

JERRY WATERS

IBLA 83-515

Decided February 28, 1984

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, rejecting certain acquired lands oil and gas lease offers. NM-A 47975 TX, NM-A 49050 TX, and NM-A 49894 TX.

Affirmed.

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

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976).

APPEARANCES: Jerry Waters, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jerry Waters has appealed from three separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated March 3, 1983, rejecting over-the-counter oil and gas lease offers NM-A 47975 TX, NM-A 49050 TX, and NM-A 49894 TX. The first offer embraced acquired lands within Dyess Air Force Base, while the latter two embraced acquired land within Goodfellow Air Force Base. The decisions noted that the land sought within Dyess was also within the city limits of Abilene, Texas, while the land sought within Goodfellow was also within the city limits of San Angelo, Texas. The New Mexico State Office rejected all three offers, noting that acquired lands within incorporated cities, towns, and villages are not subject to leasing, citing 43 CFR 3101.2-1(b)(4). 1/

In his statement of reasons, appellant recounts that he filed these offers, among others, pursuant to a Presidential directive which requested that BLM "open" lands within military reservations for oil and gas leasing. He states that he believed that 43 CFR 3101.2-1(b)(4) would be waived pursuant to this directive, because it was a "one-time offering." He notes that he would be willing to accept protective stipulations and states that the Mayor of Abilene has indicated that he would not object to leasing.

1/ The oil and gas regulations were substantially revised on July 22, 1983. 48 FR 33648. The prohibition against leasing acquired lands in incorporated cities, towns, and villages is presently found at 43 CFR 3100.0-3(b)(2)(ii).

Oil and gas leasing on acquired lands is authorized under the Mineral Leasing Act for Acquired Lands of 1947, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. §§ 351-359 (1976). As originally enacted, section 3 of the Act authorized the Secretary to lease deposits of oil and gas and other minerals located in lands acquired by the United States with various exceptions, two of which are of importance herein. The authority to issue leases was expressly made "exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, [and] (b) set apart for military or naval purposes." 30 U.S.C. § 352 (1970).

In 1976, however, Congress amended the Acquired Lands Leasing Act in certain ways. See Federal Coal Leasing Amendments Act (FCLAA), Act of August 4, 1976, 90 Stat. 1083. Section 12(a) of FCLAA amended section 3 of the Mineral Leasing Act for Acquired Lands, supra, by deleting the language excluding deposits located in lands "set apart for military or naval purposes." See 30 U.S.C. § 352 (1976).

Pursuant to the 1976 amendments, the Department promulgated regulations on August 23, 1978, which deleted the regulatory prohibition against leasing acquired lands set aside for military or naval purposes. See 43 FR 37202 (Aug. 23, 1978). A great number of offers to lease such lands were thereafter filed.

Problems, however, arose, particularly with reference to the issuance of leases pursuant to offers filed before the effective date of the August 23, 1978, amendment to the regulations. Accordingly, on November 1, 1979, the Secretary of the Interior imposed a moratorium on the leasing of such lands in order to provide Congress and the Department an opportunity to study how such lands should be made available for leasing. By notice dated November 5, 1979, the Secretary also suspended 43 CFR Part 3110 as it is related to such lands and directed that no further oil and gas offers would be accepted for such lands. See 44 FR 64085 (Nov. 6, 1979).

Approximately 20 months later, on July 20, 1981, this moratorium was rescinded. See 46 FR 37205 (July 20, 1981). The order of rescission provided that oil and gas lease offers would be accepted for a 15 day period from August 16, to August 28, 1981. All offers received during this period would be considered as simultaneously filed and a drawing would be held to determine the priority of conflicting offers. It was during this period that appellant filed the offers in the instant appeal.

We have set out the history surrounding leasing in military and naval installations at some length, because it clearly shows that appellant is mistaken in his view that the filings elicited pursuant to the July 20, 1981, notice were for a "one-time" offering. On the contrary, the July 20, 1981, notice merely had the effect of restoring the availability of such lands to the conditions which existed prior to November 1, 1979. A specified filing period was established, but this was done merely to avoid a land office "rush" to obtain priority. However, offers filed after the close of the filing period were not subject to automatic rejection but merely were accorded a priority below that of all offers filed within the specified period.

BLM, in reality, was not "offering" anything at all. It merely allowed those who so desired to file an offer to lease. Nor did BLM purport to guarantee offerors that leases would issue, even if an offer obtained first priority. Indeed, it could not do so, since under the Acquired Lands Leasing Act, as amended, the Bureau lacks authority to issue a lease unless and until the surface managing agency consents thereto.

See e.g., Joseph C. Manga, 71 IBLA 187 (1983); Altex Oil Corp., 66 IBLA 307 (1982).

[1] In any event, BLM could not have waived the regulation prohibiting the issuance of leases for lands within incorporated cities, towns, and villages (43 CFR 3101.2-1(b)(4)), for the simple reason that it has no legal authority to issue leases for such lands. While section 12(a) of FCLAA did remove the proscription against leasing lands set aside for military or naval purposes, it left unaltered the prohibition against leasing lands within incorporated cities. Thus, the Department lacks any authority to lease such lands even where the incorporated city would interpose no objection. See Potts Stephenson Exploration Co., 60 IBLA 397 (1981). The fact that the acquired land within the limits of an incorporated city is also set aside for military or naval purposes does not change this analysis. The State Office correctly rejected appellant's offers to the lease.

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.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

