

Editor's note: Reconsideration and request for hearing denied by order dated July 8, 1980

JACOBS CONTRACTING CORP.

IBLA 80-29

Decided January 14,

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting competitive coal lease application. ES 15923.

Affirmed.

1. Coal Leases and Permits: Generally -- Coal Leases and Permits: Applications -- Mineral Leasing Act for Acquired Lands: Generally -- Mineral Leasing Act for Acquired Lands: 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, e.g. the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

APPEARANCES: James R. Schadel, Esq., Grogan, Graffam, McGinley & Solomon, Pittsburgh, Pennsylvania, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated September 7, 1979, by the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's coal lease application ES 15923, covering 41.69 acres in Parcel No. R-50, in Armstrong County, Pennsylvania.

The lease application was rejected pursuant to 43 CFR 3501.2-6 1/ on the ground that the lands are included within a license for public park and recreational development and fish management purposes for the Fish Commission of Pennsylvania. The U.S. Army Corps of Engineers, as the surface management agency of the lands involved, advised BLM that coal stripping would be incompatible with the above purposes.

Appellant asserts that the land in issue is not part of any active recreational area or parks, the land is used strictly as a water impoundment area and has no value, and the only active fishing on Crooked Creek takes place on the Crooked Creek dam impoundment "which is located some miles from the subject property are not affected by proposed mining on the subject property." Even assuming that appellant's assertions are correct, the coal lease application was properly rejected for the reasons set forth infra.

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976) 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.

[1] The effect of this statute is to preclude mineral leasing on acquired lands without the consent of the administrative agency having jurisdiction over the acquired land. Capitol Oil Company, 33 IBLA 392 (1978), Charles F. Hajek, 29 IBLA 330 (1977). Thus, since the Corps of Engineers has withheld its consent, the Department cannot issue a coal lease in the land and the lease application was properly rejected. Cf. Sherrie R. Strange, 15 IBLA 278 (1974), and M. R. Diggs, Jr., 12 IBLA 187 (1973).

1/ "§ 3501.2-6 Consent of administering agency.

"(a) Jurisdiction of lands. Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered. Such consent to prospecting shall not be deemed to vest in the prospector an exclusive right to exploration or a preference right to a lease under this part."

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.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

