

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 67473 Acq.

Set aside and remanded.

1. Oil and Gas Leases: Future and Fractional Interest Leases--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

In those cases where the mineral interest in the land will vest in the United States at some future date, a future interest oil and gas lease offer may be filed by a party qualified to file such an offer. When a noncompetitive oil and gas lease offer filed subsequent to vesting is rejected because an oil and gas lease had been issued to an offeror who had filed an offer prior to the date the minerals had vested in the United States, it must be shown that the offeror who was prior in time was qualified to file a future interest oil and gas lease offer. If the record does not contain evidence the prior offeror was so qualified, the decision rejecting the second offer will be set aside and the case file remanded to BLM for a determination regarding the proper qualification of the first offeror, and, if necessary, cancellation of the lease issued to the first offeror.

APPEARANCES: F. F. Schell, Lorraine Schell, Frances Stephens, and Marvin Stephens, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

F. F. Schell, Lorraine Schell, Frances Stephens, and Marvin Stephens (appellants) appeal from a decision, dated January 8, 1986, issued by the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer M 67473 Acq.

On November 13, 1985, appellants filed oil and gas lease offer M 67473 Acq., for the S 1/2 SE 1/4, sec. 3. T. 13 N., R. 26 E., Montana Meridian,

Petroleum County, Montana. In its January 8, 1986, decision BLM rejected appellants' offer to lease in its entirety because the land sought by appellants was included in an oil and gas lease which had been issued to an offeror having priority in time of filing. The lease offer which BLM found to have priority in time of filing, M 67471 Acq., had been filed by Donald McSweyn on November 12, 1985, and was issued effective January 1, 1986.

In their statement of reasons for appeal, appellants state:

Prior filing M67471 was on November 12, 1985 and at that time we were the parties who owned all of the present rights in the lands as mineral fee owners and do [sic] so until November 13, 1985, thus our November 13, 1985 filing has to be considered timely per 3111.3-1. M67471 has to be considered a future interest lease of [sic] November 12, 1985 filing is considered.

The case file contains two deeds to the land encompassed by lease offers M 67471 Acq. and M 67473 Acq. One is a warranty deed dated February 23, 1938, from Odillo Rogge to the United States. The other is a quitclaim deed from Petroleum County, Montana, to Odillo Rogge. ^{1/} A BLM memorandum dated January 3, 1969, interprets the effect of the two deeds as: "All minerals reserved by Government's grantor until Nov. 12, 1985, subject to a perpetual reservation of 2 1/2 percent royalty in all minerals by Petroleum County."

The regulation cited by appellants, 43 CFR 3111.3-1, concerns the requirements for future interest offers and provides:

(a) A noncompetitive lease for future interest in lands not known to contain mineral deposits may be issued if in the public interest.

(b) A noncompetitive future interest lease shall be issued only to an offeror who owns all or substantially all of the present operating rights in the lands, either as an operator holding

^{1/} The warranty deed contains the following reservation:

"Reserving unto the grantor, his heirs, and assigns, all oil, gas, coal and other minerals that may be produced from said premises for a period of 50 years from November 13, 1935, and full rights to go upon the above mentioned premises and develop such minerals during the above mentioned period upon payment of damages to surface rights.

"TOGETHER with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining."

The quit claim deed, contains the following exception:

"Reserving unto the grantor herein and to its successors and assigns, two and one-half (2 1/2) per cent of all of the oil and/or gas or other minerals that may be hereafter produced from the above described premises delivered free of cost in the tanks, pipe lines or bins serving said premises."

such rights, or as mineral fee owner, as lessee or another party in interest.

(c) An offer made on the current form approved by the Director for a future interest lease may be filed at any time prior to the date of vesting in the United States of the present interest in the minerals. Upon the vesting in the United States of the present possessory interest in the minerals, all such offers for future interest leases pending at the time shall be considered for lease, retaining priority for consideration, as of the original date of filing; and thereafter only offers for present interest shall be considered; or at the Director's discretion, such offers may be included as a simultaneous filing for such lands under Subpart 3112 of this title.

In its decision BLM has apparently made its determination on the basis of first in time of filing, first in priority, and issued a lease to an offeror who filed prior to appellants' filing. However, appellants have raised the question of whether a future interest offer had been properly made by the first priority offeror.

Under the terms of the warranty deed dated February 23, 1938, minerals in the lands covered by both lease offers, M 67471 Acq. and M 67473 Acq., had been reserved by Odillo Rogge, the Government's grantor, "for a period of 50 years from November 13, 1935." Thus, the lands described in both lease offers were unavailable for leasing, until November 13, 1985. Any lease offer filed prior to that date must qualify as a future interest offer pursuant to 43 CFR 3111.3, and be made by a party who holds those rights described in 43 CFR 3111.3(b).

The regulation, 43 CFR 3111.3-1(b) and (c), states that an offer may be filed prior to the date of vesting of the present interest in the minerals in the United States and that a noncompetitive future interest lease may be issued only to a future interest offeror who owns all or substantially all of the present operating rights in the lands either as an operator holding such rights, or as mineral fee owner, as lessee, or party-in-interest. Such offeror must, as a part of his offer, submit that information called for by 43 CFR 3111.3-2.

Appellants have alleged that on November 12, 1985, "we were the parties who owned all of the present rights in the lands as mineral fee owners." However, appellants filed their lease offer after the interest in the minerals had vested in the United States. Thus, the offer filed by appellants cannot be construed to be a future interest lease offer. Notwithstanding this fact, the case file contains nothing which would identify Donald McSweyn as having qualified to file a future interest lease offer pursuant to 43 CFR 3111.3-1, when he filed lease offer M 67471 Acq., on November 12, 1985.

[1] There being no documentation in the present record which would establish McSweyn filed a future interest lease offer, there remains the

question whether McSweyn's lease was improperly issued, because the mineral interests in the lands sought for leasing were not vested in the United States at the time of his lease offer. See Georgette B. Lee, 1 IBLA 263 (1971). The BLM decision now before us is properly set aside and the case file remanded for reexamination of that question. Douglas A. Pugh, 77 IBLA 126 (1983); Douglas H. Wilson, 58 IBLA 115 (1981). The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. See generally Fortune Oil Co., 69 IBLA 13 (1982). If it is found that lease M 67471 Acq. was improperly issued because McSweyn was not qualified to file a future interest lease offer, such steps should be undertaken.

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 Montana State Office rejecting appellants' oil and gas lease offer is set aside and the matter remanded for further action consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

