

NAVAJO TRIBE OF INDIANS

IBLA 84-595

Decided September 13, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management, issuing oil and gas lease NM 58231.

Reversed.

1. Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases --  
Cancellation

Where an oil and gas lease has been issued for lands which have been withdrawn from the public domain by Executive Order for Indian purposes, the lease must be canceled. The Secretary of the Interior has the authority to cancel any oil and gas lease which is issued contrary to law.

APPEARANCES: Suzette C. Chafin, Esq., Santa Fe, New Mexico, for Bureau of Land Management; Paul Frye, Esq., and Elmer J. Lincoln, Jr., Esq., Window Rock, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Navajo Tribe has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 25, 1984, issuing an oil and gas lease to Brian Schutz.

Oil and gas lease offer NM 58231 was filed on January 24, 1984, by Schutz for the E 1/2 sec. 33 and the SW 1/4 sec. 34, T. 21 N., R. 7 W., New Mexico Principal Meridian, New Mexico. BLM issued the lease to Schutz effective May 1, 1984. The Navajo Tribe was served with the BLM's decision as an adverse party with the right to appeal to this Board. The Navajo Tribe has appealed BLM's decision, and BLM has moved this Board to remand this case to BLM for further factual investigation. As grounds for its motion for remand, BLM asserts that it needs to thoroughly investigate the facts to determine if the facts of this case are distinguishable from Tenneco Oil Co., 8 IBLA 282 (1972).

The subject land has been claimed by the Navajo Tribe by virtue of Exec. Order No. 709 (Nov. 9, 1907) and Exec. Order No. 744 (Jan. 28, 1908). Exec. Order Nos. 709 and 744 withdrew certain land from sale or settlement, and set apart the land as an addition to the Navajo Indian Reservation. Exec. Order No. 1000 (Dec. 30, 1908) restored certain lands, inter alia, in T. 21 N.,

R. 7 W., to the public domain with exceptions embracing 110 unapproved allotments. The land excepted from restoration to the public domain by Exec. Order No. 1000 includes the subject land upon which BLM issued the oil and gas lease.

Exec. Order No. 1284 (Jan. 16, 1911) provides as follows:

It is hereby ordered that all lands not allotted to Indians or otherwise reserved within the townships in New Mexico added to the Navajo Reservation by Executive orders of November 9, 1907, and January 28, 1908, lying west of the first guide meridian west, be and the same hereby are restored to the public domain.

A determination must be made as to whether the subject land lies west of the first guide meridian, and whether it has been allotted to Indians. While Exec. Order No. 1284 did restore lands withdrawn by Exec. Order Nos. 709 and 744, it was limited in its scope to those lands "lying west of the first guide meridian west." The first guide meridian west from New Mexico principal meridian forms the western boundary to R. 8 W. Thus, the subject land lies east of the first guide meridian west, and Exec. Order No. 1284 did not restore the subject land to the public domain.

It is, therefore, unnecessary to remand this case to BLM for further factual investigation because the present record is sufficient to ascertain the requisite facts. This case is indistinguishable from Tenneco Oil Co., supra, and a remand would serve no useful purpose.

[1] It is well settled that an oil and gas lease offer is properly rejected where the land which is the subject of the offer has been withdrawn from the public domain, and is not open to mineral entry. See, e.g., Robert W. Piatt, 73 IBLA 244 (1983); Golden Eagle Petroleum, 67 IBLA 112 (1982). In Tenneco Oil Co., supra, this Board held that an oil and gas lease offer is properly rejected where the lands have been withdrawn for Indian purposes by an Executive order. It is well established that the Secretary of the Interior has the authority to cancel an oil and gas lease issued contrary to law. See, e.g., Boesche v. Udall, 373 U.S. 472, 476 (1963); D. M. Yates, 76 IBLA 208 (1983); Paul S. Coupey, 64 IBLA 146 (1982). Therefore, the oil and gas lease must be canceled because the land was not subject to mineral leasing.

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 reversed and BLM's motion for remand is denied.

Edward W. Stuebing

Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Bruce R. Harris,  
Administrative Judge

