

WILFRED PLOMIS

IBLA 88-29

Decided July 5, 1989

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer ES 35432.

Affirmed.

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

An oil and gas lease offer for acquired land located in the State of Michigan, which was filed on Oct. 18, 1985, is properly rejected due to premature filing where, in a warranty deed dated Oct. 18, 1935, passing title to the surface estate to the United States, the minerals were reserved in the grantor "until Fifty (50) years from date of this instrument," since the minerals did not vest in the United States until Oct. 19, 1985, according to the general rule applicable in Michigan, that when computing the time within which an action is to take place, the first day is excluded and the last day included.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant; William R. Murray, Office of the Solicitor, Division of Energy and Resources, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Wilfred Plomis has appealed from an August 20, 1987, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting acquired lands oil and gas lease offer ES 35432. The basis for BLM's rejection was its conclusion that the United States did not own the oil and gas on the date that Plomis filed his lease offer.

Plomis filed the offer on October 18, 1985, for 320 acres of land located in the Manistee National Forest and described as the NE<sup>^</sup> of sec. 33 and the NW<sup>^</sup> of sec. 34, T. 17 N., R. 12 W., Michigan Meridian, Lake County,

Michigan. That land had been acquired by the United States by warranty deed dated October 18, 1935, from one Homer M. Lee. The deed contained the following reservation:

RESERVING, ALSO, from the operation of this conveyance and unto said party of the first part hereto, his heirs, executors, administrators and assigns, all coal, oil, gas, salt and salt brine in, upon and under the lands herein mentioned and hereby conveyed, together with the right to mine, drill, remove and operate for same until Fifty (50) years from date of this instrument, and not thereafter, and after Fifty (50) Years from date of this instrument, the said coal, oil, gas, salt and salt brine and all rights thereunder shall become the property of the party of the second part hereto, and its assigns \* \* \*. [Emphasis added.]

(Warranty Deed at 2).

On March 17, 1987, BLM issued a decision rejecting Plomis' offer because, "The lease offer was filed prematurely on October 18, 1985. The minerals in the lands applied for did not vest to the United States until 12:01 A.M. October 19, 1985." 1/ Thereafter, by petition dated March 25, 1987, Plomis requested that BLM reconsider its decision of March 17, 1987, and hold that decision in abeyance pending reconsideration. 2/ By decision dated April 13, 1987, BLM granted the petition.

Following receipt of legal advice from the Office of the Solicitor, BLM, on August 20, 1987, again rejected Plomis' lease offer on the basis that it had been filed before the mineral rights had vested in the United States. Plomis timely appealed that decision to this Board.

The only issue raised in the appeal is when the mineral rights reserved in the October 18, 1935, deed vested in the United States. Pursuant to the regulations at 43 CFR 3111.3 (see note 1 supra), if appellant filed his offer prior to vesting in the United States, his offer must be rejected.

In his statement of reasons (SOR), appellant argues that because the surface rights vested in the United States on October 18, 1935, the mineral rights must necessarily have vested on October 18, 1985, and that the "deed specifically states that the mineral reservation is for fifty years from the

1/ Pursuant to 43 CFR 3111.3-1(c), an offer filed prior to the time the minerals vest in the United States must be considered a future interest lease offer. A future interest lease may be issued only to an offeror who owns all or substantially all of the present operating rights in the land. 43 CFR 3111.3-1(b). The record contains no evidence or allegation that appellant qualifies for a future interest lease. See F. F. Schell, 100 IBLA 296, 298 (1987).

2/ The basis for Plomis' petition was that by letter dated Mar. 13, 1987, he had requested that the Forest Service, United States Department of Agriculture, reconsider its interpretation of the warranty deed, which had served as the basis for BLM's action.

date of the instrument, not fifty years from the day following the date of execution of the instrument" (SOR at 5, emphasis in original.) Appellant's argument is based in part upon a June 9, 1987, memorandum from the Assistant Solicitor, Onshore Minerals, to the State Director, Eastern States Office, BLM, which reads:

The deed was executed on October 18, 1935, on which day the United States owned the surface and the grantor owned the minerals for a period of 50 years from that date. The date of execution should be excluded from the reckoning. The mineral reservation then expired on October 18, 1985, and vested in the United States on October 19, 1985.

Appellant interprets that statement to mean the following: "BLM acknowledges that title to the surface vested in the United States on the date of execution of the deed, while continuing to insist that the 50-year term of the mineral reservation did not begin running until the following day" (Response at 1-2).

Appellant attempts to inject an inconsistency into BLM's analysis of the reservation. However, the question is how to interpret the reservation, *i.e.*, on what day did the 50-year period begin to run. The fact that the United States owned the surface on October 18, 1935, and the grantor owned the minerals, does not automatically require that the computation of the 50-year period include the day of October 18, 1935. In its answer, BLM argues that the general rule for computing time from a particular day is to exclude the first day and include the last day, unless the parties clearly had another intent. BLM asserts that there is no indication that the parties to the deed in question desired to alter that general rule.

