

JOAN CHORNEY (ON RECONSIDERATION)

IBLA 87-462

Decided June 5, 1989

Petition for reconsideration of the Board's decision in Joan Chorney, 108 IBLA 43 (1989), on appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling oil and gas lease W-100165.

Petition for reconsideration granted; prior Board decision vacated, and decision of BLM affirmed in part and reversed in part and remanded.

1. Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to

A decision to cancel an oil and gas lease will be affirmed on appeal to the extent it is shown that the lease was issued through administrative error for lands within a wilderness study area which the Department was barred by statute from leasing for oil and gas. The statutory protection afforded a bona fide purchaser of a lease under 30 U.S.C. | 184(h)(2) (1982) does not bar cancellation of a lease erroneously issued for lands which the Department was prohibited from leasing by Act of Congress.

Joan Chorney, 108 IBLA 43 (1989), vacated.

APPEARANCES: Joan Chorney, pro se; William R. Murray, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Bureau of Land Management (BLM), acting by and through the Solicitor, has petitioned the Board for reconsideration of our decision in this case, cited as Joan Chorney, 108 IBLA 43 (1989). In that decision we reversed the decision of BLM cancelling appellant's oil and gas lease because the lease was erroneously issued for lands within a wilderness study area (WSA). While recognizing that the decision must be sustained "if the Department was legally precluded by Act of Congress from issuing an oil and gas lease for the lands in the WSA," we noted that:

The difficulty with the BLM decision is the failure to cite any relevant statutory authority for the prohibition of leasing within a WSA at the time appellant's lease was issued. It is true

that The Department of the Interior and Related Agencies Appropriations Act for 1984, P.L. 98-146, 97 Stat. 919, 951-52, precludes the expenditure of appropriated funds to issue leases within WSA's. However, the lease at issue in this appeal was issued in June 1986 and not in fiscal 1984. Research of the Appropriations Act for fiscal 1986 and other mineral leasing legislation fails to disclose the existence of a prohibition which was effective at that time.

108 IBLA at 45 (footnotes omitted). In the absence of a showing that the lease issued in violation of any statutory or regulatory prohibition, we held it was improper to cancel the lease.

In the petition for reconsideration, BLM has shown that there was in fact a statutory prohibition of leasing of lands within a WSA in effect at the time appellant's lease was issued. Authorization of funding for the Department was provided by The Department of the Interior and Related Agencies Appropriations Act, 1986, P.L. 99-190, § 101(d), 99 Stat. 1185, 1224. Section 307 of that Act provided in pertinent part that: "[N]one of the funds provided in this Act shall be obligated for any aspect of the processing or issuance of permits or leases pertaining to exploration for or development of * * * oil, gas * * * on Federal lands * * * within Bureau of Land Management wilderness study areas * * *." 99 Stat. 1263-64. In light of this provision of the statute which previously eluded our attention and the resulting absence of authority for BLM to issue appellant's oil and gas lease, BLM has requested that the Board grant the petition for reconsideration, reverse its prior decision in this case that BLM was not precluded by law from issuing an oil and gas lease for lands within the WSA during fiscal year 1986, and affirm the decision of BLM to cancel lease W-100165. Appellant has not responded to the petition for reconsideration.

A petition for reconsideration may be granted in extraordinary circumstances where good reason is shown therefor. 43 CFR 4.21(c); 43 CFR 4.403. In this case, counsel for BLM has shown an error in the fundamental premise under which our prior decision was issued. Under the circumstances, we are compelled to find that good cause for reconsideration has been shown and, hence, the petition is granted.

[1] In our earlier decision in this case we discussed in some detail the authority of the Secretary to cancel a lease issued contrary to law through administrative error:

As a threshold matter, we note that the Secretary of the Interior has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Hanes M. Dawson, 101 IBLA 315 (1988); D. M. Yates, 74 IBLA 159 (1983); Fortune Oil Co., 69 IBLA 13 (1982). As the Board stated in D. M. Yates, supra at page 161:

Appellant contends that Boesche v. Udall, supra, cited by BLM as authority for the cancellation of his lease

* * * does not in fact authorize such a postlease cancellation. Boesche v. Udall, supra, however, observes that whereas section 31 of MLA [Mineral Leasing Act, as amended, 30 U.S.C. | 188 (1982)] reaches only cancellations based on postlease events, it leaves unaffected the Secretary's traditional administrative authority to cancel on the basis of the prelease factors. In fact, Boesche clearly states that the Secretary should have the power to correct his own errors. Boesche v. Udall, supra, at 478.

See also Lee Oil Properties, Inc., 85 IBLA 287, 290 n.2 (1985).

Appellant asserts that BLM's authority to cancel oil and gas leases is limited by the bona fide purchaser provision set forth at 30 U.S.C. | 184(h)(2) (1982). That statute provides in pertinent part that:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, [or] interest in a lease, * * * which lease [or] interest * * * was acquired or held by a qualified person, association or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease [or] interest * * * was acquired * * * may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

This provision provides protection to "good faith purchasers whose predecessors in interest were in violation of some provision of the act, such as acreage limitation provisions, and not for protection of purchasers of leases erroneously issued for lands not subject to noncompetitive leasing." Oil Resources, Inc., 14 IBLA 333, 337 n.1 (1974). Thus, the Board has consistently held that where the lease is subject to cancellation because BLM lacked authority to issue it, the bona fide purchaser protection afforded by 30 U.S.C. | 184(h)(2) (1982) does not apply. See Hanes M. Dawson, supra (lands within a designated Wilderness Area not subject to leasing); Lee Oil Properties, supra (lands leased noncompetitively when only subject to competitive leasing); William L. Ahls, 85 IBLA 66 (1985) (lands leased under Mineral Leasing Act of 1920, when only subject to leasing under the Right-of-Way Leasing Act of 1930); Oil Resources Inc., supra (lands within a wildlife refuge not subject to leasing).

108 IBLA at 44-45. Thus, we concluded in our prior decision that "if the Department was legally precluded by Act of Congress from issuing an oil and gas lease for the lands in the WSA, the decision of BLM must be sustained regardless of the fact that appellant may have qualified as a bona fide

purchaser." 108 IBLA at 45. Accordingly, we must vacate our prior decision in this matter and affirm the decision of BLM to the extent the lands embraced in appellant's lease were located within a WSA at the time of lease issuance.

Review of the master title plat in the case file discloses that the western portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of section 25 embraced in appellant's oil and gas lease is located within the boundary of the Sheep Mountain WSA. It follows that the decision of BLM must be affirmed to the extent the lands embraced in the lease are situated within the WSA and reversed to the extent the leased lands are located outside the WSA. We will remand the case to BLM to prepare a description of those lands under lease not within the WSA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the prior decision of the Board in this case is vacated, the decision of BLM is affirmed in part and reversed in part, and the case is remanded to BLM for further action consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member