

Appeal from decision of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. CA 12228 through CA 12231.

Reversed and remanded.

1. Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Where oil and gas lease offers embrace lands withdrawn or reserved for an agency of the Department of Defense, the lands may only be leased after consultation with the Department of Defense.

APPEARANCES: David M. Garland, Esq., Newport Beach, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Douglas E. Smith has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated April 8, 1982, rejecting his noncompetitive oil and gas lease offers, CA 12228 through CA 12231, that encompass all of San Nicolas Island, Ventura County, California. BLM rejected the offers because "[t]he lands were withdrawn from mineral leasing

by Executive Order dated November 15, 1901, as amended by Executive Order 6009 dated January 31, 1933."

The Executive order dated November 15, 1901, stated simply, "It is hereby ordered that San Nicolas Island, California, be, and it is hereby, reserved for lighthouse purposes." Exec. Order No. 6009, dated January 31, 1933, is titled "Transferring to Control and Jurisdiction of the Secretary of the Navy Certain Lands off the Southern Coast of California for Naval Uses," and reads as follows:

By virtue of the authority vested in me by law it is hereby ordered that so much of Executive Order dated January 26, 1867, as related to San Nicholas Island, California, and Executive Order of November 15, 1901, which reserved said island for lighthouse purposes, be, and the same are hereby, revoked.

And it is hereby ordered that the said San Nicholas Island off the southern coast of California, * * * be, and the same is hereby, placed under the control and jurisdiction of the Secretary of the Navy for naval uses.

Reserving, however, for the use of the Department of Commerce sites to be selected by that Department on which to erect and maintain such aids to navigation and incidental facilities as the Secretary of Commerce may consider desirable.

This order shall continue in full force and effect unless and until revoked by the President or by an Act of Congress. [1/]

Public Land Order No. 5647, dated September 20, 1978, revoked Exec. Order No. 6009, effective September 27, 1978, as to the sites reserved for the use of the Coast Guard, Department of Commerce, for lighthouse purposes, but left unaltered the reservation of the island to the Secretary of the Navy for naval uses. See 43 FR 43718 (Sept. 27, 1978). 2/

In his statement of reasons, appellant argues that both the reservation for lighthouse purposes and that for naval uses involve only surface use of

1/ The Executive order of January 26, 1867, "reserved for Light House purposes" various coastal lands of California and Oregon including the southwestern and southeastern points of San Nicolas Island as requested by the Naval Secretary of the Light House Board through the Department of the Interior.

2/ Prior to its reservation to the Navy, San Nicolas Island was encompassed by Exec. Order No. 5326, dated April 14, 1930, which states in relevant part that

"all unreserved islands, rocks, and pinnacles situated in the Pacific Ocean off the coast of California, be, and the same are hereby, temporarily withdrawn from settlement, location, sale, or entry, subject to the conditions and limitations of said acts, for classification and in aid of legislation, and subject to valid, existing rights." The order was based on the authority of the Act of June 25, 1910, 36 Stat. 847, as amended by the Act of Aug. 24, 1912, 37 Stat. 497.

the island and no mention was made in either reservation of precluding oil and gas leasing. He urges that the Secretary of the Interior retains the authority to lease for oil and gas subject to the consent of the Secretary of the Navy and under the conditions that the Navy might impose.

In apparent support of its conclusion that San Nicolas Island is withdrawn from mineral leasing BLM has included in the case file for this appeal a copy of a memorandum dated September 19, 1979, from the Regional Solicitor to BLM concerning the status of the mineral estate of Dead Man's Island, another island off the coast of California, that had been withdrawn as a military reserve in 1872. ^{3/} The Regional Solicitor referred to several Supreme Court decisions standing generally for the principle that lands which have been appropriated or reserved for a lawful purpose are not public and are impliedly excepted from subsequent laws, grants, and disposals which do not specially disclose a purpose to include them. See United States v. Minnesota, 270 U.S. 181, 206 (1926); Scott v. Carew, 196 U.S. 100 (1905); Wilcox v. Jackson, 13 Pet. 498, 513 (1839). He then concluded that since the Mining Law of 1872 and the Mineral Leasing Act of 1920 were passed subsequent to the reservation of Dead Man's Island for military purposes, the island is not open either to mining location or mineral leasing. We note, however, that each of the cases addressed in the cited Supreme Court decisions arose prior to the passage of and did not involve the Mineral Leasing Act of 1920 and that, in the present appeal, the reservation with which we are most concerned, the 1933 reservation for naval purposes, occurred after the passage of the Mineral Leasing Act. Without otherwise commenting on the Regional Solicitor's opinion, we find that it is not applicable to this appeal.

[1] The general rule applicable to mineral leasing on withdrawn or reserved land provides that mineral leasing does not constitute an appropriation of the land leased, and, unless a withdrawal or reservation specifically provides otherwise, the withdrawn or reserved land is presumed to be available for oil and gas leasing, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Chevron U.S.A., Inc., 52 IBLA 278 (1981); Kerr-McGee Corp., 46 IBLA 156, 158 (1980); Noel Teuscher, 62 I.D. 210 (1955). However, minerals in lands withdrawn or reserved for the use of any agency of the Department of Defense, e.g., the Navy, may not be leased if, after consultation with the Secretary of the Interior, the Secretary of Defense makes a determination that leasing would be inconsistent with military use of the lands. 43 U.S.C. § 158 (1976); see Mobil Oil Corp., 20 IBLA 296 (1975).

There is no information in the case files as to the views of the Secretary of Defense regarding the leasing of San Nicolas Island. Since the island is available for leasing unless he determines that leasing would be inconsistent with the Navy's use of the land, we remand the case to BLM to readjudicate the offers after making inquiry to the Secretary of Defense or his authorized representative in accordance with 43 U.S.C. § 158 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the

^{3/} It does not appear that the appellant was given a copy of this memorandum.

California State Office is reversed and the lease offers remanded for readjudication consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge