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Pitfalls in Federal Oil and Gas Leasing Practice

Terry N. Fiske

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PITFALLS IN FEDERAL OIL AND GAS LEASING PRACTICE

Terry N. Fiske
Davis, Graham & Stubbs
Denver, Colorado

PUBLIC LANDS MINERAL LEASING:
ISSUES AND DIRECTIONS

A Short Course Sponsored by the
Natural Resources Law Center
University of Colorado School of Law

June 10-11, 1985
I. The Federal Leasing System.

A. Statutory authority.


B. Leasing categories and procedures. 43 C.F.R., Group 3100.

1. Competitive bidding is utilized for lands within any known geological structure (KGS) of a producing oil or gas field, and certain other lands. 43 C.F.R., Parts 3100 and 3120; Law of Fed. Oil and Gas Leases, Chap. 7 (Rocky Mt. Min. L. Found. 1985).

2. Most other lands are leased noncompetitively. 43 C.F.R., Parts 3100 and 3110.

   a. Simultaneous filing is utilized for non-KGS lands which were subject to prior federal leases which were cancelled, terminated, relinquished or expired, and other designated lands. 43 C.F.R., Subpart 3112; Law of Fed. Oil and Gas Leases, Chap. 6 (Rocky Mt. Min. L. Found. 1985).

   b. Over-the-counter filing is utilized for non-KGS lands which have never been subject to a federal lease, or for which no applications are received when offered in a simultaneous filing procedure. 43 C.F.R., Subpart
3111 and § 3112.7; Law of Fed. Oil and Gas Leases, Chap. 5 (Rocky Mt. Min. L. Found. 1985).

c. Acquired lands leasing requires consent of surface managing agency, e.g., military reservations, whereas leasing of public domain land administered by another agency, e.g., national forests, requires only "consultation" with that agency.

43 C.F.R. § 3101.7.

d. Leasing of some rights-of-way is pursuant to special procedures.

43 C.F.R., § 3109.1.

C. Basic sources of most "pitfalls."

1. Lack of familiarity with applicable statutes and regulations; carelessness.

2. Inadequate planning or allowance for time.

II. Pitfalls in Lease Acquisition.

A. Determination of land status availability and third party interests. Law of Fed. Oil and Gas Leases, Chaps. II and 20 (Rocky Mt. Min. L. Found. 1985); Lear, Lurking Title Problems: Snares for the Unsuspecting Federal Oil and Gas Lease Title Examiner, 25 Rocky
1. Understanding the nature of BLM records.

2. Problems of reliance upon entries or absence of entries in the BLM records.

3. Correlation of BLM records with county records; the notice issue. 
   Dame v. Mileski, 340 P.2d 205 (Wyo. 1959);
   Bolack v. Underwood, 340 F.2d 816 (10th Cir. 1965, construing New Mexico law);

4. Existence and consequences of unpatented mining claims.
   a. Multiple use.
   b. Access across claims.
   c. Use of surface material (sand and gravel).
   d. Oil placer claims (productive and nonproductive).

5. Uncertainty of challenge on environmental grounds. 
   Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983); 
B. Completion of offer and application forms.

1. Problems of understanding; strict requirement for technical compliance.

2. Full disclosure of required data about applicant, other parties in interest, and assistance in preparing and submitting application form.


4. Problems of tract size, description and configuration. 43 C.F.R. §§ 3111.2-1 through 3111.2-4, 3112.1-2, 3120.3.


C. Lessee qualification requirements. 43 C.F.R., Subpart 3102 (1984); Law of Fed. Oil and Gas Leases, Chap. 4 (Rocky Mt. Min. L. Found. 1985); Lear, Lurking Title Problems: Snares
for the Unsuspecting Federal Oil and Gas Lease
Title Examiner, 25 Rocky Mt. Min. L. Inst.

1. Trusts, trustees and beneficiaries.

2. Corporations, partnerships and other associations.

   a. Rules of attribution.
   b. Consequence of corporate merger.
   c. Audit.

D. Sole party in interest requirements. See Hawley, Federal Oil and Gas Leases--The Sole Party in Interest Debacle, 27 Rocky Mt. Min. L. Inst. 987 (1982), which is helpful for background understanding but be aware that the regulations discussed in that paper have been significantly changed to ease the administrative burden of compliance. See generally Law of Fed. Oil and Gas Leases, Chaps. 4 (Lessee and Transferee Qualifications), 5 (Over-The-Counter Offers), and 6 (Simultaneous Filings) (Rocky Mt. Min. L. Found. 1985); Lear, Lurking Title Problems: Snares for the Unsuspecting Federal Oil and Gas Lease
1. Single party interests in more than one application in a simultaneous filing.
   43 C.F.R. § 3112.5-1.

2. Individuals, other entities, and representational capacities.

3. Use of assistants and filing services.

4. Remedies of rejection of applications and lease cancellation.

E. Determinations and effect of KGS status.


2. Problems of timing.


2. U.S. Forest Service stipulations.

3. Special stipulations.

2. Problem of knowledge or identification of an existing right-of-way.

3. Question of policy or practice of BLM concerning non-railroad right-of-way leasing.

III. Pitfalls in Lease Operation.

A. Applications for Permit to Drill. 43 C.F.R., Part 3160 (1984) and Onshore Oil and Gas Order No. 1 of Nov. 21, 1983, as corrected.

1. Planning and timing problems.

2. Failures to properly prepare applications; use of "boilerplate" and carelessness.

B. Access (a federal oil and gas lease does not necessarily include a grant or right of ingress or egress). F.L.P.M.A., Title V, 43 U.S.C. §§ 1761-1771; M.L.L.A. §§ 28 and 29, 30 U.S.C. §§ 185, 186; Martz, Love and Kaiser,


2. Lease provisions and stipulations.

3. Requirement for surface management agency consent.

4. Patented surface title and inholdings.


1. Questions of "justified" failure, "reasonable diligence," and "inadvertence."

2. Availability of the land for lease reinstatement.
3. Rights of non-lessees with interests in
the leases (e.g., holders of ORR, operating
rights, farmout agreements).

D. Assignments of interests in leases. 43 C.F.R.,
Subpart 3106 (1984); Law of Fed. Oil and Gas
Leases, Chap. XX (Rocky Mt. Min. L. Found.
1982); Ekberg, Federal Oil and Gas Leasing:
Developments in Selected Problems and Issues,
1. Requirements for federal approval and
effect of lack of approval or non-
approval.
2. Difficulties in obtaining approval.
3. Problem of "retained percentage."
4. Failure to file.
5. Premature assignment.
6. Payment of rentals and receipt of notices
before approval.

E. Bona fide purchaser protection. Geosearch,
Inc. v. Watt, 721 F.2d 694 (10th Cir. 1983),
cert. denied May 14, 1984; Ekberg, Federal
Oil and Gas Leasing: Developments in Selected
Problems and Issues, 29 Rocky Mt. Min. L. Inst.
1. It does not apply to all defects and
deficiencies.
2. Uncertainties about who can qualify.

1. "Drilling over" lease expiry date.
2. Partial commitment to a unit.
3. Suspension of operations and production.
4. Cessation of production.


1. Differentiations between types of changes; damages vs. fines.
3. Definitional problems.
4. Responsibilities of all lessees.