

MOBIL OIL CORP.

IBLA 72-337

Decided February 20, 1973

Appeal from decision (Or. 8168 (Wash.)) by Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer for acquired lands.

Affirmed as modified.

Acquired Lands -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

An application for an acquired lands oil and gas lease must be rejected where the land is set apart for military or naval purposes and expressly excluded from leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970).

Acquired Lands -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

The consent of the United States Army Corps of Engineers is required for leasing acquired lands under its jurisdiction for civil purposes. The Departmental decisions of March 25, 1969, captioned "William W. Ogden," A-29775 and A-29976, are precedents for this application of the Mineral Leasing Act for Acquired Lands. However, those decisions do not support any implication that lands set apart for military or naval purposes may be leased under the authority of that Act, as such lands are excluded from the Act, regardless of the question of consent.

Mineral Leasing Act for Acquired Lands: Generally -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Acquired Lands Leases

If acquired lands excepted from the operation of the Mineral Leasing Act for Acquired Lands are threatened by drainage, there is implied authority in the executive branch of the Government to take measures to protect its interests.

Decisions William W. Ogden, A-29775 and A-29976 (both dated March 25, 1969) clarified.

APPEARANCES: Mobil Oil Corp., by G. H. Ketchum, Assistant Secretary, E. & P. Division.

OPINION BY MRS. THOMPSON

Mobil Oil Corporation has appealed from a decision of the Oregon State Office, Bureau of Land Management, dated March 6, 1972, rejecting a noncompetitive oil and gas lease offer, OR 8168 (Wash.), for acquired lands under the jurisdiction of the United States Department of the Army, for failure of that agency to give its consent to issuance of a lease.

The application, submitted June 14, 1971, shows that the Department of the Army administers 49 acres located in T. 27 N., R. 2 E., W.P.M., Kitsap County, Washington, as NIKE Battery 92 of the Seattle Defense Area. The lands are acquired lands and Mobil filed its application pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.* (1970), which authorizes the Secretary of the Interior to lease deposits of oil and gas within lands acquired by the United States, with certain exceptions.

The consent of the agency having jurisdiction over the acquired land is a prerequisite to the issuing of a lease under the Act. The Bureau's Office reported that the Army refused consent because the lands are actively used for NIKE control, launcher, and family housing areas.

Appellant contends in its appeal that it has acquired more than 8,000 acres of oil and gas leases within the vicinity of the NIKE site, has formed a pooling unit within which the NIKE site is located, and that an exploratory well is presently being drilled within a quarter mile of the NIKE site. Appellant also contends that it controls all lands upon which drilling structures may be erected, and that if a discovery results, the Government's acquired lands may be subject to drainage.

It further asserts that the Army's reasons for denying consent are invalid because the Army did not understand the full facts. In addition, due to Army easement restrictions no drilling could be done except on lands controlled by Mobil, thus preventing anyone else from exploiting any oil or gas underlying the NIKE site. Therefore, Mobil asserts that its noncompetitive offer should not be rejected because both the Government and Mobil's interests would be adversely affected. It urges this Department to apprise the Army more fully that it only desires subsurface rights by directional drilling from its own lands.

There is a fundamental problem in this case, however, in addition to the Army's refusal to consent. The decision below and the

appeal are predicated upon the assumption that the land is subject to lease under the Mineral Leasing Act for Acquired Lands if the consent of the Department of the Army is obtained. This assumption is not correct here as it appears the land falls within one of the exclusions in the Act, namely, lands "(b) set apart for military or naval purposes * * *". 30 U.S.C. § 352 (1970). See also 43 CFR 3101.2-1(f).

One matter needs to be clarified here. The Bureau office cited William W. Ogden, A-29976 (March 25, 1969), as authority for the proposition that rejection of a lease offer such as we are concerned with here is mandated where the Department of the Army does not consent to a lease of land under Army jurisdiction.

The Ogden decision and a companion decision of the same name and date, A-29775, simply mention the lack of consent by the Department of the Army. However, both cases refer to two cases involving the same lands, both under the name The California Company, A-28753 (July 30, 1962) and A-30287 (March 25, 1969). These cases show the lands involved were under the jurisdiction of the Army Corps of Engineers. Lands may be under the jurisdiction of the Corps for civil purposes such as for flood control, or other purposes not necessarily "military or naval purposes" as envisaged by the Mineral Leasing Act for Acquired Lands (see United States Government Organization Manual, 1972/73, Office of the Federal Register, National Archives and Records Service, General Services Administration, at 171, describing the civil functions of the Army). Therefore, the Ogden cases are not authority for any implication that lands under the jurisdiction of the Army are subject to lease under the Mineral Leasing Act for Acquired Lands if the Army's consent otherwise could be obtained, where the lands are set apart for military or naval purposes. Those decisions are clarified to that extent. They are correct as precedent establishing the necessity for the Army's consent where civil functions are involved.

Appellant's request for further inquiry to the Army concerning its application is denied. Cf. Thomas B. Cole, et al., A-30444 (December 6, 1965). A contention that a subsurface lease would not affect the use of land for military purposes is to no avail when the lands are set apart for military or naval purposes. An application to lease such lands under the Mineral Leasing Act for Acquired Lands must be rejected as those lands are excepted from the authority granted by that Act. Duncan Miller, A-30393 (June 30, 1965). Cf. Elgin A. McKenna, Executrix, Estate of P. A. McKenna, 74 I.D. 133, 137 (1967), aff'd, McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969); Roy G. Barton, Jr., 9 IBLA 50 (1973). The decision is so modified to show this reason for the rejection of appellant's offer.

As to appellant's contention concerning possible drainage from the government land, it suffices to say that if the interests of the United States in oil and gas deposits are endangered, there is implied authority in the executive branch of the Government to take measures to protect its interests. Solicitor's Opinion, 60 I.D. 201 (1948). However, an application under the Mineral Leasing Act for Acquired Lands must be rejected. Roy G. Barton, Jr., supra. See also, Arnold R. Gilbert, Belco Petroleum Corp., A-29123 (January 14, 1963).

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 as modified.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

