

RICHARD D. SAWYER

IBLA 2001-406

Decided October 22, 2003

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive presale oil and gas lease offers. CACA 38564, CACA 40322, CACA 40323, CACA 40324, CACA 41416, CACA 41417.

Affirmed.

1. Administrative Authority: Generally--Appeals: Jurisdiction

The Board does not have the delegated authority to review, reverse, reject, or amend proclamations issued by Presidents of the United States.

2. Mineral Leasing Act: Generally--Oil and Gas Leases:
Applications: Generally

The authority to issue an oil and gas lease for any given tract is within the discretion of the Secretary of the Interior. An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. A noncompetitive lease offer does not compel the Secretary to hold a competitive lease sale for the lands subject to the offer.

3. Mineral Leasing Act: Generally--Oil and Gas Leases:
Applications--Resource Management Plans

BLM has authority to eliminate specific parcels from leasing even where they had been designated in a Resource Management Plan as generally suitable for leasing.

APPEARANCES: Richard D. Sawyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Between 1997 and 1999, Richard D. Sawyer submitted to the California State Office, Bureau of Land Management (BLM), several presale noncompetitive offers to lease more than 8,600 acres of land for oil and gas on Federal lands in San Luis Obispo and Kern Counties in California. BLM serialized these offers as CACA 38563, CACA 38564, CACA 40322, CACA 40323, CACA 40324, CACA 41416, and CACA 41417.^{1/}

On April 21, 1999, BLM advised Sawyer that it would not be including lands covered within offers CACA 40322, 40323, and 40324 in a competitive lease sale because “the lands are within the Carrizo Plain Natural Area and the Carrizo Plain Management Plan has not yet been signed by all parties.” (Apr. 21, 1999, letter from BLM to Sawyer.) On February 15, 2000, BLM advised Sawyer that it would not include within a competitive lease sale lands identified in his offers because the lands were subject to ongoing Congressional deliberations for inclusion within a national conservation area. (Feb. 15, 2000, letter from BLM to Sawyer.)

On August 8, 2001, the Chief, Branch of Energy, Mineral Science, and Adjudication, California State Office, Bureau of Land Management, issued a decision entitled: “Lands Not Subject to Oil and Gas Leasing, Noncompetitive Oil and Gas Lease Offers Rejected in Whole, Noncompetitive Oil and Gas Lease Offer Rejected in Part.” In it BLM rejected the presale noncompetitive oil and gas lease offers (except that it rejected CACA 41416 only in part) on the following grounds:

The lands in the above offers were never put on a competitive oil and gas lease sale notice due to the fact that they were all within an area identified as the Carrizo Plain Natural Area and the Carrizo Plain Management Plan had not been completed. Additionally, there were ongoing congressional deliberations initiated by the Secretary of the Interior to establish the Carrizo Plain Natural Area as a National Conservation Area. Subsequently, under Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), the lands in the Carrizo Plain Natural Area were proclaimed by the President of the United States to have historic or scientific interest, and on January 17, 2001, were established by Presidential Proclamation 7393 (copy enclosed) as a national monument named the Carrizo Plain National Monument.

^{1/} The land descriptions are contained in each individual lease offer, as subsequently amended by Sawyer, and in the challenged decision. Because these detailed descriptions are not at issue, we do not copy them here.

(Aug. 8, 2001, decision at 3.) The decision explained that the monument designation within Proclamation 7393 withdrew all lands within the monument boundaries from oil and gas leasing, and that, therefore, the offers “are hereby rejected in their entirety, and offer CACA 41416 is rejected in part.” *Id.*

On August 30, 2001, BLM vacated its August 8 decision with respect to CACA 38563. BLM noted that its records indicated that the lands subject to that particular offer had been offered for competitive lease sale and were thereby available for noncompetitive leasing for a 2-year period thereafter. (Aug. 30, 2001, decision at 1.)

