

Editor's note: Appealed -- remanded to IBLA (court retained jurisdiction), Civ. No. W83-0176(B) (D. Miss. Aug. 29, 1984); aff'd in part, as modified, vacated in part on remand -- See 84 IBLA 331 (Jan. 11, 1985)

SAM P. JONES

IBLA 83-177

Decided July 19, 1983

Appeal from decisions of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers ES-28059 and ES-28060.

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 the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Sam P. Jones appeals from decisions of the Eastern States Office, Bureau of Land Management (BLM), dated October 1, 1982, rejecting noncompetitive acquired lands oil and gas lease offers ES-28059 and ES-28060.

On May 28, 1981, appellant filed oil and gas lease offers ES-28059 and ES-28060 for approximately 818 acres and 534 acres, respectively, of acquired land situated in Warren County, Mississippi, pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 (1976).

By letter of March 25, 1982, BLM requested the Corps of Engineers (COE), Vicksburg District, the agency having jurisdiction over the land, to complete

a title report form with respect to appellant's oil and gas lease offers. In a letter dated July 2, 1982, COE replied to the BLM request stating: "Waterways Experiment Station does not consent to lease the lands covered under ES-28059 and ES-28060 under a noncompetitive lease. It is their desire to obtain competitive bids on the leases."

On October 1, 1982, BLM, citing 43 CFR 3109.3-1, rejected the oil and gas lease offers because the surface management agency (COE) withheld its consent to lease.

Appellant summarized his arguments on appeal as follows:

The provision for leasing acquired lands only with the consent of the administering agency presupposes that such consent will not be withheld for reasons that are unrelated to the purposes for which the lands were acquired or are being administered, an abuse of discretion, arbitrary and capricious, or nonexistent. Thus withholding of consent because of a desire that lands only be leased competitively cannot be recognized. In any event, a statement of desire to lease lands competitively constitutes consent to the leasing of the lands, enabling a lease to be issued either competitively or noncompetitively according to the objective criteria of the law.

Accompanying his statement of reasons is a motion to consolidate the appeals involving oil and gas lease offers ES-28059 and ES-28060. Appellant's motion is hereby granted.

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976), provides, 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.

See 43 CFR 3109.3-1. We have long held that the statute precludes mineral leasing of acquired lands by the Secretary of the Interior without the consent of the administrative agency having jurisdiction over the lands. Florence Wentworth, 72 IBLA 248 (1983); Joseph C. Manga, 71 IBLA 187 (1983); Amoco Production Co., 69 IBLA 279 (1982); Altex Oil Corp., 66 IBLA 307 (1982), and cases cited therein. This is distinguished from mineral leasing under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), where the Secretary of the Interior is vested with the sole authority for deciding whether to issue a lease for public lands. 1/ See, e.g., Natural Gas Corp. of California, 59 IBLA 348 (1981).

1/ In certain instances, a service or bureau within the Department may have jurisdiction over acquired lands, in which case the Secretary of the Interior would have the sole authority for deciding whether to issue a lease for such lands. See S. Dawson, 73 IBLA 301 (1983); Mardam Exploration, Inc., 52 IBLA 296 (1981). However, this is not the situation in the instant case.

This dichotomy between the two statutes similarly applies to the decision to impose certain conditions as a prerequisite to issuing a lease. For instance, under the Mineral Leasing Act, supra, BLM may condition issuance of a lease on the execution of certain stipulations, subject to a determination by the Secretary of the Interior that the decision is supported by valid reasons and that the stipulations are a reasonable means to accomplish a proper Departmental purpose. Max B. Lewis, 56 IBLA 293 (1981); James E. Sullivan, 54 IBLA 1 (1981); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972) (Forest Service Stipulations). On the other hand, under the Mineral Leasing Act for Acquired Lands, supra, while the jurisdictional agency may condition issuance of a lease on the execution of certain stipulations, the Secretary of the Interior has no authority to waive execution of the stipulations or to alter their terms. Thomas Connell, 46 IBLA 331 (1980), and cases cited therein. Moreover, this rule applies in cases where the jurisdictional agency conditions its consent to lease on the lessee's compliance with a requirement unrelated to the purposes for which the lands were acquired or are being administered. This was the case in Amoco Production Co., supra, in which the Board affirmed BLM's decision holding an oil and gas lease for rejection where TVA conditioned the giving of its consent on the lessee's compliance with a request to demonstrate that the lands sought were needed to establish a drilling unit. The Board held that regardless of any views the Department may have regarding the wisdom of such precondition, it has no authority to waive compliance. Amoco Production Co., supra at 282.

In this case COE expressed a desire to lease the lands in question competitively. Contrary to appellant's assertion that a statement of such desire constitutes consent to leasing, such a statement appears to be a condition to leasing, and, in fact, COE stated that it "does not consent to lease the lands * * * under a noncompetitive lease."

The Secretary is without authority to lease acquired lands without the proper consent regardless of the agency's reasons for withholding that consent. That limitation on the Secretary's authority is clearly expressed in the statute. Altex Oil Corp., 73 IBLA 73 (1983); Esdras K. Hartley, 57 IBLA 293, 294 (1981). BLM's recently released Instruction Memorandum No. 83-265 (Jan. 19, 1983) instructs BLM officials to request, as part of their inquiry process, that the surface managing agency submit reasons for a negative recommendation or denial of consent. This memorandum, however, recognizes that, although it would be helpful in supporting the rejection of an application for the surface managing agency to provide its rationale, it is not possible to compel an agency to provide such reasons.

Wildlife refuge cases provide examples of cases in which noncompetitive leasing is not permitted. The applicable regulation, 43 CFR 3101.3-3(a)(1), provides that wildlife refuge lands are specifically exempt from oil and gas leasing except when these lands are subject to drainage and in those instances, leases will be offered only under competitive bidding. Esdras K. Hartley, 57 IBLA 319, 323 (1981); Tucker & Snyder Exploration, Inc., 49 IBLA 176 (1980), and cases cited.

BLM's decisions rejecting appellant's oil and gas lease offers because COE withheld its consent to lease the lands noncompetitively are proper. We note, however, that BLM has no authority to put the lands up for competitive

bidding absent a determination that the lands are included within the boundaries of a known geologic structure of a producing oil or gas field. 43 CFR 3100.7-1; 43 CFR 3101.1-1. Absent such a determination it will be impossible to lease such lands competitively.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

