

OIL RESOURCES INCORPORATED

IBLA 73-317

Decided February 5, 1974

Appeal from decision of the Montana State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease M 21527.

Affirmed as modified.

Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to--Wildlife Refuges and Projects

Lands in wildlife refuges are closed to noncompetitive oil and gas leasing by 43 CFR 3101.3-3(a)(1); so a lease erroneously issued for any such lands is a nullity.

Oil and Gas Leases: Cancellation--Oil and Gas Leases: Bona Fide Purchaser

The protection to a bona fide purchaser of an oil and gas lease afforded by 30 U.S.C. §§ 184(h)(2), and 184(i) (1970) is not available where the lease involved is a nullity.

APPEARANCES: Richard C. Hoeffle, Vice President, Oil Resources Incorporated, for appellant.

OPINION BY MRS. LEWIS

Oil Resources Incorporated has appealed from a decision by the Montana State Office, Bureau of Land Management, dated February 23, 1973, canceling its noncompetitive oil and gas lease M 21527 for the reason that the lands included in the lease are within the Lake Bowdoin National Wildlife Refuge and are not subject to leasing for oil and gas.

Lease M 21527 was issued to W. V. Moore effective July 1, 1972, for lots 1, 2, 3, S1/2 N 1/2, S1/2 sec. 3, SE1/4 NE1/4 sec. 4, N1/2 NE1/4 sec. 10, T. 30 N., R. 31 E., P.M., Montana, and was assigned to Oil Resources Incorporated effective August 1, 1972. After the lease was issued, the State Office discovered that its oil and gas

status plat [OG Plat] for T. 30 N., R. 31 E., was in error inasmuch as it failed to reflect the fact that the subject lands were included in Executive Order [E.O.] 7295 of February 14, 1936. This order established the Lake Bowdoin Migratory Waterfowl Refuge, and was amended by E.O. 8592 of November 12, 1940, which changed the status of the withdrawal to the Bowdoin National Wildlife Refuge. The Oil and Gas Plat showed only that the subject lands were within a reclamation withdrawal, established by Secretary's Order of August 18, 1902, whereas the Historical Index [HI] for T. 30 N., R. 31 E., disclosed that the reclamation withdrawal had been restored by Order of April 2, 1920. The HI also showed that all of these lands were withdrawn by E.O. 7295 for Lake Bowdoin Migratory Waterfowl Refuge which was converted to Bowdoin National Wildlife Refuge by E.O. 8592.

Pursuant to a notice issued by the State Office on January 16, 1973, Oil Resources Incorporated was allowed 30 days within which to show cause why lease M 21527 should not be canceled in light of the fact that it embraced only lands not subject to noncompetitive oil and gas leasing.

On February 21, 1973, after expiration of the 30-day period, Oil Resources submitted a response, contending essentially that the effect of E.O. 7295 was to establish a coordination area under a cooperative agreement with the Montana State Game Commission and that the area was leasable for oil and gas pursuant to 43 CFR 3101.3-3(c)(1).

The State Office found no merit in the showing made by Oil Resources and, by its decision of February 23, 1973, held that lease M 21527 was null and void. This appeal followed.

Appellant asserts error in the State Office decision to cancel the leases for these reasons:

- A. The appellant and assignee is a bona fide purchaser for valuable consideration, in good faith and without notice, and therefore is accorded the protection of the 1959 amendment to Mineral Lands Leasing Act, Section 17(c), 27(h)(2), (i) as amended, 30 U.S.C.A. Sections 226(c), 184(h)(2), (i).
- B. The Bureau of Land Management did not issue the lease in error. The lands contained in the lease was available for leasing under the Mineral Lands Leasing Act, pursuant to title 43 CFR Section 3101.3-3(c)(1).

We consider the second argument first. Appellant is not correct in its contention that the subject lands are available for oil and gas leasing as "coordination lands," as defined in 43 CFR 3101.3-3(c)(1). The lands are wildlife refuge lands, within the Bowdoin National Wildlife Refuge created by E.O. 8592. The pertinent regulation relating to issuance of oil and gas leases on such wildlife refuge lands is found in 43 CFR 3101.3-3(a), which provides:

(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

The exception set forth in 3101.3-1 is as follows:

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3-3 of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities

and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

It has been the consistent policy, buttressed by the foregoing regulations of the Department, to reject noncompetitive oil and gas lease offers filed for lands within wildlife refuges. Noncompetitive oil and gas lease offers are properly rejected where the lands applied for have been withdrawn for a national wildlife refuge and the regulations provide that such wildlife refuge lands will not be leased unless the Geological Survey determines that such lands are subject to drainage. In this event the lands may be leased only by competitive bidding. Sam K. Viersen, Jr., NM 020712 etc., (June 16, 1959), approved by the Secretary July 6, 1959; Sam K. Viersen, Jr., NM 020716 (Okla.) (April 11, 1960), approved by the Secretary April 21, 1960. Thus, it was manifest error for the State office to issue a noncompetitive lease for the subject lands.

The regulations contain a caveat to protect the interest of the Government in situations such as this. 43 CFR 1810.3(c) states:

Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

And it is axiomatic that the United States is neither bound nor estopped by acts of its officers or agents in entering into an agreement or lease which the law does not sanction or permit. Utah Power & Light Co., v. United States, 243 U.S. 389, 409 (1917); United States v. Lance, 73 I.D. 218 (1966).

The Secretary of the Interior is bound by his own regulation promulgated pursuant to the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181 et seq. (1970), so long as it remains in effect, since it has the force of law. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

When an act, such as the Mineral Leasing Act, vests the Secretary of the Interior with discretionary authority but directs him to issue regulations governing the exercise of his discretion, the authority of his delegate to act in any given time must be exercised in conformance with the regulations then in force. Solicitor's Opinion M-36465 (August 9, 1957).

The Secretary's delegate has no authority to act contrary to the established regulations and policy of the Department. Accordingly, it

must be held that lease M 21527 is a nullity. The State Office decision is so modified.

Appellant's contention that it is entitled to the protection afforded to bona fide purchasers by the amendatory acts of September 21, 1959, 73 Stat. 571, and of September 2, 1960, 74 Stat. 781, likewise cannot be accepted. The statutory protection to a bona fide purchaser may be granted where an oil and gas lease is subject to cancellation for violation of some law or regulation by the original applicant, but we do not recognize any protection to a purchaser in good faith and for value of a lease which was a nullity from its inception. All reported cases concerning bona fide purchasers relate to leases for land which could have been leased properly to someone, but for various reasons, the original lessee was not presently qualified or was not the first qualified applicant for the lease. Nowhere have we found any indication that a bona fide purchaser is entitled to any protection where the lease in question was issued for land not subject to noncompetitive oil and gas leasing under the Mineral Leasing Act. 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, as modified.

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Anne Poindexter Lewis, Member

We concur:

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Douglas E. Henriques, Member

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Frederick Fishman, Member

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1/ The legislative history of the 1959 act, the basic amendment which provided protection for bona fide purchasers, indicates that the intent of Congress was to protect good faith purchasers whose predecessors in interest were in violation of some provision of the act, such as the acreage limitation provisions, and not for the protection of purchasers of leases erroneously issued for lands not subject to noncompetitive leasing. See 1959 U.S. CODE CONG. & ADM. NEWS, p. 2620 et seq.

