

DAPHFINE SHEAR  
DAVID L. SHEAR

IBLA 76-747  
IBLA 76-753

Decided February 10, 1977

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM-A 26732 (Okla.), etc.

Affirmed.

1. Bureau of Reclamation: Generally--National Park Service: Generally--  
-Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil  
and Gas Leases: Acquired Lands Leases--Oil and Gas Leases:  
Consent of Agency

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act to the leasing of the land. Where the National Park Service recommends that oil and gas leases for lands within the boundaries of the Chickasaw National Recreation Area be rejected in order to maintain the area for the purposes for which it was established, it is proper to accept this recommendation and reject the offers.

APPEARANCES: J. W. McTiernan, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On July 16, 1976, the New Mexico State Office, Bureau of Land Management, issued two decisions rejecting a total of eight noncompetitive oil and gas lease offers 1/ for acquired lands in Murray County, Oklahoma, seven of which were filed by Daphne Shear and the remaining one filed by David L. Shear. The decisions rejected the offers for the following reason: 2/

The lands covered by these offers are under the surface jurisdiction of the Bureau of Reclamation and the National Park Service. These agencies have determined that issuance of these leases would not be in the best interest of the United States considering the present use of areas involved.

Appellants filed their notices of appeal on August 10, 1976, which noted that they would file their statement of reasons in accord with statutory requirements. Pursuant to appellants' request, the Board extended the time for submission of the statement of reasons through November 8, 1976. On November 1, 1976, one J. W. McTiernan filed a statement of reasons for the cases included in this appeal. No other document was received. 3/

[1] We find no error in the decision below. The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. Sallie B. Sanford, 24 IBLA 31 (1976); Frederick L. Smith, 21 IBLA 239 (1975); Susan D. Snyder, 9 IBLA 91 (1973). If however, the acquired lands in issue are under

-----  
1/ The leases involved are NM-A 26732 (Okla.), NM-A 26733 (Okla.), NM-A 26735 (Okla.), NM-A 26736 (Okla.), NM-A 26737 (Okla.), NM-A 26747 (Okla.), and NM-A 26748 (Okla.) filed by Daphne Shear and NM-A 26761 (Okla.) filed by David Shear.

2/ On August 18 and 19, 1976, the State Office issued amended decisions which explained that the United States does not own the mineral rights in certain lands described in NM-A 26737 (Okla.) and that other lands involved in NM-A 26732 (Okla.), NM-A 26736 (Okla.) and NM-A 26761 (Okla.) are presently under lease to Dorothy V. Connell. Consequently Ms. Connell is an adverse party in this matter.

3/ The record does not show the authority of McTiernan to represent these appellants. It has not been demonstrated that McTiernan is qualified to practice before the Department. See 43 CFR 1.2, 1.3.

the jurisdiction of a service or bureau within the Department of the Interior, as are the National Park Service and the Bureau of Reclamation, the Secretary of the Interior is the one whose consent is necessary under the Act to the leasing of the land. Although the objections of a service or bureau which is administering the land are to be given careful consideration and accorded their full weight in determining whether issuance of the lease is in the public interest, such objections do not prohibit issuance, if the Secretary determines that a lease should issue despite the objections. Duncan Miller, A-28104 (December 1, 1959). See Solicitor's Opinion M-36049, 60 I.D. 441 (1950).

We have examined the official boundary map of the Chickasaw National Recreation Area numbered 107-20004-A dated February 1974, and note that the lands included in these applications are within the exterior boundaries of the recreation area established by the Act of March 17, 1976, 90 Stat. 235, 16 U.S.C. § 460hh et seq. The purpose of this Act is to:

\* \* \* provide for public outdoor recreation use and enjoyment of Arbuckle Reservoir and land adjacent thereto, and to provide for more efficient administration of other adjacent area containing scenic, scientific, natural, and historic values contributing to public enjoyment of the area and to designate the area in such manner as will constitute a fitting memorialization of the Chickasaw Indian Nation \* \* \*.

We find that the recommendation of the National Park Service to reject applications for oil and gas leases in this area is in the public interest and is in keeping with the intent of the Act. It is also in harmony with a policy announced by Congress in the Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. § 1902, et seq., 1976 U.S. Code Cong. and Admin. News 1342, to protect national park lands by regulation of mining activity within, and repealing the application of mining laws to, areas of the National Park System because such activity is incompatible with the concept of national parks.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques

---

Administrative Judge

I concur:

---

Martin Ritvo  
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

I agree with the decision in affirming the rejection of these offers and wish only to delineate further reasons for this action. Appellants have contended that oil and gas leases have issued on some lands in this area in the past. They contend that the United States does not own all the minerals in the land in the area and other companies may be exploring for minerals on such land. They contend that the area can and should be administered for multiple uses, including the oil and gas, for the best interests of the United States. They also suggest that the Bureau of Reclamation probably would be in favor of issuance of the leases.

The decisions below did not indicate as completely as they should the bases for the rejections of the oil and gas lease offers. By agreement between the Bureau of Reclamation and the National Park Service the lands involved are subject to the responsibility of the National Park Service. The superintendent of the Chickasaw National Recreation Area of the Park Service in a report to the Bureau of Reclamation indicated that his agency had not yet prepared a "development concept plan" for the area to determine what areas could possibly be developed without conflict with development of recreation areas. He indicated that after completion of such a plan, leases which would not conflict with the purpose of the National Recreation Area could be considered. The Regional Director of the Bureau of Reclamation recommended rejection of the lease offers on the basis of Park Service's proposal that lease offers be rejected at this time.

Until proper planning can be made to assure that the Congressional purpose in establishing the National Recreation Area can be maintained if oil and gas leases issue, I see no justifiable reason for setting aside the Bureau's action. Multiple use of the resources of the Area can best be made after adequate planning is done, including uses to help serve the energy needs of the nation.

If there should be discovery and production of oil and gas from private lands in this area the interests of the United States may be protected through the issuance of leases then to avoid drainage of any oil and gas owned by the United States.

Joan B. Thompson

---

Administrative Judge

