

BLUE RIDGE OIL & GAS EXPLORATION, INC.

IBLA 93-405

Decided October 5, 1993

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer CACA 31584.

Affirmed.

1. Mineral Leasing Act for Acquired Lands--Oil and Gas Leases:
Acquired Lands--Oil and Gas Leases: Applications: Generally--Oil
and Gas Leases: Consent of Agency

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1988), the Secretary of the Interior lacks authority to issue an oil and gas lease over the objection of the agency having jurisdiction of the acquired land.

APPEARANCES: Gary L. Plotner, Bakersfield, California, agent for appellant. 1/

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Blue Ridge Oil and Gas Exploration, Inc. (Blue Ridge), has appealed from an April 23, 1993, decision of the California State Office, Bureau of Land Management (BLM), that rejected noncompetitive acquired lands oil and gas lease offer CACA 31584 for approximately 395 acres located in sec. 13, T. 32 S., R. 28 E., Mount Diablo Meridian, Kern County, California. The

1/ We note that Plotner appears to be an employee of Maverick Petroleum, Inc. A business that is performing a service for its client -- in this case, Blue Ridge Oil and Gas Exploration, Inc. -- is not qualified to practice under 43 CFR 1.3(b). Robert G. Young, 87 IBLA 249, 250 (1985). Were we not disposing of this appeal on an expedited basis, we would be constrained to order Plotner to show cause why the appeal should not be dismissed. See Resource Associates of Alaska, 114 IBLA 216, 218-19 (1990).

offer was rejected because the agency responsible for management of the surface estate, United States Department of Agriculture, Farmers Home Administration (FmHA), refused to consent to lease issuance.

Blue Ridge has requested expedited review of this appeal, alleging that the refusal of FmHA to consent to leasing has hindered formation of a drilling block in the area of the tract sought to be leased, and that financial hardship will result from delay in assembling a functional block of land for the prospect if resolution of this appeal is delayed. Blue Ridge contends that the position taken by FmHA is founded on an erroneous understanding of applicable law, and that BLM should not accept a refusal to allow leasing that rests on legal error. Because of the basic nature of the argument advanced, and in consideration of the result mandated by regulation in such cases, we may decide this case at the same time we respond to the motion to advance it on the docket. We therefore advance this appeal on our docket and affirm the decision to reject the Blue Ridge offer.

[1] So far as relevant here, section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1988) provides that leasing shall not occur "except with the consent of the head of the executive department * * * having jurisdiction over the lands." The Departmental regulation implementing this proviso, 43 CFR 3107.7-3, establishes that when "the surface managing agency has * * * refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency." 43 CFR 3101.7-3(b). See 53 FR 22814, 22817, 22837 (June 17, 1988).

Prior Departmental decisions interpreting section 3 establish that the Department may not inquire into the reason why a surface managing agency has refused to allow leasing. See e.g., Amoco Production Co., 69 IBLA 279, 282 (1982), and cases cited. This is so because the Secretary of the Interior does not have authority to modify or correct policies of agencies not within the Department of the Interior. The Amoco decision (which distinguished cases arising under the Mineral Leasing Act, 30 U.S.C. § 181 (1988)), is controlling here. Cf. Petrovest, Inc., 76 IBLA 327, 329 (1983)). While the Departmental regulation cited in Amoco (43 CFR 3109.3-1 (1982)) did not provide guidance to an unsuccessful offeror concerning the proper avenue for appeal in such cases, as does subsection (b) of the current rule, nonetheless the rule respecting review of such cases in this Department remains the same: when a surface managing agency has refused to consent to leasing on acquired lands, the only recourse the offeror has is to the agency that has made the decision not to lease. See 43 CFR 3101.7-3; Amoco at 69 IBLA 282.

We therefore conclude that BLM properly rejected the Blue Ridge offer because the surface managing agency refused to consent to issuance of an oil and gas lease covering the sought-after land. This Department lacks authority to waive or alter policy announced by another agency. Blue Ridge must direct the arguments advanced before this Board to FmHA, the agency having jurisdiction over the land. See 43 CFR 3101.7-3(b).

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 affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge