

ESDRAS K. HARTLEY

IBLA 81-820

Decided October 16, 1981

Appeal from decision of California State Office, Bureau of Land Management, rejecting in part oil and gas lease offer CA 3945.

Affirmed.

1. Oil and Gas Leases: Lands Subject to--Private Exchanges: Generally

Lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by sec. 8 of the Taylor Grazing Act do not become available for oil and gas leasing upon acceptance of title on behalf of the United States, but only when an order is issued opening the lands to such disposition.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Esdras K. Hartley has appealed the May 26, 1981, decision of the California State Office, Bureau of Land Management (BLM), which rejected his noncompetitive oil and gas lease offer CA 3945, as to parcels 1 and 2 therein described, because, although title to the lands had been reconveyed to the United States in a private exchange, the lands had not been opened to mineral leasing. The decision stated that exchanges of land are governed by section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1976), and that, under implementing regulation 43 CFR 2200.3, 46 FR 1640 (Jan. 6, 1981), effective April 15, 1981, lands reconveyed in an exchange shall not be available for location under the mining laws or for mineral leasing until a notice of availability is published in the Federal Register and noted on the public land records. No such notice has been published for the lands described in parcels 1 and 2 in oil and gas lease offer CA 3945.

The record shows that the subject lands were reconveyed to the United States under private exchange CA 1702 by a warranty deed dated October 7, 1974, pursuant to section 8 of the Taylor Grazing Act (TGA), 43 U.S.C. § 315g (1970) (repealed by section 705(a) of FLPMA, 90 Stat. 2793). Oil and gas lease offer CA 3945 was filed September 22, 1976.

Thus, both the reconveyance of the land and the filing of the lease offer occurred before October 21, 1976, the date of approval of FLPMA.

Appellant argues that, although section 8 of TGA was repealed by FLPMA, as the private exchange CA 1702 was consummated prior to enactment of FLPMA and his lease offer was likewise filed before approval of FLPMA, the availability of the land sought for leasing should be determined as of the date of filing of his lease offer, September 21, 1976, and therefore it was error for BLM to reject a portion of his offer based on regulations adopted under FLPMA for opening lands acquired by the United States in an exchange. Appellant also argues that upon acceptance of title to land offered in a TGA exchange, the reconveyed land became public land and was available for leasing under section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), and emphasizes that no regulation effective when he filed his offer specifically required the issuance of an opening order to make such land available for oil and gas leasing. Further, appellant argues that, although the decision accepting title to the subject land in exchange CA 1702 provided that the land would not be subject to appropriation under the public land laws unless and until an appropriate order has been issued by the authorized officer, such decision did not close the land to operation of the Mineral Leasing Act because a mineral lease is not an appropriation of public land and the mineral leasing laws are not included within the generic term, "public land laws," citing Boesche v. Udall, 373 U.S. 472 (1963), and Udall v. Tallman, 380 U.S. 1 (1964), as well as Dale E. Armstrong, 53 IBLA 153 (1981). Finally, appellant suggests that BLM's determination that a de facto withdrawal had occurred because no opening order for the subject land had been issued and BLM's establishment of a withdrawal review file under section 204 of FLPMA, 43 U.S.C. § 1714 (1976), do not preclude mineral leasing because no opening order was necessary to make the lands available under the mineral leasing laws. In further support, appellant notes a BLM memorandum dated June 17, 1980, in which the Chief, Land Section, Branch of Mineral Operations, California State Office, BLM, requests review of the lands at issue to identify any significant public land values which require protection from the nondiscretionary public land laws, including the mining laws, prior to opening the land to appropriation. Appellant points out that mineral leasing is a discretionary activity of the Secretary.

[1] Appellant is correct that the provisions of section 206 of FLPMA, supra, and the corresponding regulations do not apply to private exchange CA 1702. However, the Department held in Southern California Petroleum Corp., 57 I.D. 61 (1959), that lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by section 8 of the Taylor Grazing Act, supra, do not become available for offers to lease for oil and gas simply upon acceptance of title on behalf of the United States, but only when an order is issued opening them to such disposition. See also J. E. Dawson, Jr., A-27838 (Mar. 2, 1959). In Petro Leasco, Inc., 42 IBLA 345 (1979), we reiterated that holding. Petro Leasco involved lands acquired by the United States under forest exchange U 32477, authorized by the Act of March 20, 1922, 16 U.S.C. § 485 (1976). We said that lands acquired by the

Secretary of Agriculture by forest exchange become part of the National Forest System upon acceptance of title, and are thereby subject to all the laws, rules, and regulations applicable thereto. National forest lands are by statute open to mineral leasing. We contrasted that with lands reconveyed to the United States under an exchange perfected pursuant to section 8, TGA, supra, for which restoration orders are mandatory, adverting to the BLM Manual §§ 2091.8 and 2097. We also stated:

[W]e have discerned nothing in the legislative history of FLPMA which arguably suggested congressional intent to abolish the Department's administrative practice of issuing restoration and opening orders. Moreover, we do not choose to assume that the Congress was unaware of this long practice or precedent applicable thereto. In our view, mandates of the Act are best served by adhering to the sound policy of fair and orderly administration of the public lands, until such time as the Secretary may promulgate a different or contrary rule.

* * * We further hold that acquired lands administered by BLM are not subject to appropriation unless and until opening orders are duly noted on the land records in the manner prescribed and set forth in the BLM Manual, supra.

42 IBLA at 353-54.

As there have been no orders opening the tracts for which appellant applied to disposition, they are not open to oil and gas leasing under the Mineral Leasing Act. An offer to lease filed for lands which are not available for leasing must be rejected. Curtis D. Wheeler, 55 IBLA 278 (1981); Alver C. Duncan, 39 IBLA 144 (1979). Thus it was proper for BLM to reject the oil and gas lease offer of appellant as to the reconveyed lands.

Accordingly, 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.

Douglas E. Henriques

Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

