

EDWARD C. SHEPARDSON

IBLA 80-467

Decided May 13, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management rejecting oil and gas lease offer. M 45220.

Affirmed.

1. Oil and Gas Leases: Applications -- Oil and Gas Leases: Lands Subject to -- Surplus Property -- Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

2. Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Revocation and Restoration

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

APPEARANCES: Howard W. Dennis for Edward C. Shepardson.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 21, 198, by the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer M 45220 because the lands in issue were withdrawn from appropriation under the mineral leasing laws.

By Public Land Order (PLO) No. 10, July 8, 1942, the subject lands were withdrawn from all forms of appropriation under the public land laws and were reserved for use of the War Department as an ordnance storage depot site. An October 7, 1950, amendment (PLO 674) expressly withdrew the lands from appropriation under the mineral leasing laws.

Appellant states that most of the land contained in its application was covered by intention to release MO 69756. Appellant voices regret that release from withdrawal and restoration of the land to oil and gas leasing has not been finalized. Appellant seemingly is suggesting that the lack of need for the withdrawal is a sufficient predicate to ignore it as a bar to leasing.

[1] Land withdrawn for military purposes by means of a public land order which specifically withdraws the land from mineral leasing is not subject to oil and gas leasing. Frank M. McGinley, 67 ID. 194 (1960); B. L. Haviside, 66 I.D. 271 (1959). Moreover, section 6 of the Act of February 28, 1958, 43 U.S.C. § 158 (1976), does not give the Secretary of the Interior authority to issue oil and gas leases, with the concurrence of the Secretary of Defense, on lands in existing withdrawals which expressly prohibit mineral leasing. That is precisely the nature of the withdrawal here at issue. See Glenn S. Miller, A-28232 (March 29, 1960). The record indicates that the lands in issue may have been declared surplus and turned over to the General Services Administration. Therefore, such lands are not subject to leasing by this Department. See Paradox Oil and Gas Co., 22 IBLA 242 (1975).

[2] That the withdrawal in issue here apparently has outlived its usefulness does not vitiate its effectiveness to preclude oil and gas leasing.

In F. M. Tully, 39 IBLA 137, 139 (1979), we stated:

The 1960 Act includes no express revocation of the 1938 withdrawal. In a series of public land orders the Department has touched upon lands pertinent to the Dinosaur National Monument, viz., PLO 5204, 37 FR 7206 (April 12, 1972); PLO 5333, 38 FR 7558 (March 23, 1973); PLO 5424, 39 FR 24901 (July 8, 1974); PLO 5475, 40 FR 6341 (February 11, 1975). However, the executive branch has never taken formal action to revoke the 1938 withdrawal,

and to restore the land to the operation of the public land laws, including the mineral leasing laws. We adhere to the rule, which is stated below:

[T]he consistent position of the Department has been that lands which are withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal. The mere passage of time or the accomplishment of an avowed purpose cannot serve as a substitute for the formal restoration, \* \* \*.

Tenneco Oil Company, 8 IBLA 282, 283-84 (1972). See John C. Amonson, 8 IBLA 346 (1972); Rowe M. Bolton, 5 IBLA 226 (1972); Oliver and Robert A. Reese, 4 IBLA 261 (1972). Until the lands are restored to entry, they are not open to leasing, regardless of what effect the 1960 Act has. Accordingly, we find the lands in issue are not open to leasing, and BLM properly rejected appellant's noncompetitive oil and gas lease offer for these lands. Cf. City of Phoenix, 14 IBLA 315, 81 I.D. 64 (1974).

We reiterated in Wendell L. Garrett, d.b.a. Garrett Industries, 39 IBLA 85 (1979), that it is immaterial whether lands are presently being, or ever have been used for the purpose for which they were withdrawn. The withdrawal is effective until revoked or modified.

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:

Anne Poindexter Lewis  
Administrative Judge

James L. Burski  
Administrative Judge

