

WALTER W. SAPP

IBLA 77-85

Decided March 30, 1977

Appeal from decisions of the Idaho State Office, Bureau of Land Management, rejecting eight acquired lands oil and gas lease offers. I-10253, I-10254, I-10256 through I-10260, I-10551.

Affirmed as modified in part; set aside and remanded in part.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases

Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, the Secretary is the one whose consent is necessary to the leasing of the land. The Bureau's views, of course, will be considered carefully. Where its views are merely conclusionary, it is proper to remand the case to ascertain the factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations. The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970).

2. Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases

The Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (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. The

Department of the Interior has no authority to lease such land where the consent is withheld.

APPEARANCES: John W. Coughlin, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Walter W. Sapp has appealed from eight separate decisions of the Idaho State Office, Bureau of Land Management, all dated December 16, 1976, individually rejecting the eight acquired lands oil and gas lease offers above-listed. Appellant's lease offers were filed pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970). All the lands encompassed by the lease offers are under the jurisdiction of either the Walla Walla District, Corps of Engineers (Corps), Department of the Army, or the Bureau of Reclamation (BuRec), Department of the Interior.

The reason stated in the decisions for the rejection of the offers for the lands under the jurisdiction of the BuRec was:

The lands * * * are under administration, management and jurisdiction of the Bureau of Reclamation. The land is within the Tex Creek Game Mitigation Area and the Bureau of Reclamation states that oil and gas leasing on these lands would be undesirable and in opposition to the intended function of these lands, and has recommended that no mineral leasing be allowed.

The offers or portions of the offers covering lands under the jurisdiction of the Corps were rejected because:

The lands in this offer were acquired by the Corps of Engineers, within the Ririe Land Project. The Corps of Engineers does not consent to the leasing of this land as it will interfere with the primary project purpose.

The basis for the rejections were a letter from the Chief, Realty Division, Walla Walla District, Corps of Engineers, dated October 29, 1976, and a letter from the Associate Regional Director, BuRec, dated October 5, 1976.

Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), provides in part:

* * * No mineral deposit covered by this section shall be leased except with the consent of the head of the

executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *.

The same requirement of consent is stated in the regulations at 43 CFR 3109.3-1.

The Department has held that the effect of this statute is to preclude mineral leasing on acquired lands, as contrasted with public domain, without the consent of the administrative agency having jurisdiction over the acquired land, and to cause any lease which does issue to be subject to any stipulations which said agency may impose. Sallie B. Sanford, 24 IBLA 31 (1976); Frederick L. Smith, 21 IBLA 239 (1975). The Department has no authority to waive either the consent requirement or the execution of stipulations required by the administrative agency. Sallie B. Sanford, *supra*; Frederick L. Smith, *supra*.

Appellant is aware of the statute requiring consent; however, appellant argues that BuRec is not an executive department, independent establishment, or instrumentality, but rather is a bureau of the Department of the Interior. Appellant contends that the comments of BuRec must be considered, but are not controlling.

[1] We are in agreement with appellant. The Department has held explicitly that BuRec is not an agency whose consent is necessary to the issuance of an oil and gas lease under the Mineral Leasing Act for Acquired Lands. Duncan Miller, A-28104 (December 1, 1959). The Assistant Secretary of the Interior stated in Miller:

* * * Although the objections of a bureau within the Department, which is administering the lands, are to be given careful consideration and accorded their full weight in determining whether issuance of an acquired lands lease is in the public interest, such objections do not prohibit issuance of a lease if the objections are not persuasive and if it is determined that a lease should issue despite the objections. In the case of acquired lands under the jurisdiction of bureaus of this Department, the Secretary of the Interior is the one whose consent is necessary under section 3 to the leasing of the land. His authority in that respect

coalesces with his authority under the Acquired Lands Act to lease acquired lands in his discretion.

Daphne Shear, 29 IBLA 33 (1977), is to the same effect.

However, this is not the basis upon which BLM rejected the offers as to the BuRec lands. Rather it appears from the record that the offers involving lands were rejected solely because of BuRec's conclusionary objection. The offers concerning BuRec lands should be reconsidered to determine whether the lands should be rejected based upon BLM's independent evaluation of the factual milieu, or whether leases should issue despite the objection, or whether leasing might be undertaken with protective stipulations. At present there is no support in the record for BuRec's conclusion that oil and gas leasing on the lands in question would be "undesirable" and not compatible with the "intended function" of such lands. Fred P. Blume, 28 IBLA 58 (1976).

[2] As to the offers for lands under the jurisdiction of the Corps of Engineers, it is clear that because the Corps has refused to consent to the leasing of the acquired lands, we must uphold the rejection of the offers as to such lands. See Sallie B. Sanford, *supra* at 33.

Appellant has requested that the offers not be finally rejected until such reasonable time after the Board decision herein, so the Corps has the opportunity to fully reconsider the matter in light of this decision. Appellant indicates that his request is not without precedent and that in Max Barash, A-31057 (November 18, 1969), the offerors were granted a reasonable period of time (60 days from the date of the decision) to attempt to reach mutually agreeable terms with the Forest Service concerning certain stipulations required by the Forest Service, the agency having jurisdiction over the acquired lands sought to be leased.

The Department has a long standing policy of rejecting applications for mineral leases for lands which are not available for requested disposition at the time they are filed or considered. J. G. Hatheway, 68 I.D. 48 (1961). However, in the present case it does not appear that the interests of the United States or any third party would be adversely affected by the granting of the requested stay by appellant. Therefore, appellant is granted 60 days from the date of this decision within which to discuss with the Corps of Engineers the matter of leasing the lands in question. If appellant's discussions are successful, he should file with BLM a consent by the Corps to leasing. Should appellant's efforts not come to fruition within such period, appellant's lease offers as to the lands under the jurisdiction of the Corps of Engineers will stand as rejected.

Accordingly, 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 relating to lands under the jurisdiction of the Corps of Engineers are affirmed as modified (I-10253, I-10254 [those lands in T. 2 N., R. 40 E., B.M.], I-10551) and the decisions relating to lands under the jurisdiction of the Bureau of Reclamation are set aside and the cases are remanded for appropriate action in accordance herewith (I-10254 [those lands in T. 2 N., R. 41 E. B.M.], I-10256 through I-10260).

Frederick Fishman

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

