

CHAMPLIN PETROLEUM CO.

IBLA 86-178

Decided October 21, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, which revoked in its entirety oil and gas lease NM 58625.

Reversed.

1. Oil and Gas Leases: Cancellation

It is improper to cancel an oil and gas lease where BLM had previously approved the assignment of the lease, the assignees were bona fide purchasers, and it has not been shown that the lease was issued in violation of any statutory or regulatory provision.

APPEARANCES: William A. Keefe, Esq., Staff Attorney, Champlin Petroleum Company.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Champlin Petroleum Company (Champlin), Raymond Chorney (Chorney), and Norcen Energy, Inc. (Norcen), appeal a decision dated October 23, 1985, issued by the New Mexico State Office, Bureau of Land Management (BLM), which revoked, in its entirety, oil and gas lease NM 58625 "pursuant to Secretarial Directive of December 30, 1982, which prohibits mineral leasing in BLM wilderness study areas." While BLM's decision does not so state, its decision was apparently based on Instruction Memorandum No. 87-237 dated January 7, 1983, which 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."

In the November 1982 simultaneous oil and gas leasing program for available lands in New Mexico, the application of Rich Partnership received first priority for parcel 144. Oil and gas lease NM 55844 was issued for the 1,360.91 acres in the parcel to Rich Partnership, effective May 1, 1983. By decision dated April 18, 1984, BLM stated that, effective September 28, 1983, oil and gas lease NM 55844 was unitized in part. The committed land in the base lease was described as sec. 14, NW 1/2 NW 1/4, T. 22 N., R. 10 W., New Mexico Principal Meridian (NMPM), San Juan County, containing 40 acres. The noncommitted land, which was segregated and assigned lease number NM 58625, was described as follows:

Item 2 - NM 58625T. 22 N., R. 10 W., NMPM, San Juan County

Sec. 3: Lots 3, 4, S 1/2 NW 1/4, SW 1/4

Sec. 4: Lots 1, 2, S 1/2 NE 1/4, SE 1/4

Sec. 8: NW 1/4, SE 1/4

Sec. 9: W 1/2

Sec. 17: NE 1/4 NE 1/4

1,320.91 acres

The April 18, 1984, decision further states that "[s]egregated lease NM 58625, shall continue in force and effect for its original term, but for not less than two years from September 28, 1983, and so long thereafter as oil or gas is produced in paying quantities."

On October 1, 1984, an assignment of lease NM 58625 from Rich Partnership to Champlin, Chorney, and Norcen was approved by BLM. The assignment bears the execution date of June 18, 1984, by Rich Partnership. The requests for approval by Champlin, Chorney, and Norcen show execution dates of August 28, August 20, and August 8, 1984, respectively.

In the statement of reasons for appeal, appellants argue that no provision of any statute or regulation was violated by the issuance of the lease. Appellants note that Instruction Memorandum No. 82-237 apparently was the authorization relied upon by BLM in revoking lease NM 58625 and contend that instruction memoranda are not binding on the general public.

Appellants further argue that all appellants are bona fide purchasers whose interests in lease NM 58625 cannot be revoked. Specifically, they state:

Appellants acquired their interests in Lease NM58625 in good faith for a valuable consideration and without any notice of any violation of statutes or regulations in the issuance of said Lease. The original lessee, Rich Partnership, assigned the lease to Champlin, Chorney and Norcen on June 18, 1984, and was paid valuable consideration in exchange therefor by check dated July 13, 1984. The assignment was transmitted to BLM for approval and such approval was given, effective October 1, 1984. Appellants checked the lease file in the BLM Office in Santa Fe, New Mexico concerning this Lease prior to paying such consideration and found nothing to indicate other than that Lease NM58625 had been issued in the normal course of business to Rich Partnership. The lease file did not reveal that part of the area covered by said Lease is within any Wilderness Study Area. Appellants thus argue that they had no notice, constructive or otherwise, that any portion of Lease NM58625 was within any Wilderness Study Area when

they purchased the Lease from Rich Partnership. Appellants further argue that they had no duty to search beyond said records \* \* \*. As bona fide purchasers, Champlin, Chorney and Norcen are entitled to assume BLM properly discharged its duties in the issuance of said Lease \* \* \*.

No response to appellants' statement of reasons was filed by BLM.

[1] Appellant's argue that no statute or regulation was violated by issuance of the lease in question. We agree. BLM instruction memoranda are binding neither on this Board nor on the general public. Emery Energy Inc. (On Reconsideration), 67 IBLA 260, 261 (1982). The sole authority relied upon for cancellation of lease NM 58625 was apparently Instruction Memorandum No. 82-237. Nothing in the record shows any violation of any statute or regulation in the issuance of the lease.

Appellants also argue that they are bona fide purchasers. One claiming to be a bona fide purchaser under the bona fide purchaser amendment to the Mineral Leasing Act, 30 U.S.C. § 184(h)(2) (1982), must have acquired his interest in good faith for valuable consideration, and without notice of violation of Departmental regulations. Winkler v. Andrus, 614 F.2d 707, 711 (10th Cir. 1980). Assignees who seek to qualify as bona fide purchasers are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment; however, assignees are not required to go outside the records kept in the BLM state office relating to the particular parcel of land assigned. Id. at 712, 713. For the purpose of determining whether an assignee of a Federal oil and gas lease was a bona fide purchaser within the meaning of the Mineral Leasing Act, it is the date of assignment which is critical as to the bona fides of the assignee. Id. at 713.

In the present situation, there is no evidence that appellants did not acquire their interests in good faith for valuable consideration. As to the question of notice, there is no indication that on June 18, 1984, the date of assignment, the case file indicated that the lands encompassed by lease NM 58625 were included in a BLM wilderness study area. Nor is there any indication that the case file contained any reference to such inclusion as late as October 1, 1984, the date BLM approved the assignment. We therefore conclude appellants satisfied the requirements of bona fide purchasers.

In Beverly M. Harris, 78 IBLA 251 (1984), BLM revoked a portion of an assigned lease, basing its revocation on BLM policy as reflected in BLM Instruction Memorandum No. 82-237. The Board held that such action was improper where there was no showing the lease was issued in violation of a statute or regulation and where the assignees were good faith purchasers. Our holding in Harris is applicable to this case. We therefore conclude BLM's decision of October 25, 1985, revoking oil and gas lease NM 58625 was in error.

Accordingly, 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 New Mexico State Office is reversed.

John H. Kelly  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

