

Editor's note: decision vacated by Order dated Jun 19, 1984 -- See 71 IBLA 190A below.

JOSEPH C. MANGA

IBLA 83-12

Decided March 10, 1983

Appeal from decisions of California State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers CA 10983 through CA 10985.

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: Keith A. Christenson, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Joseph C. Manga has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated July 26, 1982, rejecting noncompetitive acquired lands oil and gas lease offers, CA 10983 through CA 10985, for certain lands within the Marine Corps Base at Camp Pendleton, California.

The BLM decision reports that the selected lands are acquired lands under the jurisdiction of the Department of the Navy and that the Navy has advised that it does not consent to leasing. BLM explains:

Camp Pendleton has the primary mission of providing facilities and support services to train air and ground forces assigned to the 1st Marine Amphibious Force as well as those assigned to other services.

The Department of the Navy has advised us that all of the proposed oil and gas lease sites selected in these offers affect major training areas within this facility. The training conducted at Camp Pendleton involves large portions of the facility dedicated exclusively for use as impact areas for both small arms as well as artillery delivered high explosives. In support of combined arms training, substantial portions of the Base are used as maneuvering areas for tracked vehicles, helicopters, and other aircraft as well as infantry units. The closing of any of these areas for oil and gas exploration would have a negative impact on and be totally incompatible with the mission of this facility.

In addition to the adverse impacts on training resulting from oil and gas leasing, the Navy cites additional potential damaging impacts including contamination of the ground water supply, exacerbation of current soil erosion problems, and a disruption of a fragile coastal ecosystem. [1/]

Therefore, BLM rejected the offers citing 43 CFR 3109.3-1 which prohibits the issuance of oil and gas leases for acquired lands without the consent of the agency having jurisdiction over the lands.

In his statement of reasons, appellant makes two principal arguments. First, appellant contends that in light of underlying policy changes expressed by the Department of the Interior and Congress and related changes to certain regulations, BLM may no longer merely defer to the administering agencies but must actively participate in determining whether oil and gas development is compatible with the use of the lands by that agency. He refers to amendment of section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976), by section 12 of the Federal Coal Leasing Amendments Act, 90 Stat. 1090, and related changes to 43 CFR 3101.2-1(f), 43 FR 37202 (Aug. 22, 1978), that opened acquired military lands to oil and gas leasing. He contends that the changes reflect a policy in favor of development of oil and gas reserves under military lands. He points out language in the preamble to the regulatory change stating that "[t]he two Departments [Interior and Defense] will determine the suitability of the land for mineral leasing and development on a case by case or area by area basis before the Secretary of the Interior issues a lease," and interprets it to mean that Interior will no longer defer to the administering military agency. He adds that this "togetherness policy" was recognized by a Federal court in Texas Oil and Gas

1/ BLM adopted this rationale from a letter dated July 2, 1982, from the Director, Real Estate Division, Western Division, Naval Facilities Engineering Command, Department of the Navy, to BLM advising that the Department of the Navy did not consent to accepting certain other offers to lease in Camp Pendleton. By memorandum dated Jan. 28, 1983, the Board requested BLM to submit for the record a recommendation from the Department of the Navy directed specifically to the offers now at issue. By letter dated Feb. 3, 1983, the Department of the Navy advised BLM that "any mineral leasing applications for the Marine Corps Base * * *, including but not limited to Applications CA 10983, 10984, and 10985 (IBLA 83-12) must be denied. The justification and rationale for denying mineral leasing applications at the Base was set forth in our 2 July 1982 letter."

Corp. v. Andrus, 498 F. Supp. 668 (D.D.C. 1980). ^{2/} Appellant suggests that decisions concerning leasing of acquired lands administered by other agencies should now be made under the same principles as are applied to the leasing of public domain lands administered by agencies other than the Department of the Interior and cites to various Board decisions setting out those principles. ^{3/}

Appellant also argues that the Department of the Navy's refusal to consent to leasing is arbitrary, capricious, unreasonable and an abuse of discretion because his offers affect only a limited area of Camp Pendleton that does not include those areas subject to high explosives or used for maneuvers or training and where there are numerous other nonconforming surface uses, including a railroad right-of-way, highway easement, high tension power transmission lines, nuclear power plant and various residential, recreational and storage uses. He suggests that potential conflicts with military uses should be dealt with by appropriate stipulations, not rejection of his offers.

