the law is clear that, to the extent that the right-of-way invaded the SW 1/4 NW 1/4 sec. 29, BLM was without authority to lease the land except under the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1982).

In our recent decision in Champlin Petroleum Co., 68 IBLA 142, 89 I.D. 561 (1982), we explored in considerable depth the historical development of mineral leasing in rights-of-way. We will not repeat that discussion here save to note that therein we concluded that the 1930 Act "is the exclusive authority for issuance of oil and gas leases for lands underlying railroad rights-of-way issued under the 1875 Act." Id. at 160, 89 I.D. at 570 (emphasis in original). Thus, BLM was without authority to lease the land pursuant to the Mineral Leasing Act of 1920, as amended 30 U.S.C. § 181 (1982), and, to

the extent that the lease which appellant obtained purported to include this land, it was a nullity.

[2] Appellant suggests various courses of action for resolving the present situation, including paying him \$131,800 to buy back his 6.59 acres. 1/ Appellant misapprehends the nature of the rights he acquired by having his application drawn with first priority. When the United States places a parcel on a simultaneous list it does not warrant that it will issue a lease to the successful applicant. On the contrary, all that the simultaneous drawing determines is who will be afforded an opportunity to file an oil and gas lease offer. It does not commit the United States to issue a lease at all. In fact, a number of different eventualities could arise wherein the Department would be prohibited from issuing a noncompetitive lease.

Thus, should BLM determine that the land embraced by a lease offer was within a known geologic structure of a producing oil and gas field, a noncompetitive oil and gas lease could not legally be issued. Moreover, any noncompetitive lease issued for such land is a nullity and must be cancelled. See Skelly Oil Co., 16 IBLA 264 (1974), rev'd on other grounds, Skelly Oil Co. v. Morton, No. 74-411 (D.N.M. July 16, 1975).

So, too, with land underneath a railroad right-of-way. A noncompetitive lease offer under the 1920 Act for such lands cannot be granted and gains the applicant no rights. Should such a lease inadvertently issue, it is a nullity. Appellant thus never obtained a right to the lands at issue, even though they were purportedly included in the lease, and, therefore, has suffered no compensable loss. The decision of the State office being correct, it must be affirmed. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

1/ It is clear that appellant not only mistakes the nature of the rights acquired by being drawn with first priority (a matter further explored in the text) but misunderstands the nature of his present interest in the lease. Appellant owns no part of the record title interest, having assigned all of that interest to Aeon. Appellant merely owns a 10 percent royalty interest. He owns no acreage which he could sell back to the Government under any theory.

2/ A refund of \$6 per year for the land inadvertently included in the lease should issue in due course.

