

THUNDERBIRD RESOURCES, INC.

IBLA 74-209

Decided May 16, 1975

Appeal from a decision by the Acting Director, Geological Survey, denying appellant's application to purchase royalty crude oil. (GS-54)

Affirmed.

1. Oil and Gas Leases: Contracts for the Sale of Royalty Oil or Gas

The Department may not sell royalty oil to an ineligible refinery, unless the Secretary of the Interior finds that the crude oil needs of refiners eligible to purchase crude oil under 30 U.S.C. § 192 (1970), are being met in the open market.

2. Oil and Gas Leases: Contracts for the Sale of Royalty Oil or Gas -- Regulations: Validity -- Secretary of the Interior

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

APPEARANCES: Edwin Jason Dryer, Esq., Washington, D.C., for appellant.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Thunderbird Resources, Inc., has appealed from a decision of the Acting Director of the United States Geological Survey (Survey) dated December 6, 1973, which affirmed a decision of the Survey's Area Oil and Gas Supervisor, Northern Rocky Mountain Area, dated June 1, 1973. Both decisions rejected Thunderbird's application to purchase royalty crude oil from the Government under the Act of July 13, 1946, 60 Stat. 533, amending section 36 of the Mineral Leasing Act of 1920, 30 U.S.C. § 192 (1970), because it was not an "eligible refiner" as defined by 30 CFR 225.2(a).

On appeal, Thunderbird raises two arguments. One, the Survey has incorrectly interpreted the regulation that defines "eligible refiners". Two, if the Survey's interpretation is correct, the regulation is void because it is inconsistent with the statute.

The Act of July 13, 1946, said:

[S]ection 36 of the Act of February 25, 1920 (41 Stat. 451, U.S.C., 1940 edition, title 30, sec. 192), is amended, in order to assist small business enterprise by encouraging the operation of oil refineries not having an adequate supply of crude oil, by adding before the first proviso in the second paragraph thereof the following: "Provided, That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this Act, as amended: Provided further, That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced:".

60 Stat. 533, 30 U.S.C. § 192 (1970) (Emphasis added).

In a memorandum of understanding executed August 10, 1960, and September 12, 1960, the Department of the Interior and the Small Business Administration (SBA) established a procedure where, among other things, the SBA was to make available its facilities for identifying small business concerns interested in the purchase of royalty

crude oil. Chapter 1, Geological Survey-Conservation Division Manual, Part 672, Exhibit 3. In the Memorandum of Understanding, the Department of the Interior agreed to grant the preferences to purchase royalty oil only to those refineries not having their own source of supply of crude oil which qualify as small business concerns under standards promulgated by the SBA. Id.

The agreement with the SBA was implemented in Interior's regulations in 1968. 34 F.R. 1019. The regulation says:

(a) "Eligible refiners" under the Act of July 13, 1946, shall be owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities.

30 CFR 225.2(a) (1974). A regulation further provides:

Except in times of general unavailability of an adequate supply of crude oil in the United States, or when special circumstances warrant other action, as determined by the Secretary, Government royalty oil available for disposal pursuant to the Act of February 25, 1920, as amended, will be sold in accordance with the regulations in this part. Such oil will be sold only to "Eligible refiners" under the Act of July 13, 1946, and all such sales will be made at the "market price" without premium or bonus. \* \* \*

30 CFR 225.3 (1974).

Although Thunderbird concedes that it is not an eligible refiner under the definition in 43 CFR 225.2(a), it asserts that it is eligible to purchase oil under the "special circumstances" clause of the section, and that the Survey erred in not granting it a preference right under that section.

In support of this contention, Thunderbird notes that it has been granted a preference right to purchase Outer Continental Shelf (OCS) royalty oil under a similar "special circumstances" clause in 30 CFR 225a.3. It argues that since the special circumstances clause was used in its favor for OCS royalty oil, it can also be used in its favor for onshore royalty oil.

While Thunderbird's argument is appealing, it is flawed. Section 5 of the Outer Continental Shelf Lands Act of August 7, 1953, 43 U.S.C.

§ 1334 (1970), authorizes the Department of the Interior to sell royalty oil received under that Act to anyone. By regulation, the Department has established a policy of selling OCS oil to refineries that meet certain SBA requirements. By regulation, the Department has also left itself with the discretion not to sell the OCS oil to SBA refineries "under special circumstances." By contrast, 30 U.S.C. § 192 (1970), requires the Department either to (1) retain the royalty oil for use by the United States, (2) sell it to certain preference right refineries when those refineries do not have an adequate supply of crude oil, or (3) sell the oil to any refinery when preference right refineries have an adequate supply of crude oil.

[1] The "special circumstances clause" in 30 CFR 225.3, recognizes that under certain conditions, the restrictions and requirements of the regulations pertaining to the sale of the royalty oil or gas need not be followed. However, unless the Secretary of the Interior has found that the crude oil needs of refiners eligible to purchase royalty oil under the Act of July 13, 1946, 30 U.S.C. § 192 (1970), are being met in the open market, the Department may not sell oil to an ineligible refinery under the regulation. Since Thunderbird admits it is an ineligible refinery, under the regulatory definition, and has made no showing that the needs of eligible refiners are being met in the open market, 1/ the special circumstances clause does not come into operation.

[2] Thunderbird next argues that the Department's regulation defines eligible refinery in contravention of the statute, and improperly excludes it from the statutory class. We disagree. The agreement between the Secretary of the Interior and the Administrator of the Small Business Administration was an exercise of the discretion granted to the Secretary by the Act of July 13, 1946, and the regulation defining eligible refinery conforms with the mandate of the statute. A regulation is valid where it constitutes an implementation of a statute and is not unreasonable or plainly inconsistent with the statute. See Duncan Miller, 12 IBLA 206, 209 (1973). We find the regulation's definition of eligible refiners to be within the ambit of the Secretary's authority to promulgate rules and regulations to implement the Mineral Leasing Act, 30 U.S.C. § 189 (1970).

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1/ The decision of the Area Oil and Gas Supervisor stated:

"Our Washington office advises that the current status of the crude oil market dictates that onshore royalty oil should be sold only to refiners who qualify as "eligible refiners" as defined in 30 CFR 225.2(a)." Thunderbird has presented no evidence contrary to this conclusion, although it generally criticizes the conclusion.

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.

Joan B. Thompson  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joseph W. Goss  
Administrative Judge

