

Editor's note: Reconsideration granted; decision set aside by Order dated May 3, 1984 -- See 79 IBLA 89A th D below.

UNION OIL COMPANY OF CALIFORNIA
STEPHEN E. BUBALA

IBLA 82-502; IBLA 82-515

Decided February 16, 1984

Appeal from decisions of the California State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers CA 10996 and CA 11297.

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 a lease application be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease. Where an offeror seeks to lease lands under the jurisdiction of the Department of the Navy, and that Department refuses consent, no lease may issue.

APPEARANCES: Stephen E. Bubala, pro se; Douglas V. Fant, Esq., Union Oil Company of California, for the company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Union Oil Company of California and Stephen E. Bubala appeal from the respective January 21, 1982, decisions of the California State Office, Bureau of Land Management (BLM), which rejected noncompetitive oil and gas lease offers, CA 10996 and CA 11297. Both offers were filed on August 28, 1981, for specified acres of acquired land all of which is situated within the U.S. Naval Construction Battalion Center (CBC), Port Hueneme, California, which is under the jurisdiction of the Department of the Navy. The decisions state:

The regulations in 43 CFR 3111.1-2 [1982] 1/ require the consent of the jurisdictional agency before a lease may be issued.

1/ The oil and gas regulations have undergone a number of revisions since appellants' offers were filed. The consent requirement now appears at 43 CFR 3101.7-1 (48 FR 33666 (July 22, 1983)).

The Navy does not consent to these lands being leased for oil and gas for the following reasons.

CBC, Port Hueneme, is a critical national defense mobilization staging area. Oil and gas operations are not compatible with the mobilization readiness mission of this naval installation. Leasing for purposes of oil and gas exploration has the tendency to expand and place unacceptable demands on the land and resources of the Station. Also, Port Hueneme Center has a fragile fresh water table threatened by salt water intrusion. There is a possibility that oil and gas operations in this area would further aggravate this problem. The use of the land at this key naval port facility to explore or develop oil and gas interests is not in the best interests of the Navy or national defense readiness.

As a result of the foregoing explanation, both offers CA 10996 and CA 11297 were rejected by BLM.

On April 23, 1982, Union Oil Company of California and Stephen E. Bubala filed a joint statement of reasons for appeal and requested that the separate appeals be consolidated. The request for consolidation is granted.

Appellants filed a supplemental statement of reasons on June 7, 1982. Subsequently, appellants were granted a number of stays of the proceeding as they represented that settlement negotiations might resolve the issues in the case. The most recent stay expired on December 7, 1983.

Appellants raise a number of arguments on appeal. Their arguments relate to the following facts. The Port Hueneme Naval Base was established in 1942. The Mineral Leasing Act for Acquired Lands of 1947 did not apply to lands situated within incorporated cities, towns, and villages nor to lands set aside for military or naval purposes. 30 U.S.C. § 352 (1976). In 1948 the City of Port Hueneme, California, was established. In 1951 the city annexed the naval base. The prohibition against the leasing of acquired lands set apart for military or naval purposes was repealed in 1976 by section 12 of P.L. 94-377, 90 Stat. 1083, 1090. The Department of the Interior imposed a moratorium, on November 1, 1979, on the issuance of oil and gas leases for acquired lands within military reservations, 44 FR 64085 (Nov. 6, 1979), and on August 10, 1981, the Department partially lifted that moratorium. 46 FR 37250 (July 20, 1981).

Appellants argue generally that the Mineral Leasing Act for Acquired Lands does not preclude issuance of an oil and gas lease on lands within the naval base and that annexation of the naval base by the city was void ab initio and, therefore, does not preclude issuance of a lease. Appellants conclude that BLM may properly consider issuance of an oil and gas lease on the naval base.

They further argue that the Department of the Navy letter upon which BLM relied in rejecting the lease offers was intended to reply to an over-the-counter lease offer filed by another offeror prior to the reopening of acquired military lands for leasing. Appellants contend that such a response does not support rejection of their offers. They request that the cases be remanded to BLM to allow BLM to seek the Navy's de novo opinion on leasing, including the propriety of issuance of a lease with protective stipulations.

