

CHARLES F. HAJEK  
and  
FREDERICK L. SMITH

IBLA 76-746

Decided March 31, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM-A 22853 Texas.

Affirmed.

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

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

APPEARANCES: Charles F. Hajek and Frederick L. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Appellants, Charles F. Hajek and Frederick L. Smith, have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 29, 1976, rejecting their noncompetitive oil and gas lease offer NM-A 22853, Texas, located in Howard County, Texas, and comprising 130 acres of land.

On July 28, 1975, the State Office, BLM, rejected appellants' oil and gas lease offer because it was not accompanied by a map

showing the exact location of the lands involved. On August 19, 1975, appellants sent a map of the land involved to the BLM and requested reconsideration of the July 28, 1975 BLM decision. On June 29, 1976, the BLM issued another decision rejecting the appellants' oil and gas lease offer. It held that part of the land in the offer was deeded for construction of IS-20 and is not available for leasing. As to the remaining lands, it found that the U.S. Department of Agriculture, Agricultural Research Service, which has administrative control over their surface use recommends that the lands not be leased in order to preserve them for agricultural research purposes.

Appellants requested reconsideration of the June 29, 1976 BLM decision, stating they would agree to a "no entry" stipulation in order to meet the objections of the Agricultural Research Service. The State Office, BLM, forwarded the Request for Reconsideration to the Department of Agriculture. The BLM also informed appellants their Request for Reconsideration did not extend the time period within which they are allowed to appeal the BLM decision of June 29, 1976. In accordance with appellants' request their July 21, 1976 letter was treated as their Notice of Appeal.

As grounds for their appeal, appellants allege other instances where oil and gas leases have been issued with a "no entry" stipulation.

Appellants request their July 21, 1976 letter be treated as their timely Notice of Appeal.

[1] The subject land is acquired land under the administrative jurisdiction of the U.S. Department of Agriculture, Agricultural Research Service.

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

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 purpose 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 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); Susan D. Snyder, 9 IBLA 91 (1973). The Department has no discretionary authority to waive either the consent requirement or the execution of the stipulations required by the administrative agency. Sallie B. Sanford, supra; Frederick L. Smith, supra; Susan D. Snyder, supra.

The only avenue left open to appellants is to contact the Agricultural Research Service directly to explore the possibility of leasing this land with a "no entry" stipulation.

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.

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Martin Ritvo  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

