

NORTH DAKOTA RURAL REHABILITATION CORP.

IBLA 87-108

Decided October 27, 1988

Appeal from a decision of the Montana State Office, Bureau of Land Management, dismissing a protest against issuance of a lease for lands embraced in oil and gas lease counter offer M-66986(ND) Acq.

Affirmed.

1. Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Offers to Lease

The filing of a declaration of taking in a condemnation proceeding pursuant to the Declaration of Taking Act, 40 U.S.C. | 258a (1982), vests the United States with fee simple absolute or such other estate or interest as was specified in the declaration.

APPEARANCES: David L. Peterson, Esq., Bismark, North Dakota, and Joseph J. Cichy, Esq., Bismark, North Dakota, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The North Dakota Rural Rehabilitation Corporation (NDRRC), has appealed a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 29, 1986, dismissing its protest against the issuance of an over-the-counter oil and gas lease for lands embraced in lease offer M-66986(ND) Acq. This offer embraces a parcel of acquired land, aggregating 45.86 acres, denominated as KK-3336 by the Army Corps of Engineers.

On October 3, 1985, one Steven R. Regimbal filed an oil and gas lease over-the-counter offer, M-66986(ND) Acq., for Tract KK-3336. Thereafter, on August 6, Nance Petroleum Corporation (Nance), holder of a lease issued by NDRRC, filed a protest against the issuance of a lease for the lands covered by the subject over-the-counter offer, arguing that NDRRC was the owner of the mineral estate underlying the lands in question. By a decision dated August 8, 1986, BLM dismissed Nance's protest. No appeal was taken from this decision.

On September 15, 1986, NDRRC filed its own protest to issuance of the lease to Regimbal, alleging that it owned the oil and gas estate in the lands at issue. BLM, by decision dated September 29, 1986, dismissed NDRRC's protest, finding that title to the minerals in the tract was owned by the United States. NDRRC thereupon took the present appeal.

The sole question before the Board is whether or not the United States owns the mineral interest in Tract KK-3336. This parcel, along with other nearby parcels, was acquired by the United States Army Corps of Engineers in condemnation proceedings commenced on March 25, 1958, by the filing of a declaration of taking, pursuant to the Declaration of Taking Act, Act of February 26, 1931, 46 Stat. 1421, 40 U.S.C. | 258a (1982), for use in connection with the construction and operation of the Garrison Dam and Reservoir. See United States v. 1,282.58 Acres More or Less Situated in McKenzie County, North Dakota, Civ. No. 88 (D.N.D.).

The declaration of taking provided, in pertinent part, as follows:

3. The estate taken for said public uses with the exception of Tract No. KK-3336 is the fee simple title, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines and reserving, however, to the owner of the land or the owner of any interest therein, including third party lessees, their heirs, successors and assigns, all oil and gas rights therein, on or under said described lands, with full rights of ingress and egress for exploration, development, production and removal of oil and gas \* \* \*. The estate taken for said public uses with respect to Tract No. KK-3336 is the fee simple title, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines. [Emphasis supplied.]

A judgment in the condemnation proceedings was entered on March 11, 1960. Paragraph III of the judgment, tracking the language of the declaration of taking, declared that "[t]he estate taken for said public uses with respect to Tract No. KK-3336 is the fee simple title, subject to existing easements for public roads and highways, public utilities, railroads and pipe lines." Paragraph IV of the judgment, however, referenced a stipulation (Stipulation A) "fixing the compensation for said tracts [including KK-3336] at the sum of \$31,350.00, inclusive of interest, which includes the amounts of damages of claimants for impairment of oil and gas rights as set forth in said stipulation."

Stipulation A, referenced in the judgment, serves as the basis for appellant's claim that it owns the subject oil and gas rights. That stipulation reads in relevant part:

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, Plaintiff herein, \* \* \* and North Dakota Rural Rehabilitation Corporation, a Defendant herein and former owner of Tract Nos. KK-3304, KK-3305, KK-3320, KK-3330, KK-3331, KK-3335, and KK-3336 in this proceeding, and present owner of all oil and gas rights therein subject to [certain] leasehold interests \* \* \*, that the just award and compensation for the taking of the surface rights and for the subordination of all oil and gas rights therein to the right of the United States to flood and submerge the same \* \* \*, as specifically provided in the Complaint and Declaration of Taking in this proceeding, is the sum of \$31,350.00, inclusive of interest.

