

**Editor's note: Reconsideration denied by Order dated Aug. 13, 1985; Appealed -- aff'd in part (as to IBLA Nos. 86-2816, 86-2817), Civ. No. C85-0538-B1 (D. Wyo. Oct. 10, 1986), aff'd (10th Cir., Dec. 20, 1989), cert denied, No. 89-1488 (Apr. 16, 1990), 110 S.Ct. 1815**

JOSHUA BASIN PARTNERSHIP  
TAYLOR BASIN PARTNERSHIP  
SHASTA BASIN PARTNERSHIP  
MESOZOIC-PALEOZOIC JOINT VENTURE

IBLA 84-100, 84-101,  
84-196, 84-226 Decided June 13, 1985

Consolidated appeals from decisions of the Wyoming, Colorado, and Montana State Offices, Bureau of Land Management, rejecting applications for oil and gas leases W-83159, W-83748, C-37637, M-58422 (ND).

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

If the identity of the holder of an interest in an oil and gas lease application is not disclosed on the application form, the application must be rejected for failure to disclose a party in interest. If a person has an interest in more than one application filed for the same parcel, the application must be rejected as constituting a prohibited multiple filing.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest in an oil and gas lease or offer." Where an applicant for an oil and gas lease has executed a note entitling the holder to 60 percent of the proceeds from a Federal oil and gas lease, the holder of the note has an interest in the oil and gas lease pursuant to 43 CFR 3100.0-5(b) (1982).

APPEARANCES: Phillip Wm. Lear, Esq., and Matthew F. McNulty III, Esq., Salt Lake City, Utah, for appellants; Marla E. Mansfield, Esq., Office of the Regional Solicitor, for the Bureau of Land Management; David A. Gottenborg, Esq., for Kenneth M. Britt; Irma Roberts Spear, pro se.

87 IBLA 179

IBLA 84-100, etc.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These are consolidated appeals from separate decisions of the Wyoming, Colorado, and Montana State Offices, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease applications filed by Federal Lease Filing Corporation (FLFC) on behalf of appellants. The appeals differ somewhat in their procedural history. By decision dated September 26, 1983, the Wyoming State Office, BLM, rejected the application of Joshua Basin Partnership (Joshua) for oil and gas lease

W-83159, having concluded that FLFC had an undisclosed interest in the application and also because there was a violation of the multiple filing prohibition found at 43 CFR 3112.2-1(f). Joshua's appeal has been assigned docket No. IBLA 84-100. The Wyoming State Office rejected the application of Taylor Basin Partnership (Taylor) for oil and gas lease W-83748 for the same reasons by decision dated September 28, 1983. Taylor's appeal has been assigned docket No. IBLA 84-101.

By decision dated November 10, 1983, the Colorado State Office rejected the application of Shasta Basin Partnership (Shasta) for oil and gas lease C-37637 because Shasta failed to disclose FLFC's interest in the lease as required by 43 CFR 3112.2-3. This decision was prompted by a protest filed by Kenneth M. Britt. Shasta's appeal was assigned docket No. IBLA 84-196.

By decision dated November 30, 1983, the Montana State Office, BLM, rejected an application for oil and gas lease M-58422 (ND) filed by Mesozoic-Paleozoic Joint Venture (Mesozoic-Paleozoic), another FLFC client, a combination of the Mesozoic Partnership and the Paleozoic Partnership. In response to a protest by Irma Roberts Spear, the State Office had asked for a complete list of partners in the partnerships that made up the joint venture involved in filing for that lease. The list revealed that Wayne Terry, a member of Mesozoic-Paleozoic, was also a partner in the Precambrian Partnership which joined with the Quaternary Partnership to form the Precambrian-Quaternary Joint Venture. The State Office determined that because both of these joint ventures filed simultaneous applications for lease M-58422 (ND), Wayne Terry had an interest in more than one application filed for that parcel in violation of the prohibition against multiple filings, 43 CFR 3112.2-1(f) (1982). <sup>1/</sup> The decision also noted that because FLFC had an interest in the applications

