

HAROLD L. ANDERSON

IBLA 73-63

Decided April 19, 1973

Appeal from decisions of the Montana State Land Office, Bureau of Land Management, rejecting oil and gas leases offers M-19884, 19885, 19887, 22454.

Affirmed.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

An oil and gas lease offer is properly rejected where the land applied for lies within a wildlife range and the Bureau of Land Management and the Fish and Wildlife Service have not entered into an agreement, required by the pertinent regulation as a prerequisite to leasing, designating which part of the range is open to mineral leasing and which is not.

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Generally

Where an offer to lease for oil and gas cannot be accepted because the lands, at the time of filing of the offer, are not available for leasing, the offer will be rejected and will not be held in suspense until the land may become available for such leasing.

APPEARANCES: James S. Holmberg, Esq., Denver, Colorado, for appellant; David C. Branand, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY MR. RITVO

Harold L. Anderson has appealed from two decisions of the Montana State Office, Bureau of Land Management, dated June 26 and July 3, 1972, rejecting four of appellant's oil and gas lease offers. Offers M-19884, 19885, and 19887 were filed on October 8, 1971; offer M-22454 was filed July 25, 1972.

The offers were rejected by the State Office for the reason that the lands were entirely within the boundaries of the C. M.

Russell National Wildlife Range. It pointed out that the pertinent regulation, 43 CFR 3101.3-3(b)(1), provides that the Bureau of Land Management and the Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying which lands shall and shall not be open to oil and gas leasing and that no agreement has been reached for lands within the wildlife range. 1/

Appellant argues that the regulation, supra, requires the Bureau of Land Management and the U.S. Fish and Wildlife Service to confer for the purpose of entering into an agreement specifying those lands which will be subject to oil and gas leasing. Absent such an agreement, he says, an oil and gas offer at most should be suspended and not rejected.

This argument is not persuasive. Other provisions of the regulation, 43 CFR 3101.3-2(a) and (b) 2/, require that any agreement reached under 3101.3-3, supra, shall be published in the Federal

1/ 43 CFR 3101.3-3(b)(1) reads as follows:

"(1) Leasing. As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the U.S. Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the U.S. Fish and Wildlife Service and the Bureau of Land Management."

2/ 43 CFR 3101.3-2 in pertinent part reads as follows:

"§ 3101.3-2 Requirements.

(a) Publication and filing of agreements. The agreements referred to in § 3101.3-3 of this section shall be published in the Federal Register and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose.

"(b) Filing of lease offers. Lease offers for such lands will not be accepted for filing until the 10th day after the agreements and supplemental maps or plats are noted on the land office records.

Register, and that lease offers for such lands, will not be accepted until the 10th day after the agreement is noted on the Land Office records.

These regulations close lands within a game range to the filing of oil and gas lease offers until the Bureau of Land Management and Fish and Wildlife Service reach an agreement specifying which lands are or are not open to oil and gas leasing. Therefore, the lands applied for were not open to oil and gas leasing when appellant filed his offers. Accordingly, it was proper to refuse to issue him leases.

The State Office also properly refused to hold his offers in suspense. Although the regulation requires an agreement between the two agencies of the Department as a prerequisite to leasing, it does not insist that they enter into one at any specific time. Nor can appellant derive an advantage from the fact that one has not been reached. Crucial to the determination of whether the offers should be rejected or suspended is the date of filing of the offers. 43 CFR 3101.3-2(b) provides that lease offers will not be accepted for filing until the 10th day after the agreements between the U.S. Wildlife Service and the Bureau of Land Management has been reached and approved by the Secretary.

It is true that in 43 CFR 3101.3-2(c) the term "suspend" is used in connection with offers and applications filed for oil and gas leases covering game ranges and certain areas. However, in order for this subsection to be operable, the lease offers must have been filed before the regulation became effective since it applies only to "offers and applications heretofore filed." The regulation has existed in substantially the same form since 1970. 43 CFR 3101.3-2 (1970). Since appellant's offers were filed in October 1971 and July 1972, the State Office properly refused to hold them in suspense.

This result is in accord with the pertinent regulation and Departmental decisions. The regulation provides:

fn. 2 (Cont.)

"(c) Suspension of pending applications. (1) All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in § 3101.3-3(b)(1) of this section shall have been completed."

* * * applications * * * must be rejected and cannot be held pending possible future availability of the land when approval of the application is prevented by --

(e) The fact that for any reason the land has not been made subject, or restored to, the operation of the public land laws. 43 CFR 2091.1

In M. F. Trask, 4 IBLA 252 (1972), we stated:

Where an offer to lease lands for oil and gas cannot be accepted because the lands, at the time of filing of the offer, are not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Appellant's argument that the State Office decisions fail to distinguish between wildlife "Refuges" and "Ranges" is without merit. The decisions were based on the assumption that the lands are within a game range as defined in the regulation 43 CFR 3103.3-3(b). This assumption is well founded. Public Land Order 2591, 28 F.R. 1871, changed the name of the Fort Peck Game Range, established by Executive Order 7509, December 11, 1936, 20 F.R. 1871, to Charles M. Russell Wildlife Range, without making any other change.

Furthermore, if the land were in a wildlife refuge, the appellant would not be helped. The regulation closes such lands to oil and gas leasing and provides that no offers will be accepted. 43 CFR 3101.3-3(a)(1).

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.

Martin Ritvo, Member

We concur:

Joan B. Thompson, Member

Douglas E. Henriques, Member.

