

Editor's note: Appealed -- aff'd, Civ. No. FS-74-42-C (W.D.Ark. Feb. 4, 1977)

J. W. McTIERNAN

IBLA 74-56

Decided February 21, 1974

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting acquired lands lease offers, ES 12094 through ES 12108.

Affirmed.

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

An acquired lands oil and gas lease offer for lands set aside for military or naval purposes must be rejected, as such lands are expressly excluded from leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970).

APPEARANCES: Jay R. Bond, Esq., of Ross, Holtzendorff & Bond, Oklahoma City, Oklahoma, for appellant.

OPINION BY MRS. LEWIS

J. W. McTiernan has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated July 10, 1973, rejecting his 15 noncompetitive offers, ES 12094 through ES 12108, to lease for oil and gas certain tracts of acquired lands within the Fort Chaffee Military Reservation, Arkansas, under the jurisdiction of the Department of the Army. The stated reasons for rejection were that acquired lands set apart for military or naval purposes are specifically excluded from mineral leasing by Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), and regulation 43 CFR 3101.2-1(f).

Appellant contends that the legislative history of Section 6 of the Act of February 28, 1958, 43 U.S.C. § 158 (1970), indicates

14 IBLA 369

it was intended that the Secretary of the Interior, with the concurrence of the Secretary of Defense, would be empowered by that Act to lease the subject lands for exploration for oil and gas. He urges that the current energy crisis necessitates, in the best interest of the nation, development of all possible oil and gas reserves. Appellant further asserts that, although the subject lands are under the jurisdiction of the Department of Defense, and since they are under agricultural lease, they are not set apart for military or naval purposes.

Appellant's appeal is predicated upon the assumption that if the consent of the Department of Defense is obtained, as provided in Section 6 of the Act of February 28, 1958, the lands involved would be subject to lease under the Mineral Leasing Act for Acquired Lands. This is not a correct assumption. That section of the Act provides that it is applicable to

[a]ll withdrawals or reservations of public lands for the use of an agency of the Department of Defense * * *.

The term "public lands" generally does not include lands acquired by the United States from private ownership. El Mirador Hotel Company, 60 I.D. 299 (1960); Cf. Solicitor's Opinion, M-36084, 64 I.D. 491 (1951). The Department has held that even if the contention could be accepted that the words "public lands" as used in Section 6 of the 1958 statute includes acquired lands, they would be leased only under the Mineral Leasing Act for Acquired Lands, Section 3 of which excepts lands set apart for military or naval purposes from operation of the Act. J. D. Simmons, A-29681 (September 25, 1963); Cf. Mobil Oil Corp., 10 IBLA 7 (1973).

As to the argument that development of the lands involved for oil and gas in view of the energy crisis would be in the national interest, there is no authority whereby this Board can change the existing statutory bar to the leasing for oil and gas of acquired lands set apart for military or naval purposes.

The assertion that the subject lands have been leased for agricultural use does not militate against the conclusion that the lands are set apart for military purposes. The phrase "set apart for military or naval purposes" includes any land acquired by, and is being held under the jurisdiction of, the Department of the Army in contemplation of its use in connection with the present or future performance of military functions. The lands covered by the

subject offers clearly come within this definition and were properly held to fall within the category of lands excluded from leasing under the Mineral Leasing Act for Acquired Lands. The Ohio Oil Co., A-26292 (September 18, 1951).

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.

Anne Poindexter Lewis, Member

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