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<sup>1/</sup> BLM and Mesozoic-Paleozoic subsequently stipulated that Wayne Terry withdrew from the Precambrian-Quaternary Joint Venture on Jan. 21, 1982, and, therefore, was not a partner or joint venturer in the Precambrian-Quaternary Joint Venture on the date of the filing for M-54822 (ND) or any other filing for the Precambrian-Quaternary Joint Venture (Stipulation of Facts and Law 171, at 47; Documents and Affidavits Supporting Stipulation of Facts and Law, Tab 55). Although Spear was not a party to this stipulation, there is nothing in the record to indicate that this stipulation of fact is incorrect. Accordingly, the rejection of the application by Mesozoic-Paleozoic can no longer be based on a finding of a multiple interest on the part of Wayne Terry, and the decision below is modified accordingly.

filed by its clients, it also violated the prohibition on multiple filing. Mesozoic-Paleozoic's appeal from that decision was assigned docket No. IBLA 84-226.

Although each appellant certified that it was the sole party in interest to its application, BLM determined that FLFC had an interest in each application because each appellant had executed a note effectively giving Federal Lease Filing Services Corporation (FLFSC), a wholly owned subsidiary of FLFC, a 60-percent share of the proceeds from the leases which are the subject of this appeal. 2/ Because FLFSC's interest was not disclosed in the space provided on the application forms, BLM rejected appellants' applications. Moreover, BLM determined that FLFC had entered more than one client for each parcel, so that FLFSC had an interest in more than one application for a parcel in violation of 43 CFR 3112.2-1(f). This violation of the prohibition against multiple filings provided BLM with an additional ground for rejecting appellants' applications.

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fn. 1 (continued)

Before these appeals had been consolidated, Britt and Spear sought to intervene in the appeals involving the Joshua and Taylor Partnerships. The Board granted their motion to intervene as amicus curiae by order dated Dec. 22, 1983. Irma Roberts Spear has moved to dismiss the appeal of Mesozoic-Paleozoic on the grounds that the Joint Venture has failed to file reasons for its appeal within the time allotted and has otherwise failed to pursue its appeal in a proper time or manner. These arguments are without merit in view of the fact that the Board had extended the time in which that appellant was required to file its statement of reasons.

2/ Appellants are all clients of FLFC which provides advisory and filing services to its clients in Federal and State oil and gas leasing systems for a fee (Statement of Reasons at 5). FLFSC was established to function as an asset holding/accounts receivable company for FLFC (Statement of Reasons at 6).

The BLM decisions refer to FLFC as having an interest in the applications; FLFSC however, holds the notes. While FLFC and FLFSC are separate entities, they act in concert with respect to the services they provide their clients.

The service agreements between appellants and FLFC work in conjunction with the service agreements which each appellant executed with FLFSC. Under the terms of the arrangement, FLFC performs the advisory and filing services, and FLFSC receives payments for services in the form of cash payments and amortization of the promissory notes (Stipulations 60, 99, 137, and 167). The amounts to be paid in advance to FLFC are the same amounts obligated to be paid to FLFSC. The partnerships and the Joint Venture are obligated for one sum under the terms of the two service agreements (Stipulations 61, 100, and 138). FLFSC is the payee and intended recipient of the cash advance payments and the sums due and owing under the promissory notes. Upon receipt of cash payments, FLFSC forwards the amounts paid by appellants to FLFC so that services may be provided under the service agreements between FLFC and appellants (Stipulations 62, 101, 139, and 167).

[1] If FLFSC had an interest in appellants' lease applications as that term is defined at 43 CFR 3100.0-5(b) (1982), there is no doubt that appellants' applications were properly rejected. That regulation refers to an applicant's obligation to disclose the name of any party having such an interest on the application, and when an applicant submits an application form, he certifies that "No party, other than the applicant and those identified herein as other parties in interest, owns or holds an interest in this application, or the offer or lease which may result." Although FLFC is identified as a filing service on appellants' applications, no entry appears in the spaces provided for identification of other parties in interest. If FLFSC has an interest in appellants' applications and such interest was not identified on the application forms, the applications were not "completed" as required by 43 CFR 3112.2-1(a) (1982), and were properly rejected pursuant to 43 CFR 3112.6-1(a) because they were not filed in accordance with the requirements of section 3112.2. Furthermore, if FLFSC had such an interest in more than one application filed for a parcel, a multiple filing occurred and each such application must be rejected. 43 CFR 3112.2-1(f).

