

SAMSON RESOURCES CO.

IBLA 80-114

Decided May 29, 1981

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, in part requiring payment of the balance of bonus bids for competitive oil and gas leases. NM-A 38437 and NM-A 38438.

Vacated and remanded.

1. Indian Lands: Generally -- Oil and Gas Leases: Competitive Leases --
Oil and Gas Leases: Lands Subject to

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

APPEARANCES: Wm. Lane Pennington, Esq., Tulsa, Oklahoma, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Samson Resources Company has appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated October 17 and 31, 1980, in part requiring payment of the balance of the bonus bids for competitive oil and gas leases, NM-A 38437 and NM-A 38438, within 15 days of receipt of the decisions. The period for submission of the balance of the bonus bid with respect to lease NM-A 38437 was subsequently extended for another 15 days pursuant to a decision dated November 7, 1979.

The dispute in this case centers on the amount which appellant was required to pay as the balance of its bonus bids for parcels 17 and 18 as a result of being declared the high bidder at a competitive

oil and gas lease sale held September 18, 1979. The notice of this sale, dated August 1, 1979, described parcel 17 as consisting of 135 acres within various tracts, C-313, C-314 Rev., C-315, C-320, and C-321, situated in secs. 6 and 7, T. 10 N., R. 27 E., Indian meridian, Sequoyah County, Oklahoma, and described parcel 18 as consisting of 358.32 acres within various tracts, C-316 through C-319, situated in sec. 12, T. 10 N., R. 26 E., Indian meridian, Sequoyah County, Oklahoma, and secs. 6 and 7, T. 10 N., R. 27 E., Indian meridian, Le Flore and Sequoyah Counties, Oklahoma.

Appellant was the high bidder for parcels 17 and 18 with bids, respectively, of \$233,388 and \$95,694.80. Appellant submitted one-fifth of the amounts bid, required as deposits with its bids.

In its statement of reasons for appeal, appellant contends that after making its lease offers it determined that a significant portion of the land to be leased was subject to conflicting claims of title. It requests the Board to clarify the question of title and modify the BLM decisions accordingly in order to reflect "a modified bid by Samson."

Appellant contends that in Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970), the Supreme Court held in part that title to that portion of the Arkansas River bed which crosses the subject land was held by the Choctaw, Chickasaw, and Cherokee Nations (Indian Nations). This land was subsequently documented in a Bureau of Indian Affairs (BIA) survey entitled "Arkansas River Movement Study" issued in 1973.

On November 11, 1975, and July 11, 1978, the Indian Nations issued oil and gas leases, BIA Lease Nos. 69131 and 69482, respectively to John D. Davis and GOMACO, Inc., covering 314.345 acres in sec. 6, T. 10 N., R. 27 E., Indian meridian, Le Flore and Sequoyah Counties, Oklahoma, and 363.065 acres in sec. 7, T. 10 N., R. 27 E., Indian meridian, Le Flore and Sequoyah Counties, Oklahoma. Appellant is the assignee under the latter lease.

Appellant also submits two maps, one prepared by BIA and the other prepared by Topographic Engineering Co., depicting the extent of overlap between land claimed by the Indian Nations and leased under the above-identified BIA leases and land in the proposed BLM leases to appellant. The extent of the overlap is asserted to be 355.27 acres out of a total of 493.32 acres offered for leasing by BLM.

Appellant served its statement of reasons on both the BIA and the Army Corps of Engineers (Corps). By letter dated January 23, 1980, the Corps informed BLM as follows:

Title to all tracts was acquired through condemnation proceedings with the exception of tract 318 which was acquired by general warranty deed. Title to the tracts in

condemnation vested in the United States upon the filing of the declaration of taking as set forth in 40 U.S.C., Section 258a, subject to the right to just compensation of the owners thereof. A copy of the statute is inclosed for your information. It would appear that the United States is the owner of the land and the Indian Nations' claim to title was divested by the condemnation proceedings.[1/]

[1] The record in this case clearly indicates that confusion exists concerning title to the lands within parcels 17 and 18. Despite the Corps' assertion that the United States owns the land and that the Indian Nations' claim to title was divested by the 1954 condemnation proceedings, it appears that the Indian Nations might hold some of the land in question.

