

N L INDUSTRIES, INC.

IBLA 78-63 Decided February 23, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers U-31009 through U-31030.

Affirmed as modified.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Lands Subject to

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer and Carling, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

N L Industries, Inc., appeals from the September 27, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), which rejected its 22 oil and gas lease offers, U-31009 through U-31030. ^{1/} The lands covered by these offers lie lakeward from the surveyed meander line of the Great Salt Lake. They were the subject of a litigation between the United States and Utah culminating in a decree announced by the Supreme Court on June 28, 1976 (Utah v. United States, 427 U.S. 461). That decree, insofar as pertinent here, provides:

2. Subject to any federal regulatory authority that may extend to the Great Salt Lake or its shorelines, the

^{1/} Appellant states its appeal relates to 21 applications.

United States of America, its departments and agencies, are enjoined from asserting against the State of Utah any claim of right, title and interest:

(a) To any lands within the meander line of the Great Salt Lake (as duly surveyed prior to or in accordance with Section 1 of the Act of June 3, 1966, 80 Stat. 192), with the exception of any lands within the Bear River Migratory Bird Refuge, the Weber Basin Federal Reclamation Project, and the Hill Air Force Range (as bounded by water's edge June 15, 1967), the title to which last-named parcel is not decided by this decree;

(b) to the natural resources and living organisms in or beneath the lands delineated in (a) above; and

(c) to the natural resources and living organisms either within the waters of the Great Salt Lake, or extracted therefrom, as delineated in (a) above.

The decision appealed from cited the above decree and rejected the lease offers for the reason that all of the lands described therein are situated within the surveyed meander of the Great Salt Lake, and title thereto was in the State of Utah.

Appellant's rationale for reversal of the decision below is as follows:

The reason for Appeal is that the United States claims ownership of all or part of the subject acreage. This is not altered by the Bureau of Land Management statement that Utah vs. United States determined all lands below the surveyed meander line belong to the State. When the then Secretary of Interior in 1966 deeded all lands in the Great Salt Lake to the State of Utah, he reserved "unsurveyed islands" in the bed of the Lake.

Adopting Interior's view, any unsurveyed island in the bed of the Lake is federal land, not subject to the 1966 Act of Congress and to the parallel State of Utah legislation. N L has reason to believe that one or more of its applications cover land which the Federal Government may consider to be an "unsurveyed island". Until final determination is made of the title to such areas, the rejection

of NL's applications is premature and improper. The BLM has no authority to overrule the Secretary of the Interior.

Appellant asks that the rejection of the subject applications be set aside and such applications reinstated. Final decision cannot properly be made until the United States has by proper action relinquished all claims to all areas covered by the subject application.

Appellant explicitly recognizes that with respect to the unsurveyed islands "no final determination of the title to such areas" has been made. We are not unaware of the line of cases exemplified by Scott v. Lattig, 227 U.S. 229, 242-244 (1913), and Moss v. Ramey, 239 U.S. 538, 544 (1916), holding that an island in existence in a navigable body of water on the date that a State is admitted to the Union remains public land of the United States until disposed of by the United States. See Willis W. Ritter, A-27755 (December 22, 1958).

[1] The Secretary in his discretion may reject applications for lands where there is a "mere uncertainty" regarding the status of ownership of mineral deposits. Gas Producing Enterprises, 15 IBLA 266, 268 (1974), and cases there cited. Uncertainty of title alone is a sufficient basis for rejecting offers. Leonard R. McSweyn, 26 IBLA 376 (1976). As we have indicated earlier, appellant recognizes the uncertainty of title.

Appellant, in essence, requests that the offers be kept in a suspended state pending resolution of the title question. We stated in Georgette B. Lee, 10 IBLA 23, 26 (1973), as follows:

It is true, as appellant suggests, that the suspension of a lease offer is discretionary in such cases, absent the prior appropriation of the land. The long standing practice of the Department, however, is to reject such applications and not suspend them indefinitely pending any change in the land status or contingency necessitating the rejection. See, e.g., Edwin D. Warren, A-29720 (September 24, 1963), and J. G. Hatheway, et al., 68 I.D. 48 (1961), where the offers were for lands withdrawn for the use of the Navy Department and there was the possibility that at some time the withdrawal would be revoked, and Pexco, Inc., et al., supra [A-28017, July 11, 1960], where there was pending litigation to resolve a question of title to the lands. In these cases requests to suspend the offers were denied in view of this practice of the Department. In Hatheway, the Department stated:

*** [T]he rule is founded upon sound administrative practice. It prevents the public land records from being burdened with thousands of applications on which there is no possibility that action can be taken in the foreseeable future. Id. at 52.

See also J. W. McTieman, 11 IBLA 284 (1973); Forest Oil Corp., 15 IBLA 33 (1974); Placid Oil Co., 17 IBLA 292 (1974); Shell Oil Co., 20 IBLA 292 (1975); Don Jumper, 24 IBLA 218 (1976). In the circumstances, the refusal below to suspend the offers pending resolution of the title issue was not improper.

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.

Frederick Fishman
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