The courts have strictly enforced the requirement that the Department reject oil and gas lease applications filed by applicants who have failed to disclose the identity of other parties in interest and who have violated the prohibition on multiple filings. *E.g., June Oil & Gas, Inc. v. Watt*, 717 F.2d 1323 (10th Cir. 1983), *cert. denied*, \_\_ U.S. \_\_, 104 S. Ct. 2169 (1984); *McKay v. Wahlenmeier*, 226 F.2d 35 (D.C. Cir. 1955); *cf. Geosearch v. Watt*, 721 F.2d 694 (10th Cir. 1983), *cert. denied*, \_\_U.S.\_\_, 104 S. Ct. 2347 (1984); *Coyer v. Watt*, 720 F.2d 626 (10th Cir. 1983), *cert. denied*, \_\_ U.S. \_\_, 104 S. Ct. 2346 (1984); *Lowey v. Watt*, 684 F.2d 957 (D.C. Cir. 1982) (rejection of leases held improper where filing service had waived and disclaimed service contract provision constituting an interest). <sup>3/</sup>

Throughout their statement of reasons, appellants assert that the relationship existing between FLFC and FLFSC is legitimate and not in violation of the regulations. We recognize that the regulations do not prohibit interests from being created by applicants. Indeed, such interests serve many legitimate and necessary business purposes. The legitimacy of the interest, however, does not exempt the applicant from having to disclose the identity of the holder of that interest on his application form. Nor is the legitimacy of the reason for creating an interest a consideration recognized by the Department when determining whether someone has an interest in more than one application filed for the same parcel.

The critical issue common to all of these appeals is whether FLFSC had an interest in appellants' applications. The facts of these cases are not disputed. Pursuant to their service agreements with FLFC, each appellant made an initial cash payment and executed an interest bearing note payable to

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<sup>3/</sup> Geosearch, Coyer, and Lowey are distinguishable from the instant appeals by the fact that FLFSC never released appellants from the obligation determined by BLM to constitute an interest in appellants' applications.

FLFSC due in 1989 for more than twice the value of the cash payment. <sup>4/</sup> Each individual member of a partnership made a cash payment and executed a noninterest bearing promissory note to the partnership in amounts proportional to his share of the partnership. <sup>5/</sup> The notes and service agreement executed on behalf of appellants provide that the principal shall be payable from 60 percent of the revenues of the maker. <sup>6/</sup> Therefore, FLFSC has a right to 60 percent of the proceeds from any Federal oil and gas lease issued to any appellant until that appellant's note is paid.

[2] Appellants view the issue in these appeals to be a complicated one and have submitted lengthy briefs and have requested oral argument. We, however, do not share appellants' perception of the complexity of the issue to be resolved or that an oral argument is warranted. Although the relationships between appellants, their filing service, and other entities may be somewhat complex, the legal issue is simply whether a right to share in the proceeds of a lease constitutes an "interest" as defined by 43 CFR 3100.0-5(b):

Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement [sic] or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease. [Emphasis added.]

<sup>4/</sup> The Joshua Basin Partnership, for example, made a cash payment to FLFSC of \$100,000 and executed a note for \$264,000 (Documents, Tab 21). The Taylor Basin Partnership paid FLFSC \$70,000 in cash and executed a note for \$154,000 (Documents, Tabs 33, 34). Shasta Basin Partnership paid FLFSC \$77,000 in cash and executed a note for \$169,400 (Appendix, Tabs 43, 44). The Mesozoic-Paleozoic Joint Venture, a combination of the Mesozoic Partnership and the Paleozoic Partnership, paid \$132,000 in cash and executed a note for \$290,400.

