

HARRIS R. FENDER

IBLA 77-508

Decided December 22, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dated July 12, 1977, rejecting a noncompetitive oil and gas lease offer NM-A 28522 TX.

Vacated and remanded.

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

A recommendation by the Bureau of Reclamation that issuing oil and gas leases on acquired land under its administration would jeopardize further acquisitions, should be given careful consideration, but the Bureau of Land Management must independently evaluate whether issuing the leases would be in the public interest.

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

An independent evaluation of whether the issuance of oil and gas leases on acquired lands would be in the public interest need, in some cases, consist only of an examination of the general character of the land. Where, however, the offeror raises material factual questions, these must be considered.

APPEARANCES: F. Wilbert Lasater, Esq., Lasater & Knight, Tyler, Texas, for Harris R. Fender, Appellant.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

Harris R. Fender appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 12, 1977, rejecting his noncompetitive oil and gas lease offer NM-A 28522 TX. The lease offer covers six tracts totaling 774.80 acres acquired in Jackson County, Texas, for the Palmetto Bend Project under the administration of the Bureau of Reclamation (BuRec). 1/

BLM stated as its justification for rejecting the offer:

The acquiring agency, Bureau of Reclamation, has indicated that the leasing of the federally-owned minerals would not be in the best interests of the government at this time. The land was acquired for the Palmetto Bend Project in Jackson County, Texas, and their acquisition program in this area is not yet complete. Initiation of mineral leasing at the present time could jeopardize their remaining acquisition program.

The record contains a memorandum dated May 27, 1977, from the Regional Director, BuRec, to the Chief, Branch of Lands and Minerals Operations, BLM, New Mexico, which apparently served as the source of BLM's justification. In addition to the substance of the above quotation, the memorandum states: "It is anticipated that within the next year the status of minerals within the reservoir area will have progressed to a point where mineral leasing programs can be initiated without jeopardizing remaining acquisitions."

1/ The land involved consists of:

<u>Contract No.</u>	<u>Tract No.</u>	<u>Acres</u>	<u>Volume/Page*</u>
5-07-10-L-0055	1-C-196	49.60	505/386
(Parcel (1) - 36.4 acres & Parcel (2) - 13.2 acres)			
14-06-534-157	1-C-110	44.30	500/543
14-06-534-131 **	1-C-111	8.50	502/303
14-06-534-120	1-C-112	88.30	499/196
(Parcel (1) - 25.4 acres, Parcel (2) - 56.6 acres & Parcel (3) - 6.3 acres)			
5-07-10-L-0054	1-C-108	374.50	505/393
14-06-534-14	1-C-109	209.60	478/231
<u>Total Area 774.80 acres</u>			

\* Volume & page references are to Deed Records of Jackson County, Texas.

\*\* Also subject to Contract No. 5-07-10-M-0046 for conveyance of 1/2 mineral interest, Vol. 506, Pg. 557.

A notice of appeal and statement of reasons were filed August 12, 1977. Appellant advances three arguments and submits new evidence which neither BuRec nor BLM has had the opportunity to consider. First, Appellant states his intention to begin drilling operations on land he already holds under lease adjacent to the Palmetto Bend Project. Such drilling, claims Appellant, "will have at least as great an effect on the Bureau of Reclamation's future acquisition as would the execution of a lease." Second, Appellant suggests that BLM will better its position by accepting the offer, as it will be enriched by the amount of the rental, and would avoid delays and the possible drainage of minerals by the drilling on the adjacent property. Finally, Appellant alleges that granting the disputed leases would permit him to unitize his operation and avoid activates which would interfere with the Palmetto Bend Project lake.

[1] Acquired lands may, with some exceptions, be leased for mineral development under the Mineral Lands Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1977). The section, however, attaches an important caveat to the issuance of such leases; no mineral deposit may be leased without the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing the mineral deposit. We have held that while, strictly speaking, the section does not mandate the consent of agencies such as BuRec which are subdivisions of the Department of the Interior, their recommendations will be given careful consideration, Kent C. Peterson, 30 IBLA 199, (1977); Walter W. Sapp, 29 IBLA 319 (1977); Daphne Shear, 29 IBLA 33 (1977); W. A. Hudson II, 1 IBLA 232 (1971); Duncan Miller, A-28104 (December 11, 1959). <sup>2/</sup> The rationale for this policy is the same as for the statute -- to prevent mineral leasing activities from interfering with the primary purpose for which the lands were acquired. Cf. 43 CFR 3109.3-1. After giving the administering agency's recommendation careful consideration, BLM must make an independent evaluation of the circumstances and determine whether leasing would be in the public interest.

[2] A recommendation, to carry weight, must be buttressed by facts, which BLM must independently consider. A mere conclusory statement by the administering agency will not suffice, Kent E. Peterson, supra; Walter W. Sapp, supra. In some cases, examination of the general character of the land involved will be sufficiently

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<sup>2/</sup> The decision whether to lease public lands is within the discretion of the Secretary of the Interior, Udall v. Tallman, 380 U.S. 1, 4 (1965); Fred P. Blume, 28 IBLA 58 (1976).

careful consideration to support the administering agency's recommendation, Daphne Shear, *supra*. Other cases, however, present issues demanding more intensive factual inquiry by BLM. 3/

The record does not show that BLM has had the opportunity to independently consider the factual questions raised by Appellant. The latter indicates that drilling will take place in the project area in the immediate future and that he intends to begin such drilling. It is to such drilling that BuRec apparently referred when it stated rather cryptically "the status of minerals within the reservoir area will have progressed." Appellant and BuRec have taken opposite positions on the impact that interim drilling would have on BuRec's acquisition programs, vis a vis leasing. Appellant claims that the effect of drilling would totally overshadow the impact of leasing. BuRec, on the other hand, implies that the impact of leasing would outweigh the effects of drilling. BLM should make inquiry into the merits of this dispute.

Appellant has also alleged that issuance of the leases would permit him to unitize his operation and avoid activities which would interfere with the Palmetto Bend Project lake. BLM has not had the opportunity to consider this question. We hold that this matter should be considered. 4/

Accordingly we find that, under the circumstances, BLM did not make a proper independent evaluation. It should do so and then the offers should be reconsidered to determine whether they should be rejected or a lease issued.

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3/ In BLM's independent evaluation, the offeror has the burden of showing that either there is a compelling public interest in the issuance of the lease or that factual basis of the administering agency's recommendation is clearly wrong, W. A. Hudson II, 1 IBLA 232 (1971).

4/ We give little weight to Appellant's further contention that part of the public interest in issuing the leases would be that BLM would have the rental payment in hand, and that delay and possible loss of minerals would be avoided. While these assertions are, generally speaking, accurate, they are of slight importance compared to the questions discussed above.

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 vacated and remanded.

Martin Ritvo  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

