

JACK E. GRIFFIN

IBLA 72-223

Decided August 30, 1972

Appeal from R 4556 and R 4557 of Riverside, California, land office, rejecting offers to lease for oil and gas.

Affirmed.

Oil and Gas Leases: Discretion to Lease

Where the Secretary of the Interior determines not to lease a certain area of the public lands for oil and gas pending a study of the impact of oil and gas leasing on the California condor, an endangered species, that determination is based upon consideration of the public interest, and his exercise of discretion in the matter is neither arbitrary nor capricious.

Oil and Gas Leases: Generally -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available for filing as prescribed by 43 CFR Subpart 3112.

APPEARANCES: Jack E. Griffin, pro se.

OPINION BY MR. STUEBING

On November 19, 1971, Jack E. Griffin filed two noncompetitive oil and gas lease offers with the Riverside, California, land office. These offers were filed pursuant to the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. § 181 (1970). In two separate decisions, both issued on December 7, 1971, the land office rejected his offers. The offers were rejected because the lands sought by Griffin had not been made available for further

oil and gas lease offers ^{1/} in accordance with 43 CFR Subpart 3112 which provides that such lands may be subject to filing only after they have been listed in a posted notice in the land office as prescribed by 43 CFR 3112.1-2.

The land office explained that these lands, located in the Los Padres National Forest, had not been posted as available because the Secretary, at the request of the Forest Service, had directed the Bureau of Land Management to refrain from issuing oil and gas leases in the entire Sespe Wildlife Area pending completion of an impact study conducted by the Forest Service. One purpose of this study was to determine the effects of oil and gas drilling activities upon the California condor, an endangered species which inhabits the area.

On December 17, 1971, Griffin filed his appeal from these decisions. Griffin admits that the regulations provide that the lands must be listed in a posted notice before an offer may be filed. He alleges, however, that the Secretary was wrongful and capricious in his use of the regulations to refrain from listing these lands as available.

Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970), provides:

All lands subject to disposition under this act which are known or believed to contain oil or gas deposits may be leased by the Secretary. (Emphasis added).

The Secretary's discretion regarding these matters has been upheld in numerous decisions issued by the Interior Department. See James K. Tallman et al., 68 I.D. 256 (1961), aff'd, Udall v. Tallman, 380 U.S. 1 (1969), reversing, 324 F.2d 411 (1963); Richard K. Todd et al., 68 I.D. 291 (1961); John R. Roderick and C. Calvert Knudsen, A-29044 (March 1, 1963); Halvor F. Holbeck, A-30376 (December 2, 1965). The Secretary's exercise of discretion has also been affirmed by the courts in other cases. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960), and cases cited therein.

^{1/} These lands were previously covered by oil and gas leases that had since terminated in accordance with Public Law 83-555, 30 U.S.C. 188(b) for nonpayment of rental.

When the Secretary determines not to lease a certain area for oil and gas purposes, and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. John R. Roderick and C. Calvert Knudsen, supra. We find that the impact study conducted by the Forest Service is a matter involving the public interest.

It is clear, then, that the Secretary has authority to refuse to accept offers for oil and gas leases. In any event, these lands will be available for filing of leases only when they have been posted in accordance with 43 CFR Subpart 3112 and all offers filed prior to that time will be rejected. See John R. Roderick and C. Calvert Knudsen, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the land office is affirmed.

Edward W. Stuebing
Member

We concur:

Joan B. Thompson
Member

Anne Poindexter Lewis
Member