The Supreme Court in Choctaw Nation v. Oklahoma, *supra*, held in part that title in fee simple to that portion of the Arkansas River bed which crosses the subject land had been conveyed by the United States to the Indian Nations by virtue of treaties and patents in the early 1800's. See Treaty of September 27, 1830, 7 Stat. 333; Treaty of December 29, 1835, 7 Stat. 478. Such land is held in trust by the United States for the benefit of the Indians.

It is a well settled principle of law that Congress has the authority to acquire Indian tribal lands through eminent domain; however, where the land is held by virtue of a treaty with the Indians, such treaty will not be abrogated "absent a clear expression of congressional purpose, for 'the intention to abrogate or modify a treaty is not lightly imputed to the Congress.'" United States v. Winnebago Tribe of Nebraska, 542 F.2d 1002, 1005 (8th Cir. 1976), quoting Menominee Tribe v. United States, 391 U.S. 404, 413 (1968). 2/

In the United States v. 2,005.32 Acres of Land, 160 F. Supp. 193 (N.D.S.D. 1958), dismissed on other grounds, United States v. Sioux Indians of Standing Rock Reservation, 259 F.2d 271 (8th Cir. 1958), the court held that neither 33 U.S.C. § 591 (1976), empowering the Secretary of the Army to acquire land by condemnation for river and harbor projects "for which provision has been made by law," nor the Declaration of Taking Act, 40 U.S.C. § 258a (1976), providing for the immediate taking of title, authorized the taking of Indian tribal lands by condemnation.

1/ The complaint in the condemnation proceeding states:

"W. O. Roberts, Area Director of the Five Civilized Tribes, Muskogee, Oklahoma, is made a party to this proceeding by reason of any interest that may be asserted on behalf of any restricted Indian."

2/ This land is not Indian allotted lands subject to condemnation pursuant to the Act of Mar. 3, 1901, 25 U.S.C. § 357 (1976). See Choctaw Nation v. Oklahoma, *supra* at 641 (Douglas, J., concurring).

Where title to land is in dispute, the Board has held that the Secretary may properly exercise his discretion to reject a lease offer for such land, without reference to the merits of the dispute or the quality of the title asserted by the United States. Don Jumper, 24 IBLA 218 (1976); see also N. L. Industries, Inc., 34 IBLA 99 (1978); Leonard R. McSweyn, 26 IBLA 376 (1976); Gas Producing Enterprises, 15 IBLA 266 (1974).

In this case there is uncertainty concerning the title to substantial portions of the tracts offered for leasing by BLM. Therefore, we void the sale of parcels 17 and 18 and direct that appellant's bonus bid deposits be returned. 3/

Because voiding the sale does not resolve the underlying title uncertainty, BLM with the assistance of the Solicitor and the participation of the Corps and the Indian Nations, should request the Attorney General of the United States to render a title opinion concerning the acreage in question. 4/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are vacated and the case remanded for further action consistent herewith.

Bruce R. Harris

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

3/ Where a BLM decision requires a submission by a party within a prescribed time period, the filing of an appeal suspends the running of that time period, and after issuance of the Board's decision, the party is properly given the entire time period in which to comply. Mobil Oil Co., 35 IBLA 375, 85 I.D. 225 (1978). In this case the appeal suspended the time periods set in the BLM decisions. Therefore, 43 CFR 3102.4-1 was never invoked requiring forfeiture of the bonus bid deposits.

4/ This decision does not preclude the reoffering of those portions of parcels 17 and 18 the title to which is undisputed, provided that they can be properly identified and described.

