

Appeal from decision of the Oregon State Office Bureau of Land Management, canceling noncompetitive oil and gas lease OR 26060 (Wash.).

Affirmed as modified.

1. Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Lands Subject to

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of section 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981).

2. Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands Subject to

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

By decision dated December 1, 1982, the Oregon State Office, Bureau of Land Management (BLM), canceled appellant's lease issued June 1, 1982, pursuant to her over-the-counter noncompetitive oil and gas lease offer, OR 26060 (Wash.), which was filed March 16, 1981, for certain lands within Benton County, Washington. ^{1/} The reason given for the cancellation was that the

^{1/} The BLM decision noted that appellant's rental payment would be subject to refund.

lands described in the lease "lie within the incorporated city limits of Richland, Washington." The decision noted that "lands within an incorporated city are exempt from oil and gas leasing. See 43 CFR 3101.1-1 (b)(3)."

Appellant contends in her statement of reasons for appeal that the case record does not establish that the leased lands are within the corporate limits of the city of Richland. Further, appellant notes that the leased land is described in a real estate sales contract between the city as purchaser and BLM. The contract provides for the reservation of all minerals to the United States together with the right to remove the same. Appellant also argues that cancellation of a lease issued by administrative error is not required where there is no violation of the Mineral Leasing Act and no prejudice to the rights of a third party. In summary, appellant contends that her lease is a valid contract and no legally sufficient cause exists for cancellation.

It appears from the case record that all except a small part of the land described in appellant's lease was annexed as a part of the city by resolution passed by the city council of Richland at a meeting on September 5, 1967. A copy of the resolution appears in the record. The resolution describes the land annexed with reference to certain rights-of-way which were not depicted on the survey plats in the case file as originally forwarded to the Board. In response to a request from the Board, these rights-of-way have now been noted on the plats.

It now appears that all except a small portion of the land embraced in appellant's lease is within the corporate city limits as defined in the annexation resolution. ^{2/} The record further discloses that the entire area in appellant's lease including the small area not described by the annexation resolution is the subject of a public sale application (OR 7171 (Wash.)) filed by the City of Richland on November 23, 1970. The application was filed pursuant to the Public Land Sales Act of September 19, 1964, 43 U.S.C. §§ 1421-1427 (1976) (superseded by sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1976), subject to issuance of patents for sales previously initiated).

A notice of the offering of public lands for sale was published in the Federal Register on December 10, 1970, 35 FR 18756, as required by the Act. 43 U.S.C. § 1423 (1976). The notice stated that the lands are chiefly valuable for community growth and development and disclosed the intention of the Secretary of the Interior to enter into an agreement to sell the lands with a reservation of all minerals which shall thereupon be withdrawn from appropriation under the mineral leasing laws. Subsequently, a real estate sales contract was entered into between the City of Richland as purchaser and the United States. The contract was executed with an effective date of February 28, 1978.

^{2/} Lands described in the lease and not embraced in the annexation resolution include two parcels: That part of the NE 1/4 NE 1/4 of sec. 14, T. 10 N., R. 27 E., Willamette meridian, lying south and west of the east right-of-way line of the former Richland Irrigation District Canal and that part of Lot 4, sec. 18, T. 10 N., R. 28 E., Willamette meridian, lying west of the east right-of-way line of the former Richland Irrigation District Canal.

[1] This Department's authority to issue oil and gas leases is circumscribed by the terms of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981). Section 1 of the Act provides for the issuance of oil and gas leases for lands owned by the United States, but expressly excludes, inter alia, lands "in incorporated cities, towns, and villages." 30 U.S.C. § 181. As this Board has held on numerous occasions, land within the boundaries of incorporated cities may not be leased under the present statutory framework. Potts Stephenson Exploration Co., 60 IBLA 397 (1981); Nova L. Dodgen, 54 IBLA 340 (1981); L. A. Walstrom, Jr., 46 IBLA 389 (1980). Thus, the lease was issued without statutory authority to the extent that it embraced land previously annexed by the city.

It is well established that the Secretary of the Interior has the authority to cancel by administrative action any oil and gas lease issued in violation of the terms of the Mineral Leasing Act and the regulations thereunder. Boesche v. Udall, 373 U.S. 472 (1963); Paul S. Coupey, 64 IBLA 146 (1982); Husky Oil Co., 52 IBLA 41 (1981); Paul N. Temple, 33 IBLA 98 (1977). Thus, the BLM decision canceling appellant's lease must be affirmed as to those lands which the record discloses to be within the city limits. Such lands are specifically excluded for oil and gas leasing by the terms of the Mineral Leasing Act. 30 U.S.C. § 181 (Supp. V 1981); see 43 CFR 3101.1-1(b)(3).

[2] With respect to the two small parcels of land which apparently have not been annexed as a part of the city, the terms of the Mineral Leasing Act do not preclude leasing. These lands were, however, embraced in the real estate sales contract of February 28, 1978, between the city and BLM. The contract was executed pursuant to the authority granted by the Public Land Sales Act of September 19, 1964, 43 U.S.C. §§ 1421-1427 (1976). Section 4 of that statute provides, in pertinent part, as follows:

All patents or other evidences of title issued under this subchapter shall contain a reservation to the United States of all mineral deposits which shall thereupon be withdrawn from appropriation under the public land laws including the mining and mineral leasing laws.

43 U.S.C. § 1424 (1976). Thus, the issue with respect to these lands is whether the sales contract constitutes such "evidence of title" as would have the effect under the statute of withdrawing the minerals reserved therein from leasing. We hold that the contract of sale is sufficient to invoke the statutory withdrawal.

Under commonly recognized principles of law the purchaser of real estate pursuant to an executed contract of sale is the holder of equitable title, as distinguished from legal title, to the property which is the subject of the contract. See 77 Am. Jur. 2d Vendor and Purchaser § 317 (1975). Thus, the executed sales contract may be considered in this context as evidence of title within the meaning of section 4 of the Act. This interpretation is required by the clear intent of the statute to withdraw the minerals reserved in the conveyance from appropriation under the mining and mineral leasing laws. 43 U.S.C. § 1424 (1976). Thus, the land at issue was within a statutory

withdrawal from mineral leasing and not subject to leasing when appellant's lease issued. Accordingly, the decision canceling the lease must be affirmed. 3/

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 as modified.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

3/ Cancellation of a lease issued through administrative inadvertence for land which is not subject to leasing at the time of lease issuance is properly distinguished from cancellation based on postleasing events. See Carl J. Taffera, 71 IBLA 72 (1983).