[1] Section 12 of the Federal Coal Leasing Amendments Act, insofar as it is relevant to this case, amended 30 U.S.C. § 352 (1976) to eliminate a prohibition against leasing lands acquired for military or naval purposes, thereby making more land available for mineral leasing. That amendment did not change the part of 30 U.S.C. § 352 (1976) more pertinent to the issues on appeal; that is,

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

We have long held that this provision precludes mineral leasing of acquired lands by the Secretary of the Interior without the consent of the administrative agency having jurisdiction over the lands. Altex Oil Corp., 66 IBLA 307 (1982); 43 CFR 3109.3-1. Furthermore, we have applied this provision in cases where one of the military agencies is the administering agency. E.g., Rachalk Production, Inc., 64 IBLA 4 (1982) (Navy); Dennis Harris, 55 IBLA 280 (1981) (Navy); and Arthur E. Meinhart, 46 IBLA 27 (1980) (Corps of Engineers).

The 1978 amendment to 43 CFR 3101.2-1(f) governing the availability of acquired lands for leasing was designed to bring the Department's regulations into conformity with the statutory change opening acquired military lands to leasing. The statement in the preamble to the regulatory change must be construed in the context of the statute. It simply refers to the change from a prohibition against leasing of acquired military lands, where the Department of the Interior would reject offers to lease outright, to the availability of such lands for leasing, where the Department of the Interior must seek the

^{2/} Rev'd., Texas Oil and Gas Corp. v. Watt, 683 F.2d 427 (D.C. Cir. 1982). ^{3/} See, e.g., Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981); Howard L. Ross, 49 IBLA 87 (1980).

views and consent of the administering agency under the statute on a case by case basis. 4/

We considered arguments similar to appellant's in Amoco Production Co., 69 IBLA 279 (1982). As was indicated there, the remedial avenue in cases such as these is for appellant to try to persuade the administering agency to modify the scope of its denial to consent to leasing, or, failing that, seek judicial review of that denial. 5/

Therefore, 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 California State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

4/ In Texas Oil and Gas Corp. v. Andrus, *supra*, the court was simply setting out the changes made to regulations by the Corps of Engineers and the Department of the Interior as a result of the elimination of the prohibition against oil and gas leasing of acquired military lands. The court was not discussing the statement vis-a-vis the consent requirement.

5/ For its part, on Jan. 19, 1983, the BLM issued Instruction Memorandum No. 83-265:

"For all classes of lands, both public domain and acquired, which are managed by an agency other than BLM, we ask the surface managing agency (SMA) respectively for recommendations or consent to lease plus stipulations prior to lease issuance. The surface managing agency does not always provide reasons when providing recommendations against leasing or in denying consent. While recognizing that it is not possible to require SMAs to provide such reasons and, therefore, is not a proper subject for rulemaking, it would be helpful in supporting our rejection of applications and in counseling applicants if BLM received such rationale. When requesting consent to lease or leasing recommendations from an SMA please request the SMA to provide reasons for negative recommendations or denial of consent. This can be done as part of the standardized request to the SMA and a copy of the SMA rationale when submitted can be enclosed with the rejection decision as appropriate. Please also assure that when BLM denies leasing, a brief statement of reasons therefor is provided the applicant."

June 19, 1984

IBLA 83-12 : CA 10983 - CA
71 IBLA 187 :
: Oil and Gas Lease Offers
JOSEPH C. MANGA :
: Decision Vacated; Request for
: Remand Granted

ORDER

On the basis of a letter dated March 23, 1984, from the Department of the Navy indicating that it has approved limited oil and gas exploration at the Camp Pendleton Marine Corps Base, subject to several conditions, the California Office, Bureau of Land Management (BLM), filed a request on June 4, 1984, that the Board vacate its March 1983 decision in this case and remand the case for issuance of leases.

Accordingly, BLM's July 26, 1982 decision rejecting noncompetitive acquired lands oil and gas lease offers CA 10983 - CA 10985 and the Board's March 10, 1983 decision affirming that decisions are vacated and the case is remanded for issuance of the leases.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris C. Randall Grant, Jr.
Administrative Judge Administrative Judge

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