Sawyer appealed and presents two issues in his statement of reasons (SOR). First, the bulk of the SOR is dedicated to challenging Presidential Proclamation 7393 and the persons involved in making the decision. (SOR at 1-3.) Second, Sawyer claims that once he submitted his presale noncompetitive lease offers, BLM should have noticed the subject lands for competitive lease sale under the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 226 (2000) (FOOGLRA). Effectively, he argues that his offers made competitive leasing for the lands identified within them a nondiscretionary act, given that, according to him, the Caliente Resource Management Plan (RMP) showed the subject lands to be available for oil and gas leasing during the time after he submitted the lease offers but prior to the issuance of Proclamation 7393.

[1] We first turn to Sawyer’s challenge to the Presidential Proclamation. While Sawyer believes that it was misguided and should be reconsidered, we are precluded from opining on the topics he raises for the simple reason that this Board does not have the delegated authority to review, reverse, reject, or amend proclamations issued by Presidents of the United States. Proclamation 7393 was issued by President Clinton in 2001, withdrawing the subject lands from leasing under the public land laws. (66 FR 7339-7341 (Jan. 22, 2001).) Even if, as Sawyer argues, this proclamation was beyond the scope of Presidential authority, this Board is not the proper forum to consider such a challenge. See 43 CFR 4.410.

[2] Sawyer’s second argument asserts that the Caliente RMP covered the lands in question and identified them as available for oil and gas leasing. According to Sawyer, this means that his presale noncompetitive oil and gas lease offers necessarily compelled BLM to open the subject lands for competitive lease sale.

Sawyer argues that where BLM has prepared an RMP under the Federal Land Policy and Management Act, 43 U.S.C. § 1732 (2000), ^{2/} and the RMP includes lands within an area designated as open to oil and gas leasing subject to special stipulations, a presale noncompetitive lease offer for such lands compels the Secretary to notice the

^{2/} Section 302(a) requires the Secretary to manage public lands in accordance with applicable land use plans established under section 202, 43 U.S.C. § 1712 (2000).

lands for competitive sale followed by compulsory noncompetitive leasing in the absence of a successful bid. 30 U.S.C. § 226(c) (2000).

Issuance of oil and gas leases for public lands is governed by the Mineral Leasing Act (MLA), 30 U.S.C. §§ 181 through 287 (2000), including amendments made by the FOOGLRA, P.L. 100-203, 101 Stat. 1330-260, 5101-5113, 30 U.S.C. § 226 (2000).^{3/} Prior to the passage of FOOGLRA, the MLA, 30 U.S.C. § 226 (1982), permitted the Department to issue some oil and gas leases on an entirely noncompetitive basis. Effective 1987, however, FOOGLRA provided that public lands may no longer be subject to noncompetitive leasing until they have first been placed in a competitive lease sale. Under 30 U.S.C. § 226(b)(1)(A) (2000), all land to be leased for oil and gas which is not within a special tar sand area is required to be leased to the highest competitive bidder pursuant to a sale conducted by oral bidding. If no bids are received for a parcel or the highest bid is less than the national minimum acceptable bid, BLM is required to make the parcel available for noncompetitive leasing under 30 U.S.C. § 226(c) (2000), within 30 days. The parcel remains available for noncompetitive leasing for a period of 2 years.

In 1988, the Department revised regulations governing onshore oil and gas leasing in 43 C.F.R. Part 3120, largely to implement FOOGLRA. In accordance with section 5102(a) of that Act, which amended 30 U.S.C. § 226, the regulations governing noncompetitive lease offers and simultaneous filings, formerly found at 43 CFR Subparts 3111 and 3112, were removed in their entirety. 53 FR 22814, 22843 (June 17, 1988).

While section 5102 of FOOGLRA essentially abolished the noncompetitive oil and gas leasing system and mandated the implementation of a competitive leasing system, BLM nonetheless retained in its revised rulemaking and preamble language informal procedures whereby a party could either nominate lands appropriate for competitive bidding or submit noncompetitive lease offers for them that could only be granted after a competitive sale. 43 CFR 3110.1(a), 3120.3-1, and 3120.3-2; 53 FR 22814, 22829 (June 17, 1988). The regulations permit nominations for competitive bidding to be filed “in response to a List of Lands Available for Competitive Nominations and on a form approved by the Director” of BLM. 43 CFR 3120.3-2. In addition, presale noncompetitive lease offers may be submitted prior to the formulation of such a list. 43 CFR 3110.1(a)(1); 53 FR 22823.