<sup>5/</sup> For each unit of the Joshua Basin Partnership, for example, a subscriber paid \$12,000 in cash and executed a subscription note in the amount of \$26,400 (Documents, Tabs 18, 19). The Solicitor suggests that investors were attracted to join the partnerships in part because they were told that they could deduct from their taxable income in the first year not only the amount of cash that they had paid but the value of the notes as well, for total deduction of more than three times the value of their cash outlay. This is indicated in the summaries of the programs (Documents, Tabs 56 through 59).

<sup>6/</sup> See Documents, Tabs 21, 34, 43, and 54 for the promissory notes. Joshua's note provides in part as follows:

"This Note is payable as follows: Principal and interest in full on or before December 31, 1989. However, the undersigned may extend the maturity date of this note for an additional five (5) years by the payment of two points of the outstanding balance on or before December 31, 1989.

"Interest shall be accrued until principal has been paid in full. Interest shall be due on a non-recourse basis. Principal on the Note shall be payable from 60% of the revenues of the Maker. After complete amortization of

It would be hard to identify a clearer example of an interest under this definition than an agreement to share proceeds of a lease should one issue. The fact that appellants' notes to FLFSC constitute such an agreement cannot be denied.

Although appellants recognize that FLFSC has a right to share in the proceeds of a lease, appellants assert that this creates no interest because it is nothing more than a "general right of repayment." Appellants' effort to characterize their interest as a "general right of repayment" arises from the Board's holding in Wayne E. DeBord, 50 IBLA 216, 87 I.D. 465 (1980), aff'd sub nom. Landis v. Clark, Civ. No. CV-81-74-BLG (D. Mont. 1984). The text of that decision, however, makes it quite clear that when the Board referred to a "general right of repayment," it was not referring to a right to share in the proceeds of a lease:

In the cases herein, Landis has an interest in each of the lease offers made pursuant to the pool agreement. He advances funds for filing entry cards and paying annual lease rentals under the terms of the agreement. He is also entitled to impose an unspecified charge on the pool as a "consultation fee," plus a general charge for office and clerical expenses. He is entitled to be reimbursed with interest from the proceeds of the sale or assignment of any lease issued, for which he may secure payment by "liens or other legal means." This is participation in the issues or profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).

This case is distinguished from such cases as D. E. Pack, supra, and Geosearch, Inc., supra, by the fact that under the agreement Landis has a contractual right to be reimbursed with interest from the proceeds of the sale of any lease issued, and not a general right of repayment. [Emphasis in original.]

Id. at 468.

The language that the Board emphasized in DeBord makes clear the distinction between an interest and a general right of repayment. An interest does not arise from a general right of repayment from funds not traceable to the proceeds of a lease; if repayment is to be made from those proceeds, an interest arises.

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fn. 6 (continued)

the principal, accrued interest shall be payable from 60% of the revenues of the Maker."

Although appellants describe this provision as a prepayment feature, this characterization is incorrect because the maker of the note has no option about making the required advance payment. Because the realization of revenue makes earlier payment mandatory, this feature is more accurately characterized as an acceleration. See Garza v. Chicago Health Clubs, Inc., 347 F. Supp. 955 (N.D. Ill. 1972).

Appellants contend that in order to find that an interest exists, BLM must not only show that FLFSC has a right to share in the proceeds of a lease, but also that FLFSC has some other "advantage or benefit." Appellants deny that their notes provide FLFSC with any advantage or benefit because they only provide a means for payment of an obligation that would otherwise be due regardless of whether a lease issued. Appellants conclude that no interest arises within the meaning of the regulation from an agreement to share the proceeds of a lease if the proceeds are used to pay an underlying obligation.

Appellants' contention that FLFSC would derive no advantage or benefit from its right to share in the proceeds of a lease is untenable. If leases were issued and appellants realized proceeds from those leases, FLFSC would be entitled to 60 percent of those specific proceeds prior to the due date of the note unless the principal and interest for some reason or other had already been paid. While appellants deny that this arrangement confers an obvious advantage or benefit on FLFSC, this Board can conceive of no circumstances in which a right to share in lease proceeds would not constitute an advantage or benefit. <sup>7/</sup>

Considering the nature of the arrangement, appellants' observation that the lease proceeds are used for advance payment of an underlying debt provides no basis for concluding that FLFSC has no interest in appellants' applications. The regulation provides no exception to the definition of interest based on the ultimate purpose of an agreement to share the proceeds of a lease. The fact that the obligation would continue if no lease were issued is irrelevant. To construe the regulation as appellants argue we should would deprive it of any rational force or effect.

