

JOHN R. MEADOWS

IBLA 77-55

Decided April 4, 1977

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting uranium prospecting permit applications NM 26155 etc.

Affirmed.

1. Act of August 13, 1949! ! Mineral Lands: Prospecting Permits! ! Public Lands: Generally! ! Public Lands: Leases and Permits

Lands which have been designated by the Act of August 13, 1949, as public domain are not leasable under the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946, even though they may have been acquired lands prior to the Act of August 13, 1949. A prospecting permit for uranium on such lands will be denied.

APPEARANCES: John R. Meadows, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John R. Meadows appeals from six decisions of the New Mexico State Office, Bureau of Land Management, rejecting six applications for uranium prospecting permits. 1/ The applications were rejected either because the lands applied for were under the jurisdiction of the Bureau of Indian Affairs, PL 63-226, dated August 13, 1949, or because the lands were not subject to the acquired land regulations.

1/ The following uranium prospecting applications are included in this appeal: NM 26155, NM 26156, NM 26157, NM 26158, NM 26159 and NM 26160.

By Executive Order 7792 of January 18, 1938, the President transferred the jurisdiction of the acquired lands involved in this appeal from the Secretary of Agriculture to the Secretary of the Interior to be administered through the Commissioner of Indian Affairs for the benefit of certain Indian tribes.

The Act of August 13, 1949, 25 U.S.C. § 621 (1970), provided that certain acquired lands covered by E.O. 7792 and also certain public domain lands be placed in trust for the Indians. The remainder of these lands was declared by the Act to be part of the public domain of the United States to be administered by the Bureau of Land Management under the provisions of the Taylor Grazing Act, 43 U.S.C. § 315 *et seq.* (1970). The boundaries of the Indian lands and public domain lands were described in 15 F.R. 1815-1858 on March 31, 1950.

Bureau of Land Management Order 55821, dated November 18, 1953, 18 F.R. 7496-97, provided that lands which were declared to be public domain by the Act of August 13, 1949, *supra*, and which were transferred to the Bureau of Land Management for administration by section II of Secretarial Order 2559, dated March 25, 1950, 15 F.R. 1851-1858, were opened to all forms of disposition under the public land laws.

In his statement of reasons, appellant specifies that he does not appeal from the decisions as to the lands under the jurisdiction of the Bureau of Indian Affairs, but only as to the lands for which applications were rejected as allegedly not being subject to leasing under the law and regulations pertaining to acquired lands. Appellant states that these lands were acquired by the United States from the Santa Fe Pacific Railroad Company by indenture dated February 4, 1936. He alleges that these lands appear to have been acquired by the United States under the provisions of Title III of the Bankhead! Jones Farm Tenant Act, 50 Stat. 522, 525 (1937) as shown by the records of the BLM, and transferred from the Department of Agriculture to the Department of the Interior by E.O. 7992. As a result of such acquisition, appellant contends that the uranium minerals in and under the lands in question, are leasable as acquired lands under the provisions of the statute by which they were acquired, and are not subject to mining location laws.

Appellant contends that the effect of the Act of August 13, 1949, *supra*, was to restore the lands involved to their previous non! Indian character. That is, he explains, lands which had previously been part of the public domain and subject to the mining location laws prior to the Act were restored to that status. Similarly, lands which had been subject to the mineral leasing laws for acquired lands were restored to that status and no longer held for the benefit of

the Indians. Appellant contends it was error for the State Office, in denying the permits, to conclude that the effect of the Act was to eliminate the acquired land status of the lands involved.

Appellant notes that the lands in question were placed under the jurisdiction of the BLM for administration under the Taylor Grazing Act and that by order of November 18, 1953, they were declared open to all forms of disposition under the public land laws. He asserts that the lands administered under the Taylor Grazing Act may be disposed of under the mining entry laws or mineral leasing laws. In conclusion, he states that the effect of the order of November 18, 1953, is to allow the disposition of the lands by leasing (through prospecting permits) of the uranium minerals in and under the lands involved.

At the outset, we do not find any indication on the status sheets included in the six files that the lands were acquired under the Bankhead! Jones Farm Tenant Act, supra. We note that lands acquired under Bankhead! Jones Farm Tenant Act may be leased by the Secretary under authority of the Acquired Lands Leasing Act of 1947, 30 U.S.C. §§ 351-359 (1970) (as to the minerals specified therein) and Reorganization Plan No. 3 of 1946 as to all other minerals, which would include uranium. See Solicitor's Opinion, M-36421 (February 18, 1957).

However, the fact that these lands may have been acquired lands at one time is of no significance. Classification or status of lands may be controlled by legislation. See Bobby Lee Moore, 72 I.D. 505, 510 (1965). Regardless of their prior classification, the Act of August 13, 1949, supra, provided that certain lands be designated as public lands. Most of the lands involved in this appeal are situated within the boundaries of the land described as public domain in 15 FR 1855, 1856, pursuant to the Act of August 13, 1949, supra. These lands were opened to all forms of disposition under the public land laws by notice of November 18, 1953. Since the lands are public domain lands, they are not available for leasing as acquired lands.

In the alternative, appellant suggests that uranium minerals in such lands are disposable under mineral leases (prospecting permits) under the Atomic Energy Act, as amended, 42 U.S.C. § 2097 (1973). The short answer to this is that the Department of the Interior does not receive or adjudicate applications to lease pursuant to this provision, and insofar as we are aware, appellant has not filed any such application.

Therefore, pursuant to the authority delegated to the Board of Lands Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