Departmental decisions have held that the applicable law to be employed in determining when a mineral rights reservation in a deed to the United States expires, thereby vesting those rights in the United States, is a matter of the law of the State where the land is located. Jacob N. Wasserman, 74 I.D. 173, 175 (1967); Curtis E. Thompson, 74 I.D. 168, 170 (1967). In this case, the land is located in the State of Michigan.

[1] The general rule for computation of time within which an action is to take place is to exclude the first day and include the last day, unless the parties have clearly expressed another intention. 86 C.J.S. Time | 13(1) (1954); 74 Am. Jur. 2d Time | 15 (1974). While the courts have come to various conclusions in their construction of terms denoting time, the general rule is usually applicable when construing the use of the word "from." <sup>3/</sup> Courts have held "'from' to be a term of exclusion; hence when

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<sup>3/</sup> Although appellant contends the words "until" and "after," used in the reservation, are the "two primary operative words," he admits those words have no fixed meaning and that their meanings vary based on the context in which they are used, at times having an exclusive meaning and at others, inclusive (SOR at 5). Appellant does not specifically analyze the use of

a period of time is to be reckoned 'from' a certain day, unless there is something in the context or circumstances to indicate a different intention, the day from which the time is to be reckoned will be excluded from the computation." 74 Am. Jur. 2d Time § 21 (1974) (footnotes omitted). Although there is some support for a different result when a document creates an estate or interest, other courts hold in the same circumstances that the ordinary meaning of the words "from this date" and the general rule regarding their interpretation are to be followed. 74 Am. Jur. 2d Time | 22 (1974). 4/

The parties do not cite, nor have we been able to find, a Michigan case construing an instrument creating an estate or interest. However, it appears that in other circumstances Michigan applies the general rule regarding computation of time. In Gorham v. Wing, 10 Mich. 486, 496 (1862), the Supreme Court of Michigan interpreted the language of a redemption statute providing for redemption "within one year from the time when such sale shall have been made." It stated:

When time is to be computed from the time of an act done, we think the more reasonable rule is that the day on which the act is done is to be excluded from the computation \* \* \*. This rule would have given the whole of the twenty-second day of December, 1848, for redemption [sale held December 22, 1847], and, until that day had expired, the power of the marshal to execute the deed did not exist. [Emphasis in original.]

In addition, in Hallock v. Income Guaranty Co., 270 Mich. 448, 259 N.W. 133 (1935), that same court cited the general rule in holding that a disability insurance policy providing for coverage until a date certain included that date in its purview. The court stated that "the date from which the contract runs is excluded, and the last date mentioned is included, in the calculation \* \* \*." 270 Mich. \_\_\_, 259 N.W. at 134.

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fn. 3 (continued)

those words in the reservation, rather he continues by concluding that Oct. 18, 1985, should be excluded from the reservation. We disagree with appellant that those two words are the "operative words." The key word, we believe, is "from."

4/ One of the cases cited in the treatise in support of the position that in the creation of an estate or interest the date named is to be included

is Taylor v. Brown, 147 U.S. 640 (1883). The Assistant Solicitor, in his June 9, 1987, memorandum, acknowledges the existence of this case in which the Court included the date of an Indian allotment patent in its calculation of the length of the 5-year statutory period from issuance of the patent during which alienation was prohibited. In Taylor, Chief Justice Fuller recognized the rule of excluding the terminus a quo, but stated that the terminus a quo "may be included when necessary to give effect to the obvious intent." Id. at 644. The Court's conclusion was based on its interpretation of the intent of the statute.

Appellant cites the Board's decision in F. F. Schell, *supra*, arguing that it should control the outcome of this case because the Board construed a mineral reservation "for a period of 50 years from November 13, 1985" and "found that the minerals became available for leasing on November 13, 1935" (SOR at 6). BLM, in its answer, disputes that the Board actually made such a finding in Schell. In that case, while we implied that the mineral rights vested in the United States on November 13, 1985, we did not expressly so hold, nor did we undertake any analysis of the date of vesting. Furthermore, based on our review of the law in resolving this appeal, it is clear that the applicable law in Schell would be the law of the State of Montana, which we did not discuss in that case. Thus, we conclude that Schell does not control the outcome of the present case.

Appellant has provided no compelling rationale for deviating from the general rule relating to computation of time, as applied by BLM. BLM's interpretation finds support in the law of the State of Michigan. Therefore, we will not disturb BLM's conclusion that the subject mineral rights vested in the United States in the first moment of October 19, 1985. Consequently, appellant's oil and gas lease offer was properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge