TENNECO OIL CO.

IBLA 71-122 Decided December 6, 1972

Appeal from a decision of the New Mexico State Office rejecting oil and gas lease offer NM 12596.

Affirmed.

Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

An oil and gas lease offer filed for lands which at the time of filing have been withdrawn for Indian purposes by an Executive Order is properly rejected.

Withdrawals and Reservations: Effect of

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

APPEARANCES: James D. Voorhees, Esq., of Denver, Colorado, for appellant.

OPINION BY MR. HENRIQUES

Appellant Tenneco Oil Company filed an oil and gas lease offer for SE 1/4, sec. 11, T. 21 N., R. 8 W., N.M.P.M. The offer was rejected by the New Mexico State Office on November 12, 1970, for the reason that: "The land described in your offer to lease is withdrawn for the Navajo Indian Reservation by Executive Order 709 dated November 9, 1907."

On November 9, 1907, by Executive Order No. 709, various lands including the parcel in issue were withdrawn from the public domain and set aside for the use of Indians as an addition to the Navajo Reservation. Subsequent thereto, it was discovered that the lands withdrawn by Executive Order No. 709 conflicted in part with lands

of the Jicarilla Indian Reservation. Accordingly, Executive Order No. 744 of January 28, 1908, redescribed the addition to the Navajo Reservation to eliminate this conflict. The SE 1/4, sec. 11, T. 21 N., R. 8 W., N.M.P.M. was within the boundaries of the redescribed withdrawal. Executive Order No. 1000, dated December 30, 1908, restored to the public domain all lands withdrawn for additions to the Navajo Reservation with the exception of 110 unapproved allotments, one of which embraced the land in issue. As regards the above sequence of orders and the effect thereof all interested parties agree.

Tenneco contends that Executive Order No. 1284, dated January 16, 1911, restored the subject land to the public domain. The text of that order is as follows:

> It is hereby ordered that all lands not allotted to Indians or otherwise reserved within the townships in New Mexico added to the Navajo Reservation by Executive Orders of November nine, nineteen hundred and seven, and January twenty eight, nineteen hundred and eight, lying west of the first guide meridian west, be and the same hereby are restored to the public domain.

While this order did, in fact, affect lands withdrawn by Executive Orders Nos. 709 and 744, it was limited in its scope to those lands "lying west of the first guide meridian west." The first guide meridian west from New Mexico Principal Meridian forms the western boundary to T. 8 W. The subject land, therefore, lies east of the first guide meridian west. Thus, it is clear that Executive Order No. 1284 did not, by its terms, return the subject land to the public domain.

Tenneco argues further that, even though no formal revocation of the order of withdrawal may have been pronounced, the passage of over sixty years, coupled with the clear intent of various public land orders, most notably Public Land Order 2198, indicates that the failure to restore the subject lands to the public domain was the result of administrative oversight. 1/ Be that as it may, the consistent position of this Department has been that lands which are withdrawn from entry under some or all of the public land laws remain so

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1/ It should also be noted that appellant contends that Public Land Order [PLO] 2198 by its terms, restored the subject lands to the public domain. PLO 2198, however, merely revoked a departmental order of July 8, 1931 which had withdrawn the land in aid of legislation. It did not revoke either Executive Order No. 744 or Executive Order No. 1000, nor did it declare the land restored to the public domain. Thus, PLO 2198 did not effect any change in the withdrawn status of the subject lands.

withdrawn until there is a formal revocation or modification of the order of withdrawal. The mere passage of time or the accomplishment of an avowed purpose cannot serve as a substitute for the formal restoration, see M. F. Trask, 4 IBLA 252 (January 13, 1972); Oliver and Robert A. Reese, Silver Associates, Inc., 4 IBLA 261 (January 21, 1972). While this Board does not blidnly follow a policy of stare decisis et non quieta movere, we have been given no sufficient reason why this continuous course of decisions should no longer be followed. We therefore decline to stray from the path charted by our prior decisions.

Finally, Tenneco contends that the Department has, in its own actions, treated the land as restored. Admittedly, the Department has, in the past, issued two oil and gas permits and two oil and gas leases for the subject tract. 2/ This we believe to have been error. But we cannot let a desire for consistency in action blind us to the errors of past practice. It is enough that at this point in time we recognize former mistakes in the treatment of the subject land and act accordingly. In any event, appellant has suffered no prejudice from this past practice and it is well settled that reliance upon erroneous advice of Departmental employees, or incorrect records maintained by the state offices cannot create a right where none would otherwise exist. See, e.g., Mark Systems, Inc., 5 IBLA 257 (March 23, 1972); Neil Ferre, A-30882 (November 29, 1967); Arnold H. Echola, A-30831 (November 16, 1967).

Therefore, 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.

Douglas E. Henriques, Member

We concur:

Newton Frishberg, Chairman

Frederick Fishman, Member.

2/ The Department of the Interior had granted oil and gas prospecting permits on June 30, 1924 (Santa Fe 047490), and on November 19, 1927 (Santa Fe 055131), and had issued oil and gas leases on January 1, 1946 (Santa Fe 077566), and on August 1, 1952 (New Mexico 04539). Lease NM 04539 expired July 31, 1962.