The preamble noted that BLM would take such noncompetitive offers after January 2, 1989, but that it would necessarily subject all lands to competition prior to being leased. 53 FR 22814, 22824; see also 43 CFR 3110.1(a)(1). The

^{3/} FOOGLRA was adopted as part of Title V of the Omnibus Budget Reconciliation Act of 1987, 101 Stat. 1330-259 (1987).

rulemaking made clear that unleased lands could be available for noncompetitive lease offer, subject to competition before being leased, with priority given to the noncompetitive offeror if no competitive bids are accepted. 53 FR 22825. “An offer filed for lands prior to those lands being posted in a list of Lands Available for Competitive Nominations or a Notice of Sale will trigger processing of the lands to determine availability and stipulations, the placement of the parcel in the competitive sale process and, failing its receiving a bid, leasing it to the priority offeror.” 53 FR 22824. It is in this later context, established in 43 CFR 3110.1(a), that Sawyer apparently forwarded his presale noncompetitive lease offers.

FOOGLRA does not impose a mandatory duty on the Secretary to hold a competitive lease sale for any parcel identified in a noncompetitive lease offer. FOOGLRA’s amendments to the MLA did not change the fact that by statute the authority to issue oil and gas leases is within the discretion of the Secretary. The MLA states that “all lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.” 30 U.S.C. § 226(a) (2000) (emphasis added). The language is not mandatory, and thus this analysis begins with the presumption that if Congress did not mandate leasing of lands, a person submitting a presale noncompetitive lease offer (for lands not listed for sale on a Notice of Sale or on a list of Lands Available for Competitive Nominations or a Notice of Sale) does not convert the statutory process into a mandatory one for the Secretary at the discretion of the offeror.

Our precedent supports this conclusion. The Board has long held that BLM is not obligated to issue a noncompetitive lease merely because it has received an offer for a particular parcel. Lowell J. Simons, 104 IBLA 129, 130 (1988). In Allen L. Lobrano, 94 IBLA 34, 36 (1986), the Board noted:

The Department * * * has consistently held the filing of an offer for a noncompetitive lease creates no vested rights in the offeror. Haley v. Seaton, 281 F.2d 620, 624 (D.C. Cir. 1960); United States ex rel Roughton v. Ickes, 101 F.2d 248, 252 (D.C. Cir. 1938). All the offeror has is a preferential right to a noncompetitive lease if one should be issued. He has no vested right to have such a lease issued. Solicitor's Opinion, 74 I.D. at 289.

In Satellite 8305141, 85 IBLA 307, 309 (1985), the Board held that “[u]ntil BLM accepts a lease, an offeror simply has no contract rights whatsoever.”

Nothing in FOOGLRA vested a noncompetitive lease offeror with greater rights than had been available prior to its passage. Rather, the relevant purpose of FOOGLRA was to ensure that leasing be based upon a competitive system. As pointed out by BLM in its 1988 regulatory preamble, BLM chose to retain the option

of permitting persons to submit noncompetitive lease offers. BLM stated that by ensuring that a presale noncompetitive offeror had priority over others if a competitive sale received no successful bids, it intended to establish an incentive reward for those noncompetitive offerors who had taken risks in frontier areas, rather than rewarding offerors based on chance. 53 FR 22823. But neither BLM nor Congress suggested any plan to establish vested rights in noncompetitive lease offerors which could trump the Secretary's discretion. Thus, to the extent Sawyer's argument is premised on the notion that his presale noncompetitive offers provided him a vested right to a lease for those lands at issue, he is in error. See SOR at 2 (charging that it was BLM error to "deny posting our lands to a competitive lease sale" (emphasis added)).

