

DONALD ERNEST WILLKENS

IBLA 83-471

Decided November 15, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offer C-32988-Acq.

Affirmed as modified.

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 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

APPEARANCES: Donald Ernest Willkens, pro se; Robert D. Dinsmore, Chief, Branch of Lands and Minerals Operations, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Donald Ernest Willkens has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 4, 1983, rejecting noncompetitive acquired lands oil and gas lease offer, C-32988-Acq., for lands within the Fort Carson Army Reservation. The decision, in part, states:

The lands in this offer [sec. 10, T. 16 S., R. 66 W., sixth principal meridian] are included in the Fort Carson Army reservation and are under the jurisdiction of the Department of the Army. The majority of the lands at Fort Carson are subject to the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352). Accordingly,

the Department of the Army must consent to leasing of the minerals. The remainder of the land is public domain which was withdrawn for use by Fort Carson. These lands are subject to the Mineral Leasing Act of 1920 (30 U.S.C. 181).

The Army has reported that exploration and development of the minerals within the Fort Carson boundaries would not be compatible with the military training and national defense activities. The Army has recommended that the lands not be leased at this time because all of the land is used for military operations, including live fire training and troop maneuvers. Insomuch as this recommendation applies to the withdrawn lands within Fort Carson, the Bureau of Land Management concurs with this recommendation.

Information submitted by BLM discloses that the lands in sec. 10 had been patented to third parties in the late 1800's. The record further indicates that the lands were subsequently acquired by the State of Colorado. When Fort Carson was expanded, the surface of the subject lands was transferred to the United States by the State of Colorado, but the mineral rights were reserved by the State of Colorado. BLM and appellant agree that the surface and mineral rights at issue are held in a split estate, as described above. For our purposes, we have assumed the ownership of the subject lands to be as stated by the parties. In this same memorandum, BLM states that all lands in application C-32988-Acq. are acquired lands within the Fort Carson Army base.

In his reasons for appeal, appellant states that the mineral rights belong to the State of Colorado and that Colorado has indicated that it will lease the mineral rights to him if he receives permission to drill. He feels this energy source should be developed and put in reserve for the Army in case of a national emergency.

[1] Appellant's offer to lease the above described acquired lands must be rejected by BLM because there is no statutory basis for BLM to issue a lease. The relevant statute, the Mineral Leasing Act for Acquired Lands, sets forth those lands subject to lease at 30 U.S.C. § 352 (Supp. V 1981):

Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944, * * * all deposits of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, sodium, potassium, and sulphur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States * * * may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. [Emphasis added.]

As stated previously, the mineral interest in the subject lands is owned by the State of Colorado. The above-quoted statute, therefore, provides no

authority for either the Secretary, or BLM as his delegate, to issue an oil and gas lease for minerals owned by Colorado. appellant has failed to set forth any alternate authority that could allow BLM to so act.

Section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732 (1976), identifies those instruments that the Secretary may use in managing the public lands. Among these are easements, permits, leases, and licenses. "Public lands" are defined, however, to mean

any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except -- (1) lands located on the Outer Continental Shelf, and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

43 U.S.C. § 1702(e) (1976). Although the record shows that the United States owns the surface of the lands, the Army, and not the Secretary of the Interior through BLM, is the surface management agency. The lands, therefore, do not fall within FLPMA's definition of "public lands," and BLM's authority to manage the surface of these lands is also lacking. If authorization to drill is necessary (a matter to be determined by the Department of the Army and the State of Colorado, owners of the estate), appellant must gain this authorization directly from the Department of the Army, the surface managing agency, and the State of Colorado, the subsurface owner.

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 State Office is affirmed as modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

James L. Burski
Administrative Judge

