

ALTEX OIL CORP.  
EMERY ENERGY, INC.

IBLA 82-1056

Decided August 24, 1982

Appeal from decisions of Oregon State Office, Bureau of Land Management, rejecting acquired land oil and gas lease offers OR 27476(WA), OR 27477(WA), and OR 27489(WA).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Consent of Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

APPEARANCES: Gordon L. Allott, Jr., Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Altex Oil Corporation and Emery Energy, Inc., appeal the June 9, 1982, decisions of the Oregon State Office, Bureau of Land Management (BLM), which rejected their acquired lands oil and gas lease offers, OR 27476 (WA), OR 27477(WA), and OR 27489(WA), because the lands sought are within the Atomic Energy Commission Reservation, and the agency withheld consent to leasing, citing 43 CFR 3109.3-1.

Appellants contend the Department of Energy (DOE) action withholding consent to lease is arbitrary and capricious, citing Esdras K. Hartley, 57 IBLA 293 (1981), which held that it must be shown that the rejecting jurisdictional agency has considered leasing subject to clear and reasonable stipulations to protect the public interest. Appellants also contend

the BLM decision is contrary to a constitutional right and a violation of the due process clause of the United States Constitution, in that the DOE determination was made without them having any chance to know the opposing evidence and to respond with their own evidence and argument. They suggest that the cited reason for rejection "the land is within the Atomic Energy Commission Reservation Boundaries. The surface management agency has withheld its consent to lease. See 43 CFR 3109.3-1," is invalid on its face as there is no Atomic Energy Commission (AEC) at this time.

Appellants are correct in saying that there is no AEC at this time. The AEC was abolished by the Energy Reorganization Act of 1974, 88 Stat. 1237, 43 U.S.C. § 5814 (1976), October 11, 1974. However, all functions of the AEC were transferred either to Energy Research and Development Agency (ERDA) or to the Nuclear Regulatory Commission. Subsequently, pursuant to 42 U.S.C. § 7151 (1976), all functions of the AEC and the ERDA were transferred to the Secretary of Energy. See Exec. Order No. 12038 (Feb. 3, 1978), 43 FR 4957, as amended by Exec. Order No. 12156 (Sept. 10, 1979), 44 FR 53073. The lands acquired or withdrawn for use by the AEC in connection with its Hanford operations remain in the same status as before, but under the jurisdiction of the Richland Operations Office, DOE. The change in name of the administering agency does not vitiate the reason given in the BLM decisions "lands are within the boundaries of the AEC Reservation Boundary."

BLM requested consent of DOE to leasing the lands within the Hanford project site for oil and gas. DOE made the following response:

Hanford is still under very serious consideration for location of the national waste terminal storage repository. Tunnels have been drilled into basalt formations and tests are underway to determine the ability of basalt to withstand the heat produced by radioactive waste. Furthermore, we have drilled several deep holes into the basalt and confirmed its basic integrity. Many millions of dollars have been spent on this effort. Therefore, we remain unwilling to approve drilling of boreholes, either onsite or offsite, which conceivably could affect the aquifers or the deep geological structures under the Hanford Site.

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

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 adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

[1] The effect of this statute is to preclude mineral leasing on acquired lands of the United States without the consent of the administrative agency having jurisdiction over the acquired land. Dennis Harris, 55 IBLA 280 (1981); Arthur E. Meinhart, 46 IBLA 27 (1980); Capitol Oil Corp., 33 IBLA 392 (1978); Charles E. Hajek, 29 IBLA 330 (1977). Thus, since DOE has withheld its consent, this Department cannot issue oil and gas leases for the land and the lease offers were properly rejected.

Appellants cited Esdras K. Hartley, *supra*, as support for their contention that no clear and reasonable rationale was given by DOE when it withheld its consent to leasing. Hartley is not apposite, as it dealt with lands acquired by the Bureau of Reclamation, an agency of the Department of the Interior. As we said in Hartley:

However, if the lands embraced by an oil and gas lease offer are under the surface jurisdiction of a service or bureau within the Department of the Interior, such as BuRec, the consent of the Secretary of the Interior is necessary under the Act for leasing of the land. Mardam Exploration, Inc., 52 IBLA 296 (1981); Walter W. Sapp, 29 IBLA 219 (1977). The opinion of such a bureau or agency would not be controlling, although its views would be considered carefully. In such a situation BLM would be responsible for assembling information and determining on the Department's behalf whether a lease should issue. Esdras K. Hartley, 35 IBLA 137 (1978).

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 affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

