

JERALD A. WATERS

IBLA 83-891

Decided January 31, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer for acquired lands NM-A 47778 TX.

Affirmed.

1. Federal Property and Administrative Services Act -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Lands Subject to -- Surplus Property

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

2. Administrative Authority: Generally -- Constitutional Law: Generally

The Department of the Interior, as an agency of the executive branch of Government, is without authority to waive requirements imposed by statute.

APPEARANCES: Jerald A. Waters, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jerald A. Waters has appealed from a July 19, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer for acquired lands NM-A 47778 TX. The reason for the rejection is as follows:

By letter dated June 27, 1983 from the Dept. of the Air Force in Washington D.C. and pursuant to 43 CFR 3100.3-3- Protective Leasing and 43 CFR 3101.2-1(b)(3) Acquired lands not subject to leasing, all the lands in the offer have been reported as surplus under the Surplus Property Act of October 3, 1944 (50 U.S.C. 1611 et seq), and are therefore not available for leasing under 43 CFR 3111.

Appellant's offer for 1,863.67 acres of land located in Webb County, Texas, was drawn No. 592 (five hundred ninety-second) in a simultaneous drawing held September 1, 1981.

In his statement of reasons for appeal appellant states that in July 1981 a Presidential Directive was issued to BLM requesting that military bases and installations be opened to oil and gas leasing because of the national energy shortage. Appellant contends that BLM indicated that such leases would issue and that the regulations 43 CFR 3100.3-3 1/ and 3101.2-1(b)(3) 2/ would be waived.

The subject application covers acquired lands which were formerly part of the Laredo Air Force Base, Texas, and which had been declared surplus under the Federal Property and Administrative Service Act of 1949 (FPASA), as amended, 40 U.S.C. § 484(k)(2) (1976).

[1, 2] An application for a noncompetitive acquired lands oil and gas lease is accepted pursuant and subject to the terms and provisions of the Mineral Leasing Act for Acquired Lands (Act), 30 U.S.C. §§ 351-359 (Supp. 1981). Section 352 of the Act expressly excludes from its purview "lands * * * reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944." Paradox Oil & Gas Co., 22 IBLA 242 (1975). Leasing under the FPASA is permitted only through competitive bidding. See Edward C. Shepardson, 53 IBLA 79, 86 (1981).

Although the Act and its regulations found at 43 CFR 3101.2-1(b)(3) refer to the Surplus Property Act of October 3, 1944 (50 U.S.C. § 1611 (1976)), it has been held that since the 1944 Act has largely been replaced by FPASA, the exception was equally applicable to the latter Act. Capitol Oil Corp., 33 IBLA 392, 394 (1978); Robert P. Ryan, 4 IBLA 181 (1971).

The regulations found at 43 CFR 3101.2 merely reflect the directives imposed by statute. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid or waive its requirements. See Lynn Keith, 53 IBLA 192, 197 (1981), and cases cited.

1/ 43 CFR 3100.3-3 provides:

"Protective leasing.

"Where jurisdiction over disposition of mineral deposits in land set apart for other Government agencies has been transferred to the Department of the Interior because of drainage of its oil or gas content, such land must be offered for lease by competitive bidding. Protective leases may cover public domain lands which have been withdrawn from oil or gas leasing or acquired lands not subject to leasing under the Acquired Lands Leasing Act."

2/ 43 CFR 3101.2-1(b)(3) provides: "(b) Acquired lands not subject to leasing include lands: * * * (3) Reported as surplus under the Surplus Property Act of October 3, 1944 (50 U.S.C. 1611 et seq.)."

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

James L. Burski
Administrative Judge