Appellant argues that it is clear from the stipulation that NDRRC and the United States intended that NDRRC would retain the mineral interest in Tract KK-3336. Recognizing that the judgment differs from the stipulation, NDRRC contends that:

[A]n obvious error was made when the body of the judgment was transcribed. The draft merely took the language from a Notice of Taking and inserted it in the Judgment without giving any consideration to the agreements of parties entered into which is reflected in the stipulation. Again, NDRRC retained its mineral interest in tract KK-3336. The language of the Judgment is an obvious drafting error and one which equitably requires a remedy to clear NDRRC's title to the mineral interest underlying tract KK-3336.

(Statement of Reasons at 2).

In essence, therefore, appellant alleges that the judgment does not accord with the intention of the parties. The issue presented before the Board, thus, is what interest in Tract KK-3336 was condemned by the United States in Civ. No. 88.

[1] As we noted above, the United States condemned Tract KK-3336 pursuant to the Declaration of Taking Act, supra. That Act specifically provides:

Upon the filing [of] said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate of interest therein as is specified in said declaration, shall vest in the United States, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein \* \*

\*. [Emphasis supplied.]

40 U.S.C. | 258a (1982). As noted in United States v. Herring, 750 F.2d 669, 671 (8th Cir. 1984), "The purpose of the Declaration of Taking Act is to establish a procedure in which the government's title to property is completely settled at the outset, thereby allowing the government to proceed with public projects in advance of time consuming proceedings concerning valuation."

Moreover, as is clear from the Act itself, title to the land vests independently from the entry of the judgment, since the judgment merely determines that just compensation has been paid for the estate already taken. In the instant case, title to the mineral estate underlying tract KK-3336 vested in the United States upon the filing of the Declaration of Taking and the depositing of the amount of the estimated just compensation on March 25, 1958. Subject only to a challenge to the statutory validity

of the taking, such title was "indefeasible" in any subsequent proceeding. United States v. Herring, supra; Fulcher v. United States, 632 F.2d 278, 281 (4th Cir. 1980). Thus, even were we to assume that appellant was correct that the stipulation correctly reflected the intent of the parties, its only possible effect would be to maintain an equitable lien on the land until such time as appellant obtained just compensation for the mineral interest taken. <sup>1/</sup> In no event, however, would appellant be deemed the owner of the mineral estate underlying Tract KK-3336. Thus, BLM properly rejected appellant's protest to the issuance of an oil and gas lease in response to offer M-66986 (ND) Acq.

We note, however, that on August 22, 1986, Nance Petroleum informed BLM of the existence of producing wells within 1/2 mile of tract KK-3336, and further advised BLM that the approved state spacing unit for the wells included a portion embraced in Regimbal's oil and gas lease offer. Clearly, these assertions raise questions whether the land embraced within Regimbal's noncompetitive oil and gas lease offer are within a known geologic structure of a producing oil and gas field. See generally, Lee Oil Properties, Inc., 85 IBLA 287 (1985).

In this regard, we note that Congress has recently adopted the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), Title V of the Act of December 22, 1987, 101 Stat. 1330-256.

Section 5102 of FOOGLRA essentially abolished the noncompetitive oil and gas leasing system and mandated the implementation of a competitive leasing system. Only after a parcel has been posted for competitive sale under the new system and received no acceptable bids, may a parcel be leased noncompetitively. However, section 5106 provides that:

Notwithstanding any other provision of [FOOGLRA], all noncompetitive oil and gas lease applications and offers and competitive oil

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<sup>1/</sup> We do not wish to imply that we agree with appellant that the record establishes that the parties did not intend the United States to take title to the mineral estate underlying KK-3336. On the contrary, the record is much more amenable to the interpretation that it was the stipulation which erroneously characterized the extent of the taking rather than the judgment itself. Not only does the judgment track the language of the Declaration of the Taking, but the case file also contains a copy of a letter, dated Mar. 31, 1960, from United States Attorney General William P. Rogers to the Secretary of the Army in which the Attorney General states:

"The proceeding is regular, the judgment is satisfied, and a valid fee simple title to said tracts, with the exception of Tract KK-3336, subject to existing easements and reserving all oil and gas rights therein, and a valid fee simple title to Tract KK-3336, subject to existing easements, have heretofore vested in the United States of America, as more fully set forth in my opinion dated April 17, 1958."

There seems little question that it was the view of the United States that it had acquired all mineral rights to the subject parcel, notwithstanding any intimation to the contrary which might be gleaned from the Stipulation.

and gas lease bids pending on [December 22, 1987], shall be processed and leases shall be issued under the provisions of the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provision or other applicable law.

Pursuant to the foregoing, BLM may process the instant offer in accordance with the statutory provisions extant prior to the adoption of FOOGLRA. However, under those provisions, if all or part of the lands embraced in the offer are deemed to be within a KGS, the noncompetitive offer must be rejected to the extent of the conflict.

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, and the case files are remanded for further action in accordance herewith.

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James L. Burski  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge