

CHRIS PALZER, ET AL.

IBLA 72-226

Decided December 6, 1972

Appeals from decisions by Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offers F 14492 and F 14549.

Affirmed.

Administrative Procedure: Hearings

Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), does not apply to determinations relating to the issuance of an oil and gas lease because no hearing is required by the Mineral Leasing Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. §§ 181 et seq. (1970), or by the due process requirements of the Constitution.

Naval Petroleum Reserves -- Withdrawals and Reservations: Generally --

Alaska: Oil and
Gas Leases

The Department of the Navy has exclusive jurisdiction over the petroleum resources within Naval Petroleum Reserve No. 4, and the Secretary is not authorized to issue oil and gas leases on lands embraced within the Reserve.

APPEARANCES: Bertil A. Granberg, Esq., of Seattle, Washington, for appellants.

OPINION BY MR. FISHMAN

Chris Palzer and others 1/ have appealed to the Secretary of the Interior from decisions of the Alaska State Office which rejected their oil and gas lease offers.

1/ Chris Palzer and Sherry L. Clark were the offerors for lease F 14492; Chris Palzer, John R. Hamilton, and Harrison T. Pruitt were the offerors for lease F 14549. The State Office rejected F 14492 by decision dated November 24, 1971, and F 14549 by decision dated December 1, 1971.

The offers were rejected for the reason that each offer:

* * * embraces lands entirely within the exterior boundaries of Naval Petroleum Reserve No. 4 which was established by Executive Order No. 3797-A, February 28, 1923. Exclusive jurisdiction over the oil and gas deposits in the lands is vested in the Department of the Navy by the Act of August 10, 1956 (70 Stat. 457-462; 10 U.S.C. 7421-7438). The Secretary of the Interior does not have the authority to issue oil and gas leases for these lands. The lands are therefore unavailable to lease under the Mineral Leasing Act, as amended, and the offer is hereby rejected in its entirety.

The appellants assert that the rejection of their offers was erroneous for the following reasons:

(a) The land applied for was not withdrawn by Executive Order No. 3797-A of February 28, 1923.

(b) Exclusive jurisdiction over the oil and gas deposits in the land applied for is not vested in the Department of the Navy by the Act of August 10, 1956 (70 Stat. 457-462; 10 U.S.C. 7241-7438). The Department of the Navy does not have exclusive jurisdiction or any jurisdiction over the lands applied for.

(c) The Secretary of the Interior has the duty and the authority to issue an oil and gas lease to appellants, with respect to the lands applied for, under the provisions of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, 30 U.S.C. sec. 181, as amended).

Although appellants assert that the Secretary has the duty and the authority to issue the oil and gas leases requested, it is well established that jurisdiction over the petroleum resources within Naval Petroleum Reserve 4 was vested in the Department of the Navy by the Act of August 19, 1956, 10 U.S.C. §§ 7421-7438 (1970). Starling Brokers, et al., 6 IBLA 237 (1972); Terza Hopson, et al., 3 IBLA 134 (1971). Moreover it is within the discretion of the Department to refuse to issue any lease at all on a given tract. See Udall v. Tallman, 380 U.S. 1,4 (1965).

The policy of this Department, consonant with the legal restraints, is to refrain from issuing oil and gas leases in, or adjacent to, Naval Petroleum Reserve No. 4.

The principal argument presented by appellants is that the lands described in their applications for oil and gas leases were not withdrawn by Executive Order 3797-A. The lands described in the applications of appellants are located along the coast of Smith Bay (F 14549) and Harrison Bay (F 14492). To the extent the lands are tidelands along the coast of Alaska, they are not subject to lease by the Department, since such lands have vested in the State of Alaska. The Secretary is not authorized to issue leases under the Mineral Leasing Act for lands below the high watermark along the coast. Pexco, Inc., et al., 66 I.D. 152 (1959) and authorities cited therein. The remaining lands are clearly within the withdrawal of Executive Order 3797-A according to Departmental maps and records, and are, therefore, not subject to oil and gas leasing by the Secretary. See State of Alaska, Kenneth D. Makepeace, 6 IBLA 58 (1972); Joyce A. Cabot, Allen B. Cabot, Walter G. Davis, et al., 63 I.D. 122 (1956). In State of Alaska, Kenneth D. Makepeace, supra, this Board reiterated the rule set forth in California and Oregon Land Co. v. Hulen and Hunnicutt, 46 L.D. 55, 57 (1917) which states that:

* * * [t]he orderly administration of the land laws forbids any departure by the Department from the salutary rule that land segregated from the public domain, whether by patent, reservation, entry, selection, or otherwise, is not subject to settlement or any other form of appropriation until its restoration to the public domain is noted upon the records of the local land office. * * *

The rule is applicable in the case at bar. The petroleum resources of the lands in issue, according to Departmental maps and records, are within Naval Petroleum Reserve No. 4, and are not subject to oil and gas leasing under the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181 et seq. (1970).

Appellants have requested a hearing on the issues raised in their appeals, "as commanded by the Administrative Procedure Act of 5 U.S.C. Sec. 702-706."

The sections of the Act cited by appellants relate to judicial review of final agency action and are therefore inapposite. Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970) provides for agency hearings where required by statute, but the provisions of the Act do not apply to determinations relating to the issuance of an oil and gas lease because no hearing is required by the Mineral Leasing Act of February 25, 1920, as amended, supra. Richard K. Todd, 68 I.D. 291 (1961). Furthermore, appellants have no rights which require a hearing to satisfy the requirements of due process under the Constitution. Cf. United States v. Keith V. O'Leary, et al., 63 I.D. 341 (1956).

A hearing in the instant case could be predicated on the general statute, embodied in 43 U.S.C. § 1201 (1970), and the implementing regulation, 43 CFR 4.415. Under 43 CFR 4.415 this Board, in its discretion, may refer any case to an Administrative Law Judge for a hearing on an issue of fact. However, the facts necessary for a determination of the instant case are shown on Departmental records, and no useful purpose would be served by a hearing. Appellants' request for a hearing is therefore denied. See Chris Palzer, et al., 6 IBLA 248, 250 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member;

Martin Ritvo, Member.