Moreover, the regulation does not require BLM to establish that FLFSC has some other advantage or benefit in addition to its right to share in lease proceeds. The regulation is clearly intended to be broad in scope; it lists several types of interests, any one of which satisfies the definition. It is drafted to ensure that even if an agreement does not give a third party the right to share in the proceeds of a lease, that party would still have an interest if the agreement confers some other advantage or benefit from the lease. In H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979), aff'd, Enevoldsen v. Andrus, No. C-80-0047B (D. Wyo. June 24, 1981), the Board found an "interest" where the offeror through an oral agreement granted another person a

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<sup>7/</sup> Appellants deny that FLFSC realizes any benefit from early amortization of the notes due to the realization of lease proceeds because FLFSC is in fact suffering a loss of interest accrued on the promissory notes (Statement of Reasons at 38). BLM responds that this payment constitutes a benefit because

"[C]urrent funds are generally preferred over tenuous future payments (especially for the unsecured interest). More importantly, being paid early guards against the possibility that they might not be paid at all due to the defenses that might be raised by the partnerships. These defenses could include failure of consideration or impossibility of performance." (Response at 17). This latter statement is predicated on the possibility that Congress might enact a bill to require competitive leasing.

first right to buy any lease issued. The Board found that such an arrangement conferred a "claim to an advantage or benefit" and did not consider whether the arrangement constituted a right to share in lease proceeds. Id. at 81, 86 I.D. at 648. Indeed, the Board stated that "the word 'claim' \* \* \* connotes something less than a right which may be successfully enforced in the courts." Id. at 83, 86 I.D. at 649. Although appellants observe that the Board applies a "two-pronged test" in deciding whether an interest exists (Statement of Reasons at 28), appellants have failed to note that each "prong" constitutes an independent basis for such a determination. In DeBord, for example, the Board considered it sufficient to find that undisclosed parties had a right to share in the proceeds of the lease. The elements of the transaction were not separately analyzed as advantages or benefits.

Appellants misread our decision in Warren R. Haas, 57 IBLA 247 (1981), which they claim supports their position and controls disposition of these appeals. In Haas, we held that there was no interest created when an oil and gas lease offeror in a written agreement gave his filing service a "security interest" in any lease issued pursuant to an offer filed under the service agreement to secure any payment of the lease rental advanced to BLM by the service. If the filing service advanced rental for any lease won by the applicant, the security interest would arise only if the applicant failed to reimburse the leasing service.

In arguing that his filing service had no interest in his application, Haas noted that the Board had held that no interest arises where the client has the option of retaining the leasing service to sell a lease, in contrast to agreements which require the client to use the services of the leasing service and thereby create an interest. Compare Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981), with Philip A. Kulin, 53 IBLA 57 (1981); Geosearch, Inc., 48 IBLA 190 (1980). In other words, an interest arises if the applicant has given a third party the exclusive right to market his lease; however, if the applicant had the option to market his lease elsewhere, the leasing service did not have a claim to an advantage or benefit nor a right to share in lease proceeds. Haas argued that he had the option of allowing his filing service to advance the first year's rental, so that the "security interest" would only arise if Haas chose to use the filing service's funds for payment of the first year's rent and failed to reimburse the service for the rental advanced.

Thus, at the crucial time, i.e., when the filing was made, no security interest existed in Haas. Whether or not one did arise was dependent upon the election of the applicant, after the drawing, to have the filing service tender the first year's rent. In the instant case, at the time the subject filings were made, FLFSC was already vested with its security interest in the proceeds of future sales. The fact that, had appellants accelerated their principal and interest payments prior to the sale of the leases, FLFSC's claim on the proceeds of the sale would have ended, does not alter the fundamental fact that at the time the applications were filed, such a claim existed. Unlike the interest of the filing service in Haas, which could arise only after the filing period, FLFSC's interest pre-existed the filing of the applications and thus was required to be disclosed in the applications

as an existing interest in the applications under 43 CFR 3100.0-5(b) (1981). Failing to do this, the applications were properly rejected.