Likewise, we find no support for Sawyer's suggestion that FOOGLRA established a non-discretionary obligation in the Secretary to offer lands for competitive sale once a presale noncompetitive offer is submitted. The discretionary language of 30 U.S.C. § 226(a) does not justify that argument. In Marathon Oil Co., 139 IBLA 347 (1997), the Board upheld BLM's discretionary authority to refuse to lease even after they were included in a competitive lease sale. If BLM has the discretion to exclude lands from leasing after a competitive lease sale including the lands, it follows that BLM has discretion to decide how to respond to a noncompetitive lease offer. Sawyer's position would compel BLM to include within a competitive lease sale parcels it then could exclude from leasing. We find no basis in FOOGLRA or BLM regulations for such an outcome.

[3] To the extent Sawyer's argument contends that an RMP establishing an area as open to oil and gas leasing with stipulations compels the Secretary to offer those lands at the request of a noncompetitive offeror, this argument likewise has been rejected by the Board. In Marathon Oil Co., we held

BLM is not strictly bound by the terms of an RMP when considering whether or not to lease a particular parcel. Indeed, BLM has authority to eliminate specific parcels from leasing even where they had been designated in an RMP as generally suitable for leasing. Amendment of the governing RMP would not be necessary whenever site-specific analysis indicated that lands which had been designated in the RMP as generally suitable for leasing without restrictions should not be leased at all. Colorado Environmental Council, 125 IBLA 210, 222 n.13 (1993).

139 IBLA at 356. We reinforce this analysis and note that the land use planning process catalogs lands for permissible use; it does not substitute for the individual implementation decisions required to be made on a case-by-case basis.

Based on the precedent, Sawyer had no vested rights by virtue of filing presale noncompetitive lease offers. Likewise, neither those offers nor the governing RMP compelled BLM to establish a competitive lease sale for particular parcels.

In Marathon, the Board nonetheless set aside and remanded BLM's decision to withdraw lands from leasing because we found that the Board has the authority to review discretionary action by BLM to determine whether, in the case of a lease offer, BLM's decision was based on "a site-specific analysis as to the particular parcels involved." Id. Thus, to the extent Sawyer contends that BLM's decision was based on erroneous analysis of the Caliente RMP, the pending Caliente RMP alleged by BLM, or pending legislation, Marathon might compel the Board to review BLM's analysis of the lands in question.

However, any such review is rendered moot at this juncture by Presidential Proclamation 7393. Sawyer does not dispute that the proclamation effectively withdraws the lands subject to his noncompetitive offers from oil and gas leasing. Any further analysis of BLM's intermediate letters advising Sawyer that it would not proceed to include the subject lands in competitive lease sales is moot.

To the extent BLM's views of the status of the land subject to the offers, as expressed in its April 21, 1999, and February 15, 2000, letters to Sawyer delayed any final decision until after the Presidential Proclamation, the Board has made clear that a delay in considering a lease offer does not vest the offeror with any additional rights. In E. B. Joiner, 78 IBLA 323, 325 (1984), the Board held:

Contrary to appellant's wishes, the long BLM delay in acting on his offers does not entitle him to leases. The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease offers were pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, [380 U.S. 1 (1965)]; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra at 666; D. R. Gaither, 32 IBLA 106 (1977) aff'd sub nom. Rowell v.

Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), aff'd in part and rev'd in part on other grounds, 631 F.2d 699 (10th Cir. 1980).

Thus, in considering pre-FOOGLRA cases, the Board has made clear that even where lease offers were pending during a period in which unleased land might have been subject to oil and gas leasing, a subsequent intervening withdrawal of the land from leasing did not affect any legitimate right of the offeror. Similarly, to the extent Presidential Proclamation 7393 withdraws the lands in question from oil and gas leasing, Sawyer had no vested rights affected by that proclamation and any further consideration of the status of the lands subject to the offers prior to the proclamation is now moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is hereby affirmed.

Lisa Hemmer
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge