

GEORGETTE B. LEE

IBLA 70-536

Decided February 22, 1973

Appeal from decision by Eastern States Land Office, Bureau of Land Management, rejecting oil and gas lease offer BLM 062432.

Affirmed.

Oil and Gas Leases: Discretion to Lease

The Secretary has discretionary authority to reject an oil and gas lease offer for lands affected by unresolved title claims.

Oil and Gas Leases: Applications: Generally

A public lands oil and gas lease offer which has been rejected by the Bureau of Land Management because of unresolved title claims to the lands in issue will not be suspended to await the indefinite outcome of possible lawsuits.

APPEARANCES: Finlay MacLennan, Esq., Washington, D.C., for the appellant.

OPINION BY MR. FISHMAN

Georgette B. Lee has appealed to the Director, Bureau of Land Management, 1/ from a decision dated March 10, 1970, by the Bureau's Eastern States Land Office, which rejected her noncompetitive oil and gas lease offer, BLM 062432.

The Land Office decision recited in part as follows:

The * * * oil and gas lease offer was filed on February 28, 1962, for certain land in Sections 113

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

and 114, T. 20 S., R. 18 E., Terrebonne Parish, Louisiana.

The application has been held in suspense pending resolution of Louisiana State Swamplands selections BLM 056493 and 056494. The selection was made in 1961 and now relates to a resurvey of the land approved in April 1962.

The Louisiana Land and Exploration Company has protested the acceptance of the 1962 plat. The company asserts private interests in the subject land. The State of Louisiana also advised that, if the swamp selection were approved, "Necessary legal action by the State of Louisiana, or the protester, would then be taken to determine the merits of the contention made by Louisiana Land and Exploration Company".

Thus, it is clear that the ownership of the land is in dispute and that resolution of title will probably have to await the outcome of litigation. Under such circumstances, it does not appear to be in the best interests of the Government to lease the applied-for land, nor to hold the application in suspense for an indeterminate time, until the title differences are resolved.

For the reasons stated, the offer to lease is hereby rejected.

On this appeal the appellant presents two arguments. The first is as follows:

The Assistant Manager, in his decision of March 10, 1970, admits the status of the land embraced in Oil & Gas Offer To Lease BLM 062432 has not been resolved. The decision of March 10, 1970, states in part --

Thus, it is clear that the ownership of the land is in dispute and that resolution of title will probably have to await the outcome of litigation.

The Assistant Manager erred in not issuing oil and gas lease to Appellant in accordance with her oil and gas offer to lease, BLM 062432. Since "it is clear that the ownership of the land is in dispute * * *", the interest of the United States might best be served by its asserting its claim through the issuance of an oil and

gas lease. (See The California Company, et al., William W. Ogden, A-28753 (Supp.), A-29775 (Supp.), A-29976 (Supp.), A-30287 (Supp.), Decided June 3, 1969.)

In The California Company, et al., A-30287 (March 25, 1969) the Department stated:

* * * [T]he offer[s] may properly be rejected in the exercise of the Secretary's discretion to issue leases under the Mineral Leasing Act for Acquired Lands * * * because of the long-continuing uncertainty as to whether title to the lands applied for is in the United States or the State of Louisiana. The matter has been the subject of an active dispute between the State and the United States and there is no prospect of any resolution of the controversy in the foreseeable future. The Department has held that in such circumstances applications for leases are properly rejected. [Citations omitted.]

It is true, as appellant's argument suggests, that the issuance of an oil and gas lease is discretionary even when the ownership of the land is in dispute. But, it is also true that such discretionary authority may be invoked to refuse such lease issuance. The long standing practice of the Department is to reject lease applications where title to the land is disputed and there is no prospect of any resolution of the controversy in the foreseeable future. The basis for this policy is that it is not usually in the best interests of the Government to lease the lands under such circumstances. See Duncan Miller, A-30451 (November 17, 1965); Pexco, Inc., et al., A-28017 (July 11, 1960).

While it is perhaps possible, as the appellant's argument and California Company suggest, that there may be factual situations where the interest of the United States might best be served by its issuing a lease even though title to the land applied for is the subject of an active dispute between the United States and others, appellant does not attempt to show that such is the present case, nor are we able to find from the record that it is.

Appellant's other argument is as follows:

Absent the issuance of an oil and gas lease to Appellant, the Assistant Manager further erred in not continuing the suspension of Oil & Gas Offer To Lease BLM 062432 until such time as a title to the lands embraced in the subject offer to lease has been resolved. In this connection see Oil & Gas Offer To Lease BLM-A 040010 which was held, along with other offers to lease, in suspension for fifteen (15) years pending a quiet title suit involving

the lands described in the lease offer. (See United States of America v. A. D. Moore, et al., Civil No. 9729, the United States District Court for the Western District of Louisiana.)

It is true, as appellant suggests, that the suspension of a lease offer is discretionary in such cases, absent the prior appropriation of the land. The long standing practice of the Department, however, is to reject such applications and not suspend them indefinitely pending any change in the land status or contingency necessitating the rejection. See, e.g., Edwin D. Warren, A-29720 (September 24, 1963), and J. G. Hatheway, et al., 68 I.D. 48 (1961), where the offers were for lands withdrawn for the use of the Navy Department and there was the possibility that at some time the withdrawal would be revoked, and Pexco, Inc., et al., supra, where there was pending litigation to resolve a question of title to the lands. In these cases requests to suspend the offers were denied in view of this practice of the Department. In Hatheway, the Department stated:

* * * [T]he rule is founded upon sound administrative practice. It prevents the public land records from being burdened with thousands of applications on which there is no possibility that action can be taken in the foreseeable future. Id. at 52.

The offer had been held in abeyance from 1962 to 1970. Even if suspensions were deemed appropriate as to lands whose title is in dispute, sufficient time has elapsed to warrant the action taken by the Land Office.

This decision is, of course, without prejudice to the filing of applications for the land at such time as it is clearly established that title to the land is in the United States.

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.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member.

