

STANLEY USTAN

IBLA 73-109

Decided September 21, 1973

Appeal from decision of State Office, Sacramento, California, rejecting appellant's noncompetitive oil and gas lease offer S 5186.

Affirmed.

Oil and Gas Leases: Lands Subject to

An oil and gas lease offer for land within one mile of the exterior boundaries of Naval Petroleum Reserves No. 1 and No. 2 is properly rejected when the Navy reports that it is impossible to state, based on geological information presently available relating to the area, that operations under a lease will not adversely affect the adjacent naval petroleum reserves through drainage from productive oil and gas horizons and that any action which will increase the likelihood of drainage in the reserves is considered to be inconsistent with the laws under which that organization must operate.

Oil and Gas Leases: Applications: Filing

The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Department of the Interior that conditions prevail in every instance which assure the availability of those lands for further leasing. The publication of the list merely serves as notice that offers to lease the lands listed will be received. The filing of an offer for a listed tract creates no contractual relationship between the offeror and the United States.

APPEARANCES: Stanley Ustan, pro se.

OPINION BY MR. STUEBING

Stanley Ustan appeals from the decision of the State Office, Sacramento, California, dated August 22, 1972, rejecting his noncompetitive oil and gas lease offer filed pursuant to the Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. §§ 181 et seq. (1970). The rejection was based on the fact that the land embraced by this offer lies within one mile of Naval Petroleum Reserves No. 1 and No. 2 and the agency which exercises jurisdiction over these reserves has not consented to the issuance of the lease as provided by 43 CFR 3101.1-1(a)(6).

Appellant filed his Simultaneous Oil and Gas Drawing Entry Card on May 19, 1972, for 239.17 acres of land in Sec. 6, T. 31 S., R. 23 E, M.D.M. This land was listed in the Bureau of Land Management's Notice of Lands Available for Oil and Gas Filings of May 15, 1972. At the drawing appellant was the successful drawee for parcel 28.

On August 22, 1972, the State Office rendered its decision rejecting the oil and gas lease offer because the land was within the naval petroleum reserve buffer zone. That decision stated that the Director, Office of Naval Petroleum and Oil Shale Reserves, Washington, D.C., reports that:

* * * [I]t is impossible to state, based on geological information presently available relating to the area, that operations under a lease will not adversely affect the adjacent Naval Petroleum Reserves through drainage from productive oil and gas horizons and that any action which will increase the likelihood of drainage from the Reserves is considered to be inconsistent with the laws under which that organization must operate (10 USC 7421-38).

On appeal, Ustan contends that the State Office decision is erroneous because there is geological information 1/ available which fully shows that no threat exists to established oil and gas reserves within the naval petroleum reserves. He offers detailed maps of the productive zones showing that the closest established

1/ The two publications to which appellant refers are 1968 Guidebook, Geology and Oilfields, West Side, Southern San Joaquin Valley by the Pacific Section A.A.P.G., S.E.G., S.E.P.M. and Unit Operation ! Naval Petroleum Reserve No. 1 (Elk Hills) Kern County, California ! Stevens Zone, Contracts NOD 4219 and NOD 8477 (reported on November 20, 1957).

reserves to the lands in sec. 6 are more than one mile to the northeast in the 29 R. structure. Based on a property ownership plat which he submitted, Ustan asserts that "[t]he interwoven character of the existing federal leased lands within Section 6 and adjoining fee lands seem to leave this particular lease application subject to a selective form of discriminating action when consent to issuance to lease is denied."

43 CFR 3101.1-1 states that all lands subject to disposition under the Act of February 25, 1920, supra, which are known or believed to contain oil or gas may be leased by the Secretary except:

(a)(6) Lands within 1 mile of naval petroleum or helium reserves. No oil and gas lease will be issued for land within 1 mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

Appellant offered no evidence to show that his situation falls within either of the "unless" provisions of this regulation. Furthermore, the Navy has reported, based on the information available to it at the time, that it is impossible to state whether or not operations under such a lease would affect the reserves. The authorized officer, having considered the reasons advanced in support of the Navy's recommendation, and having found them meritorious, acted correctly in following the recommendation. See Duncan Miller, 6 IBLA 216 (1972). Therefore, the State Office properly rejected this lease offer in accordance with 43 CFR 3101.1-1(a)(6). Starling Brokers, 6 IBLA 237 (1972); Albert P. Mickunas, 12 IBLA 375 (1973).

Ustan also states that this land was posted as available for leasing, that he complied with the procedures for filing an oil and gas lease offer and was the successful drawee. He contends that this created a contractual agreement with the Government.

The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Bureau of Land Management that conditions prevail in every instance which assure the availability of those lands for further leasing. The publication of

the list merely serves as notice that offers to lease the lands listed will be received. Usually such lands are in fact available, but it is only upon the adjudication of a proper application that a decision is made as to whether a particular parcel will actually be leased for oil and gas, and if so, whether any special stipulations will condition the lease. Ordinarily, the Bureau will not decide the issue of the availability of a particular tract of land for leasing in the absence of a qualified offer to lease. An offer to lease for oil and gas is just that! an offer by the applicant, and no contractual relationship exists between the offeror and the United States unless the offer is accepted and the lease is fully executed. Easton E. Brodsky, 76 I.D. 286 (1969); Schraier v. Hickel, 419 F.2d 663 (1969); James W. McDade, 3 IBLA 226 (1971), aff'd, McDade v. Morton, 353 F. Supp. 1006 (1973); Albert P. Mickunas, 12 IBLA 375 (1973).

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.

Edward W. Stuebing
Member

We concur:

Anne Poindexter Lewis
Member

Frederick Fishman
Member