The Haas decision also refutes appellants' contention that BLM must show both (1) a right to share in lease proceeds and (2) some other "advantage or benefit." Although we found that the leasing service had no right to share in the proceeds of the lease, we still had to consider whether it had a prospective or future claim to an advantage or benefit. In doing so, we reviewed the facts of the DeBord case to illustrate what might constitute an advantage or benefit, although that particular element of the definition of interest had not been discussed or applied in DeBord:

With respect to a prospective or future claim, 43 CFR 3100.0-5(b) provides that it must be a claim "to an advantage or benefit from the lease." In this case we cannot find that FEC derives any advantage or benefit from a lease issued pursuant to an offer filed under the service agreement. FEC is merely entitled to reimbursement for the amount of the rental advanced on appellant's behalf. The agreement provides only that a lease will be security for that payment. This case may be distinguished from Wayne E. DeBord, supra, in that in DeBord the agreement called for reimbursement with interest from the proceeds of the sale of any lease issued. In addition, the pooling agreement in DeBord provided that proceeds from the lease of any member could be used by a certain individual to reduce or discharge the debt owed to him by all the members for services rendered in connection with all the offers and leases involved. [Emphasis in original.]

Herein, FEC is not seeking an advantage or benefit from a lease. FEC is providing a service to its customers. If a customer wins a lease in a drawing and is unavailable to pay the lease rental for whatever reason (out of town on business in this case), FEC will advance the rental. The agreement does not mention interest on the advanced funds, or any fee or commission for such service. [Emphasis added.]

Accordingly, at the time appellant's DEC was filed FEC did not have an "interest" within the meaning of 43 CFR 3100.0-5(b), for which disclosure would be required under 43 CFR 3102.7.

Id. at 251. The transaction in the DeBord case, as interpreted in Haas, contained a number of advantages or benefits which constituted independent bases for concluding that an interest within the meaning of the regulation had arisen. Nevertheless, we quite plainly held in DeBord itself that the interest arose because of Landis' right to be reimbursed from the proceeds of a lease. 8/ The dispositive factor in Haas, however, was that Haas had \_\_\_\_\_

8/ It should be noted that in the original DeBord decision, the emphasized language did not include the phrase "with interest." When the Board referred to the DeBord decision in Haas, this phrase was emphasized in order to illustrate an additional "advantage or benefit" that appeared in the DeBord case that was not present in the Haas case.

the option to preclude any interest in the proceeds from arising either by tendering the rental himself or by reimbursing the service agent for the money advanced for rental.

Based on our analysis of DeBord in Haas, the parties attempt to establish whether FLFSC has additional advantages or benefits. Such a finding is not necessary, however, because it overlooks the simple fact that an interest exists by virtue of FLFSC's right to share in the proceeds of a lease. No other advantage or benefit need be shown.

We do not mean to suggest that BLM erred in its analysis of appellants' arrangements in terms of advantages or benefits. Appellants' arrangements bear significant similarity to those in DeBord that we identified as advantages in Haas. In DeBord, like the instant appeals, an advantage arises because lease proceeds will be used to repay interest and service fees in addition to any money that the services may have advanced to BLM on appellants' behalf. The fact that this agreement creating an interest is embodied in a promissory note makes no difference; an interest within the regulation may be based on "any agreement or understanding," without regard to what form that agreement may take.

Appellants suggest that FLFSC is merely imposing upon a pre-existing debt "what is in today's economy reasonable interest rates in order to be repaid for the use of time and expenses incurred in filing" 9/ (Statement of Reasons at 34). Interest charges, however, involve not only the cost of money per se, but entail a return to the lender as a profit. FLFSC's return is secured, as a contractual right, by any partnership proceeds from sale of a lease. Compared to a totally unsecured creditor who has only a general right of repayment, 10/ FLFSC is clearly benefitted by its contractual claim to part of the proceeds.

