

THOMAS D. CHACE

IBLA 77-147

Decided June 17, 1977

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer C-24014.

Affirmed as modified.

1. Indian Lands: Oil and Gas Leasing: Generally--Indian Lands: Sub-surface Estates--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to--Regulations: Generally

An oil and gas lease offer must be rejected as to lands applied for which are held in trust for Indians and are not available under the Mineral Leasing Act. Even though the minerals in these lands have been reserved to the United States, mineral development is not possible at this time because the language of the exchange act under which the lands were acquired requires further promulgation of special regulations by the Secretary as a condition precedent to such development.

APPEARANCES: Thomas D. Chace, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Thomas D. Chace has appealed from a decision of the Colorado State Office, BLM, dated January 7, 1977, which rejected in part his noncompetitive oil and gas lease offer filed under section 7 of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 et seq.

The application was rejected as to 2,145.53 acres of public land in T. 32 N., R. 1 W., N.M.P.M., for the reason that the status records indicated the mineral estate in these lands is under the jurisdiction of the Bureau of Indian Affairs. 1/

Appellant objects to this decision on appeal, citing the terms of the trust patent for these lands to the Southern Ute Indian Tribe, Patent Number 1241410. He states that the minerals and the right to prospect for same are specifically reserved to the United States and did not come under the jurisdiction of the Bureau of Indian Affairs.

The BLM through the Office of the Regional Solicitor has responded indicating that a check of the status records shows the minerals in the lands in question are not under the jurisdiction of the Bureau of Indian Affairs. However, the BLM concludes that the lease offer still must be rejected because the lands identified in the decision are available for mineral development only pursuant to regulations promulgated by the Secretary of the Interior, which regulations have not been issued.

The record shows that the applied for lands were patented to the Southern Ute Tribe as part of 2,837.38 acres pursuant to an exchange authorized by the Act of October 15, 1962 (76 Stat. 954) as amended by the Act of September 6, 1963 (77 Stat. 140). Section (b) of that Act authorized the Secretary of the Interior to transfer to the United States in trust for the Southern Ute Indian Tribe, subject to valid existing rights, public lands on the Archuleta Mesa "reserving to the United States the minerals therein and the right to prospect for and remove them under regulations of the Secretary of the Interior \* \* \*."

Section (e) provided that lands conveyed pursuant to the Act would be a part of the Southern Ute Indian Reservation.

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1/ The offer to lease was rejected as to the following described lands:

T. 32 N., R. 1 W., N.M.P.M.

Section 7: Lots 3, 4, E 1/2 SW 1/4, SE 1/4

Section 8: N 1/2 S 1/2, SW 1/4 SW 1/4, SE 1/4 SE 1/4

Section 17: NE 1/4 NE 1/4, S 1/2 N 1/2, NW 1/4 NW 1/4, S 1/2

Section 18: Lots 1, 2, E 1/2, E 1/2 W 1/2

Section 19: Lots 5 thru 12 (all)

Section 20: Lots 3 thru 10 (all)

Section 21: W 1/2 of Lot 6, W 1/2 of Lot 7

The offer was allowed as to 393.90 acres described as:

T. 32 N., R. 1 W., N.M.P.M.

Sec. 9: Lots 1, 2, 3, NW 1/4 SE 1/4, SW 1/4

Sec. 21: Lots 5 & 8 Lot 6 (E 1/2) Lot 7 (E 1/2)

On September 29, 1967, the Secretary transferred to the United States, in trust for the Southern Ute Indian Tribe, certain lands which included the applied for lands in T. 32 N., R. 1 W., N.M.P.M. As appellant has correctly indicated, the deed of trust contained a reservation of the minerals to the United States expressly providing: "Excepting and reserving to the United States, all minerals in the land so patented, together with the right to prospect for, mine and remove such deposits from the same under regulations of the Secretary of the Interior."

Generally, lands included in an Indian reservation are segregated for the benefit of the Indians and withdrawn from operation of the general public land laws, including the mining laws and the Mineral Leasing Act of February 25, 1920. See Kendall v. San Juan Silver Mining Company, 144 U.S. 658 (1892); Gibson v. Anderson, 131 F. 39 (9th Cir. 1904). However, in this case there is an express provision to the contrary. The deed issued to the Ute Indians provided for the reservation of the minerals to the United States.