Appellants' offers were rejected by BLM because of the failure of the Department of the Navy to consent to leasing. That ground for rejection is supported by the record.

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), states in 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 the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

[1] This statute precludes mineral leasing on acquired lands without the consent of the administrative agency having jurisdiction over the acquired land. Dennis Harris, 55 IBLA 280 (1981). Since the Department of the Navy has withheld its consent, this Department cannot issue oil and gas leases for the land, and the lease offers were properly rejected. Joseph C. Manga, 71 IBLA 187 (1983); Rachalk Production, Inc., 64 IBLA 4 (1982). The January 12, 1982, letter to BLM signed by the Manager, Realty Operations Branch, Real Estate Division, Naval Facilities Engineering Command, Western Division, Department of the Navy, although specifically referring to another lease offer, states that: "[T]he Navy does not consent to their [lands lying within the Port Hueneme facility] being leased for oil and gas." The letter, therefore, represents a blanket refusal to allow leasing within the facility and is sufficient support for rejecting the offers in this case. The same requirement of consent was stated in the regulations at 43 CFR 3109.3-1 (1982) (presently 43 CFR 3101.7-1 (48 FR 33666 (July 22, 1983))).

Although the offers were not rejected on the basis that the lands in question lie within an incorporated city, appellants have stated on appeal that, in fact, the City of Port Hueneme annexed the naval base in 1951. Appellants charge, however, that the annexation was illegal, and that the prohibition against leasing land situated within an incorporated city should not be applicable. Appellants have provided substantial arguments that the annexation by the city may have been void. We need not address these arguments, however. Even assuming the land was not within an incorporated city, it is still acquired land under the jurisdiction of the Department of the Navy, and, as stated supra, that agency has not given its consent to lease.

Therefore, 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.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

May 3, 1984

IBLA 82-502 : CA 10996
82-515 : CA 11297
:
STEPHEN E. BUBLA : Oil and Gas
UNION OIL COMPANY OF CALIFORNIA :
: Petition for Reconsideration
: Granted; 79 IBLA 86 (1984), set
: aside; California State Office
: decisions set aside and remanded.
:

ORDER

On March 27, 1984, Stephen E. Bubala and Union Oil Company of California filed a petition for reconsideration of our February 16, 1984, decision in Union Oil Company of California, 79 IBLA 86. They also filed a request to stay the effect of the decision. The Board's decision was based on the fact that the Department of the Navy did not consent to leasing the acquired lands sought by petitioners within the U.S. Naval Construction Battalion Center, Port Hueneme, California.

Petitioners state:

[A]ppellants contend that the Department of the Navy never rejected Mr. Bubala's application, or never properly rejected Mr. Bubala's application.

This is evident from the attached letter of September 13, 1983, marked as Exhibit A, from the Deputy Assistant Secretary, Installation and Facilities, Department of Navy, to Mr. Thomas Hairston of Union Oil Company of California.
[1/]

1/ The letter referred to states in pertinent part:

This is in response to your letter of August 22 requesting the Navy consent to oil and gas leasing at the Naval Construction Battalion Center, Port Hueneme, California. At issue are compatibility of leasing with Navy Operations and validity of the annexation of the Center by the City of Port Hueneme which determines the Government's ability to issue a lease.

Even if leasing can be compatible with Navy operations, as your letter indicates, we remain concerned with the annexation issue and the effect on our relations with the City Port Hueneme if a lease is issued without the City's knowledge or concurrence. * * *

Your proposal is for the Navy to consider the compatibility of leasing without regard to the annexation issue which could be resolved at a later

79 IBLA 89A

It is apparent from this letter that the Department of Navy has not yet rejected Mr. Bubala's application, since the Navy is uncertain whether it has the authority to accept/reject Mr. Bubala's application.

(Petition at 2).

Petitioners state that the issues presented on reconsideration are (1) whether the naval base was properly annexed by the city or was the annexation of a Federal military installation void ab initio; and (2) even if the naval base were properly annexed, did the 1978 amendments to the Acquired Lands Leasing Act authorize leasing on the naval base, even though it is located within the boundaries of an incorporated city.

