

GENERAL CRUDE OIL COMPANY

IBLA 75-93

Decided January 7, 1975

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer (W-46231).

Affirmed as modified.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Acquired Lands Leases--Offers to Leases: Discretion to Lease

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351-59 (1970).

2. Indian Lands: Leases and Permits: Oil and Gas Leases: Acquired Lands--Oil and Gas Leases: Discretion to Lease

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of August 21, 1916, 39 Stat. 519.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

General Crude Oil Company has appealed from a decision dated July 3, 1974, rejecting its acquired lands oil and gas lease offer W-46231, for the stated reason that:

Land has been deeded to the United States in Trust for the Shoshone and Arapaho Tribes of the Wind River Reservation. Minerals are administered by the Bureau of Indian Affairs.

Appellant set forth the facts as follows:

The above lands are within the boundaries of the Wind River Indian Reservation, as designated by the Act of July 3, 1868, as amended. The lands were later ceded back to the United States. The lands were then patented into full private ownership and were subsequently reconveyed to the United States on various dates. In some of the lands, the United States received only a fractional interest in the oil and gas and other minerals. Although most of the lands in the Wind River Indian Reservation were restored to tribal ownership and control under the Act of July 27, 1939, the Land Office records do not reflect that the above lands were ever restored to such ownership and control, either by statute or by executive order.

Appellant argues "that the above lands have never been restored to tribal ownership or control and therefore cannot be validly leased by tribal action and are within the purview of the Acquired Lands Leasing Act of Aug. 7, 1947 and are leasable by the United States under the provisions of Section 6 of the Act as "lands set apart for Indian use." The lands are held by the United States in trust for the Indians.

The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the law under which the applications were filed, provides in section 6 thereof, 30 U.S.C. § 355 (1970), as follows:

All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: Provided, however, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the

Department of the Interior or by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress. (Emphasis supplied.)

Assuming, without deciding, that the Mineral Leasing Act for Acquired Lands may be invoked to issue the leases sought for Indian trust lands in the ceded 1/ portion of the Wind River Indian Reservation, such lands are also subject to oil and gas leasing under the Act of August 21, 1916, 39 Stat. 519, and the regulations thereunder, 25 CFR Part 184.

That Act authorizes "the Secretary of the Interior * * * to lease, for the production of oil and gas therefrom, lands within the ceded portion of the Shoshone or Wind River Indian Reservation * * *."

Regulation 25 CFR 184.4(a) directs that upon authorization by the Joint Business Council of the Shoshone and Arapaho Tribes, oil and gas leases "be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties." Given this framework, our first task is to address ourselves to the issue whether, assuming that the Mineral Leasing Act for Acquired Lands applies, the Department must issue a lease pursuant to the offer.

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), provides in applicable portion that deposits of oil and gas "may be leased by the Secretary [of the Interior] under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." The phrase "may be leased" with respect to oil and gas also appears in section 17 of the Mineral Leasing Act, as amended, 30 U.S.C.

1/ Since the lands in issue were patented under the public land laws, the lands were not reserved by the Indians in the treaty of cession, but must have been ceded to the United States. Their subsequent disposal under the public land laws and their reconveyance to the United States "in Trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation" do not take the lands out of the "ceded portion" of the Reservation.

The Glossary of Public Land Terms (Department of the Interior 1959) defines "Ceded Indian Lands" as

"Public lands, Indian tribal title to which was relinquished to the United States by the Indians on condition that part or all of the proceeds from their sale or other disposition would be covered into the Treasury in trust for the Indians."

§ 226 (1970). The courts have affirmed over a span of years the principle that whether certain land is to be leased is a matter within the discretion of the Secretary of the Interior. Wilbur v. United States, 46 F.2d 217 (D.C. Cir. 1930), aff'd sub nom. United States ex rel. McLennan v. Wilbur, 283 U.S. 414 (1931); Wann v. Ickes, 92 F.2d 215, 217 (D.C. Cir. 1937); United States ex rel. Roughton v. Ickes, 101 F.2d 248, 251 (D.C. Cir. 1938); Dunn v. Ickes, 115 F.2d 36, 37 (D.C. Cir. 1940), cert. denied, 311 U.S. 698 (1940); Haley v. Seaton, 281 F.2d 620, 624 (1970). Cf. Udall v. Tallman, 380 U.S. 1, 4 (1965).

The Department has recognized its discretionary authority to lease or not to lease oil and gas. Sheridan L. McGarry, 14 IBLA 23 (1973); Dean Rowell, 13 IBLA 249 (1973); Douglas M. Gall, 13 IBLA 117 (1973); Duncan Miller, 12 IBLA 206 (1973); Martin Exploration, Inc., 11 IBLA 292 (1973); J. W. McTiernan, 11 IBLA 284 (1973); Georgette B. Lee, 10 IBLA 23 (1973). See Gas Producing Enterprises, 15 IBLA 266 (1974); Forest Oil Corp., 15 IBLA 33 (1974).

[2] As we have stated earlier, the lands are held in trust for the Shoshone and Arapaho Indians by the United States. In exercising discretion under the Mineral Leasing Act for Acquired Lands, the Department may refuse to issue a lease thereunder where the public interest is served by such denial. In carrying out its trust responsibility, the United States is duty bound to maximize in a prudent manner the income to be derived from the trust property for the benefit of the cestui que trust. Leasing of the lands under the terms of the Act of August 21, 1916, supra, and the regulation thereunder, 25 CFR 184.4(a), is accomplished when the lease is "offered to the highest responsible bidder for a bonus consideration in addition to stipulated rentals and royalties." A noncompetitive offer under the Mineral Leasing Act for Acquired Lands does not bring a bonus to the Indians. We therefore conclude that the rejection of the application was proper, since the lands are clearly subject to leasing under the 1916 Act, regardless of whether they are also subject to leasing under the Mineral Leasing Act for Acquired Lands.

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2/ United States v. Seaton, 248 F.2d 154 (D.C. Cir. 1957), cited by appellant in support of its position, is inapposite. The Circuit Court found that the Act of August 15, 1953, 67 Stat. 592, made the lands there in issue public domain and "no longer subject to statutes regulating leases of Indian lands." In the case at bar equitable title to the lands was not extinguished by Congress and they are subject to the 1916 Act. We also note that the Department found that acquired lands, equitable title to which had vested in the Indians, are not leasable under the Mineral Leasing Act for Acquired

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.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

Fn. 2 (Cont.)

Lands. Superior Oil Company, Utah 016385, November 7, 1958, approved by the Assistant Secretary of the Interior, November 17, 1958. In the light of the holding in the case at bar, we need not resolve this issue.