Appellants contend that their filing did not violate the prohibition on multiple filings because "[b]y signing the partnership or joint venture agreement in subscribing to the programs, all partners [or] joint venturers

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9/ With respect to the Shasta and Taylor agreements, which require mandatory principal reduction payments, it is difficult to see how these payments can compensate FLFSC for expenses already incurred in filing applications since, by the terms of the agreements, all monies obtained under the mandatory principal reduction provision are used for additional filings on behalf of the partnerships.

10/ Contrary to the assumptions of the parties to this appeal, nothing in our decision in Warren R. Haas, *supra*, described the security interest therein as a mere general right of repayment. While we recognized that the agreement in Haas did not constitute a security interest as that term is defined in Article 9 of the Uniform Commercial Code (*id.* at 248, n.3), nothing in our discussion implied that a contractual right of repayment from proceeds was not an "interest" in the application as that term is defined in the regulations. The key consideration was that in Haas the interest could not arise until after the filing and, thus, did not violate the rules mandating disclosure of all interested parties.

waived the fiduciary duties of all other general partners thereby circumventing the multiple filing prohibition" (Statement of Reasons at 48). This argument, however, is misdirected. The regulation prohibiting multiple filings was violated because FLFSC had an interest in more than one application per parcel, since more than one client filed for a parcel pursuant to a service agreement and promissory note giving FLFSC an interest in each application. The regulation would serve no purpose if it could be circumvented merely by the agreement of those who are party to a multiple filing scheme. Although the beneficiary of a fiduciary relationship may sometimes be able to disavow its interest so that no multiple filing would occur, 11/ that did not happen in these appeals. In order to have such effect, the waiver must renounce the interest that would arise from the competing applications. The only waiver that could have been effective in these cases would have to consist of a disclaimer of FLFSC's interest in the lease arising from the note, i.e., FLFSC would have to waive that provision of the note entitling it to a share of the proceeds of the lease. Cf. Lowey v. Watt, supra. Appellants' argument must fail because FLFSC had not waived or disclaimed its interest in the applications from which the multiple filings arise before these applications had been filed and winners selected. Indeed, it has not done so to date.

Appellants contend that the business arrangements established by the partnership and the joint venture agreements and the service agreements with FLFC/FLFSC are the type of innovative financing arrangements encouraged by BLM in a document dated February 15, 1984, entitled "Determination of Effects: Proposed Amendment to Regulations Governing the Bureau of Land Management Simultaneous Oil and Gas Leasing Program by Requiring Advance Rental Payment." The matter addressed by that document bears no relevance to the instant appeals.

At the time appellants filed their applications, only an applicant whose application had been selected was required to submit advance rental for the parcel. The document cited by appellants involved a proposed amendment to the regulations to require all applicants to submit the advance first year's rental with their applications in addition to filing fees, an especially heavy financial burden which appellants were not required to meet when their applications were submitted. Despite the fact that the Department referred to the need for innovative financing arrangements to address this problem, which is not pertinent to this appeal, nothing in the text of the document cited by appellants even remotely supports the conclusion that a filing service may lawfully take an interest in its client's applications and file more than one application per parcel. No change has been made in the regulations to legitimize the nature of the relationships created here. 12/

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11/ An example of such a waiver is presented in Raymond J. Stipek, 74 I.D. 57 (1967), where a corporation disclaimed any interest in oil and gas leases obtained by its officers that would have arisen from their fiduciary duties to the corporation. The officers filed applications for the same parcel; the corporation did not.

12/ Even if the regulations had been changed, such a change would not operate

We note that intervenors (see note 1) have asserted that appellants' applications should be rejected because appellants used an improper address on the applications. In light of our disposition of the above questions we need not decide whether the addresses used by appellants do, in fact, violate 43 CFR 3112.2-1(d) (1981). But see Margaret G. Pascale, 83 IBLA 268 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified, and request for oral argument is denied.

Gail M. Frazier  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge

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fn. 12 (continued)

to retroactively validate appellants' applications. Irma Spear, 42 IBLA 360 (1981); see generally Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

