

ROBERT P. RYAN
ROBERT DOOLEY
JUDITH WALKER

IBLA 71-230
IBLA 71-231
IBLA 71-232

Decided December 23, 1971

Oil and Gas Leases: Acquired Lands Leases

Where jurisdiction over oil and gas deposits in lands acquired by the United States has been transferred to the Secretary of the Interior, and the land is later declared surplus pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, such oil and gas deposits are not subject to leasing under the Mineral Leasing Act for Acquired Lands because that Act excludes from leasing oil and gas deposits in lands reported as surplus.

IBLA 71-230 : M-17486 (ND)
IBLA 71-231 : M-17487 (ND)
IBLA 71-232 : M-17488 (ND)

ROBERT P. RYAN : Acquired lands leasing act,
ROBERT DOOLEY : oil and gas lease offers
JUDITH WALKER : rejected

: Affirmed

DECISION

Robert P. Ryan, Robert Dooley and Mrs. Judith Walker have appealed from separate decisions dated January 28, 1971, by which the Montana land office, Bureau of Land Management, rejected their respective lease offers because the lands have been declared surplus federal property and are no longer available for leasing. The Acquired Lands Mineral Leasing Act, 30 U.S.C. § 352 (1970), does not apply to lands reported as surplus under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 471 et seq. (1970), which superseded the Surplus Property Act of 1944, 58 Stat. 765.

The subject offers were filed on entry cards for Parcels 276, 277 and 278, acquired lands in North Dakota, as listed in a notice of lands formerly embraced in oil and gas leases and now available to simultaneous oil and gas filings, posted by the Montana land office on December 21, 1970. Each offer emanated from the successful entry card drawn for the subject parcel. 43 CFR 3112.2-1(a)(3) (1971).

The subject tracts had been acquired by the United States in connection with the Dickinson Unit, Missouri River Basin Project. Following determination of the successful offers a report was requested from the Bureau of Reclamation, the agency exercising jurisdiction over the subject lands. That Bureau reported that the minerals within the subject lands had been declared excess federal property and would be sold under the provisions of the Federal Property and Administrative Services Act of 1949, and recommended that these offers be rejected. The General Services Administration conducted

a sale on June 24, 1971, and subsequently, on July 23, 1971, issued quit claim deeds for the mineral estate in the subject lands to the high bidders at the sale.

The pertinent regulation provides that the Mineral Leasing Act for Acquired Lands, supra, does not apply to lands or minerals which have been reported as surplus. 43 CFR 3101.2-1(c) (1971). The Mineral Leasing Act refers to the Surplus Property Act of 1944, 50 U.S.C. § 1611 et seq. The latter Act has been repealed and is covered by the provisions relating to management and disposal of government property by the Federal Property and Administrative Services Act of 1949, supra.

The Department has held that where jurisdiction over oil and gas deposits in land acquired by the United States has been transferred to the Secretary of the Interior and the land is later declared surplus pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, such oil and gas deposits are not subject to leasing under the Mineral Leasing Act for Acquired Lands because that Act excludes from leasing oil and gas deposits in lands reported as surplus. Elgin A. McKenna, Executrix, Estate of P. A. McKenna, 74 I.D. 133 (1967), aff'd., 418 F.2d 1171 (1969).

The appellants contend that each is entitled to receive an oil and gas lease because each was declared to be the successful offeror for a parcel of land listed in the simultaneous oil and gas filing list, and that this action preempted the declaration of the oil and gas being declared surplus property.

It is clear from 43 CFR 3112.4 (1971) that an offeror acquires no right to a lease merely because his entry card is drawn in the simultaneous filing drawing procedure. The drawing merely established which offer will be considered; it does not constitute a determination that a lease will be issued. If the land is not available for leasing when the offer is considered, the offer must be rejected. Cf. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963).

The record before us does not show that actual availability of the subject acquired lands was ascertained from the Bureau of Reclamation before the Bureau of Land Management posted them to its list of available lands. If such a lapse did occur, it is unfortunate,

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but it is a well-settled principle that the Government is not bound by errors of its employees. Cf. Southwest Salt Company, 78 I.D. 82 (1971).

When the subject lease offers were considered, the mineral deposits had been reported as surplus. Thus, they were no longer subject to leasing by the Bureau of Land Management, and the offers had to be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decisions appealed from are affirmed.

Newton Frishberg, Chairman

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