The principal basis for requesting reconsideration is the September 13, 1983, letter which petitioners argue negated the rationale for the Board's decision because it indicated a willingness by the Navy to reexamine possible leasing of the naval base after resolution of the annexation question. 2/

In this case petitioners received numerous stays of the proceeding as they represented to the Board that pending settlement negotiations might resolve the issues in the case. The last stay request was received by the Board on September 9, 1983. The stay expired December 7, 1983. Subsequently, the Board proceeded to decide the case based on the record before it. The September 13, 1983, letter now relied on by petitioners was not part of that record.

Thus, petitioners are in the position of requesting the Board to reconsider its decision based on evidence which petitioners possessed prior to the Board's decision, but which they did not supply to the Board. The Board does not look favorably on such a request; however, we cannot ignore the substance of the September 13 letter, viz., that the Department of the

fn. 1 (continued)

date, after issuance of a lease. While we can appreciate your reasons for wanting to secure lease rights prior to resolution of the annexation issue, Navy interests require a different approach. The Navy has considered the Center as annexed to the City for over thirty years. To consent to leasing, which is not permissible within incorporated areas under the Acquired Lands Leasing Act, could be construed as acknowledging Union Oil Company's position regarding the invalidity of the annexation. We would not want to be put in this position or in any way be accused of taking sides on the issue. Moreover, we want to coordinate with the City on any activities at the Center which may affect its interests. Therefore, the City must be consulted prior to the Navy stating its position on leasing.

"We suggest you initiate discussions with the City on this matter. When satisfactory arrangements have been made with the City we will be happy to consider your request further." 2/ The Board indicated in its decision that it was unnecessary to address the annexation arguments because in any event the Navy had not given its consent to lease. Id. at 88.

Navy would consider leasing if the annexation question were resolved favorably to petitioners.

Since the basis of our decision was the failure of the Navy to consent to lease and petitioners have shown that the Navy may be willing, under certain circumstances, to give its consent, we are constrained to set aside that decision. Petitioners urge that other issues must be resolved to determine whether leases may issue. We agree. However, we believe that those issues are best considered in the first instance by the Bureau of Land Management, with the consultation of the Solicitor.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision in Union Oil Company of California, supra, is set aside; the California State Office decisions appealed from are also set aside and the case files remanded to the State Office for consideration of issues raised. Given our disposition, there is no need to rule on the request for a stay.

Bruce R. Harris
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN DISSENTING:

After being granted one request for an extension of time in which to file a statement of reasons and no less than four requests that we stay our normal procedures pending the outcome of settlement negotiations, counsel for appellants now produces a letter written the day after the last request was granted and suggests it offers a basis for reconsideration of our decision.

It has been marked that Rule 40 of the Federal Rules of Appellate Procedure, the analogue to 43 CFR 4.21(c) governing petitions for reconsideration, "was not promulgated as a crutch for dilatory counsel

* * * nor, in the absence of a demonstrable mistake, to permit reargument of the same matters." United States v. Doe, 455 F.2d 753, 762 (1st Cir. 1972). I think the remark is apt to this case. Counsel offers not even a lame excuse for why he did not provide us with a copy of the letter before; he deserves no crutch. Nor do we need to entertain arguments again about whether the Navy might consent to leasing if the annexation dispute comes out satisfactorily. We correctly characterized the Navy's January 12, 1983, letter as a "blanket refusal." Union Oil Company of California, 79 IBLA at 88 (1984). It states:

CBC, Port Hueneme is a critical national defense mobilization staging area. Oil and gas operations are not compatible with the mobilization readiness mission of this naval installation. Leasing for purposes of oil and gas exploration has the tendency to expand and place unacceptable demands on the land and resources of the Station. Also, Port Hueneme Center has a fragile fresh water table threatened by salt water intrusion. There is a possibility that oil and gas operations in this area would further aggravate this problem.

Given this statement, it makes no difference that is was written about another lease application.

I would deny the petition.

Will A. Irwin

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Administrative Judge

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