

DANIEL C. WYCHGRAM

IBLA 85-745

Decided May 6, 1986

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offers C-39246, C-39270, and C-39271.

Affirmed.

1. Mineral Leasing Act: Lands Subject To -- Oil and Gas Leases: Lands Subject To

Lands situated within the boundaries of incorporated cities, towns, or villages are specifically excluded from oil and gas leasing by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1982).

APPEARANCES: Daniel C. Wychgram, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Daniel C. Wychgram appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated June 3, 1985, rejecting his oil and gas lease offers C-39246, C-39270, and C-39271. The offers embraced lands in the Fort Leavenworth Military Reservation, Leavenworth, Kansas. BLM rejected these offers because the lands were within an incorporated city, and lands within an incorporated city are not subject to the Mineral Leasing Act, citing 43 CFR 3100.0-3(2)(iii) as the basis for rejection.

On April 12, 1977, the city of Leavenworth, Kansas, annexed the Fort Leavenworth Military Reservation. Appellant filed the noncompetitive (over-the-counter) oil and gas lease offers with BLM on June 28, 1984.

In his statement of reasons for appeal, appellant does not dispute the fact the lands are within the limits of an incorporated city. Rather, he states leasing is in the best interest of the United States and the city of Leavenworth. He asserts the city annexed these lands for reasons other than to preclude oil and gas development and points out the city allows drilling for oil and gas on non-Federal lands within its limits, provides no services, and has no jurisdiction within the reservation.

[1] The Mineral Leasing Act, 30 U.S.C. § 181 (1982), as amended, authorizes the leasing of oil or gas owned by the United States, but excludes

lands "in incorporated cities, towns, and villages." See also 43 CFR 3100.0-3(a)(2)(iii). Thus, there is no authority under the Mineral Leasing Act to issue oil and gas leases within an incorporated city. 1/ Ed Pendleton, 45 IBLA 398 (1980), Hawthorn Oil Co., 37 IBLA 91 (1978). Appellant's assertions are appealing, but the statutory exclusion Congress has enacted is plain. 2/ L. A. Walstrom, Jr., 46 IBLA 389 (1980).

Accordingly, 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 Colorado State Office is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

John H. Kelly  
Administrative Judge.

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1/ In Hawthorn Oil Co., supra, we noted that exclusionary language in the Mineral Leasing Act of 1920, supra, is virtually identical to language in section 3 of the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. § 352 (1978), excluding acquired lands within incorporated cities, towns, and villages from leasing. We further noted that the Department has consistently construed that language as precluding oil and gas leasing of acquired lands within incorporated cities, towns, and villages. E.g., Sallie B. Sanford, 23 IBLA 312 (1976); Bernard Silver, A-30873 (Nov. 28, 1967).

2/ We note if drainage should be caused by wells drilled on adjacent lands, BLM may enter into an agreement with the owners of those wells, pursuant to 43 CFR 3100.2-1, see Hawthorn Oil Co., supra at 94, or it may initiate other measures to protect the public interest, but these measures do not include issuance of noncompetitive leases. L. A. Walstrom, Jr., supra at 390 n.2.