[1] Even though the minerals have been reserved to the United States, these minerals are not available for leasing under the Mineral Leasing Act. It has long been held by this Department that land held in trust for Indians is not subject to leasing under the Act. Carroll S. McGee, A-25778 (Nov. 7, 1949). The Department's regulations in 43 CFR 3101.1-1 confirms this policy specifically excepting Indian reservations from lands subject to leasing.

As we view the case before us it is clear that mineral development of the land in question is not possible at this time. The language reserving the mineral estate to the United States indicates that further action by the Secretary of the Interior would be necessary before the lands could be open to mineral entry or lease. The terms of the exchange enabling act and the trust deed make the promulgation of rules and regulations by the Secretary a condition precedent to such development. No such rules and regulations have yet been established by the Secretary.

A similar circumstance existed under the provisions of the Small Tract Act of 1938, 52 Stat. 609, as amended, 43 U.S.C. §§ 682(a) and (b) (1970) where the language of the Act required special rules and regulations of the Secretary as a condition precedent to the leasing of land under the Act. 2/ The Courts in interpreting the effect of

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2/ That Act provided:

"Patents for all tracts purchased under the provisions of this Act shall contain a reservation to the United States of the oil, gas, and other mineral deposits, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe."

such language have held that the Congressional intent of this type of proviso is to withdraw the land from mineral entry until administrative regulations are prepared by the Department.

In Dredge Corporation v. Penny, 362 F.2d 889 (9th Cir. 1966), the Court found that the language of the Small Tract Act did not provide that the reserved mineral should continue to be open for entry and location under the mining law, but that it left to the Secretary the question of how and to what extent they should be made available.

The Court, in the Dredge case cited its earlier ruling in Superior Land and Gravel Mining Company v. Territory of Alaska, 224 F.2d 623 (9th Cir. 1955), where it had considered the question whether school lands reserved by Congress to Alaska were open to mineral entry, where the Secretary had failed to exercise his authority to make necessary rules and regulations pursuant to legislation. 3/ The Court in Superior stated:

We are of the opinion that Congress cannot be held to have intended the 1939 legislation to become effective as to land under existing lease in the absence of the contemplated administrative regulations for the safeguarding of the interests and protection of the rights of those holding under the Territory. A less stringent construction would tend, as this case amply demonstrates, to thwart the purpose which the Congress had in mind in setting apart these lands for the benefit of the territorial common schools. The statute, unclear as it is, must be interpreted in such a manner as to effectuate its purposes, not to circumvent them. Accordingly we hold that the land was not open to mineral entry at the time applicants' locations were made, hence the locations are invalid.

224 F.2d 626-627. This line of reasoning is also applicable to the instant case. Cf. City of Phoenix v. Reeves, 14 IBLA 315, 81 I.D. 65 (1974). The purpose of the exchange enabling act in question was to

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3/ In Superior Sand and Gravel, supra, pertinent statutory authority provided:

"\* \* \* 'Such lands and the minerals therein shall be subject to disposition under the mining and mineral leasing laws \* \* \* upon conditions providing for compensation to any Territorial lessee for any resulting damages to crops or improvements on such lands, \* \* \*' [Emphasis supplied.] The Secretary of the Interior was authorized: 'to make all necessary rules and regulations in harmony with the provisions of this Act for the purpose of carrying the same into effect.' 53 Stat. 1243, 48 U.S.C. § 353 (1946 Ed.)."

obtain from the Ute Indians lands needed for the Navajo Dam and Reservoir Project in exchange for lands suitable for their uses and which were to become a part of the Southern Ute Indian Reservation. There is ample basis for the conclusion that Congress contemplated administrative regulations to safeguard the interests of the Indians. Protection of the Indians' surface rights would best be guaranteed by the promulgation of rules and regulations, which the Secretary has not yet done. Until those specific regulations are promulgated the lands are not available for oil and gas leasing.

Accordingly, the applied for lands are effectively withdrawn from mineral development until such further administrative action is taken by the Department.

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.

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Martin Ritvo  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge