

A. G. GOLDEN

IBLA 75-345

Decided June 25, 1975

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 30505 (N.D.) and M 30611 (N.D.).

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lake beds riparian thereto are properly rejected.

APPEARANCES: A. G. Golden, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On November 4, 1974, A. G. Golden, appellant, filed oil and gas lease offer M 30505 (N.D.) for certain uplands and lake bed riparian thereto in secs. 31, 32, and 33, T. 152 N., R. 73 W., Fifth Principal Meridian, North Dakota. On November 18, 1974, appellant filed oil and gas lease offer M 30611 (N.D.) for certain uplands and lake bed riparian thereto in secs. 5 and 10 of the same township. On January 9, 1975, the Montana State Office, Bureau of Land Management (BLM), rejected both offers. This appeal is taken from those decisions.

The decision by BLM was based on the fact that appellant's offers were for lands designated as "waterfowl production areas" and, therefore, not available for oil and gas leasing. Appellant argues that this conclusion is incorrect, primarily because the lands were not withdrawn from leasing under the mineral leasing laws.

[1] The lands in question here were among those withdrawn for "waterfowl production areas" by Public Land Order 4399, 33 F.R. 5420 (April 5, 1968). We held in T. R. Young, Jr., 20 IBLA 333 (1975), that although the language of P.L.O. 4399 does not withdraw these lands from oil and gas leasing, the Secretary of the Interior may still exercise his discretionary authority to reject lease offers under section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(a) (1970).

As we explained in Young, supra, the Secretary has formally exercised his discretionary authority with regard to waterfowl production areas. 43 CFR 3101.3-3(a)(1) states that "[n]o offers for oil and gas leases covering wildlife refuge lands will be accepted \* \* \*". <sup>1/</sup> We also explained that waterfowl production areas are within the meaning of the term "wildlife refuges" in that regulation. The strong policy manifest in the regulation to protect these areas by not permitting oil and gas leasing, unless there is drainage, also applies to the lake beds riparian to the designated surveyed upland areas within the waterfowl production area. Cf. David W. Harper, 74 I.D. 141 (1967). Appellant has offered no reason to differentiate between the upland and lake bed areas.

Therefore, the oil and gas lease offers for lands withdrawn as waterfowl production areas, and for lake bed riparian to the withdrawn area, were properly rejected.

Accordingly, 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:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

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<sup>1/</sup> 43 CFR 3101.3-3(a)(1) goes on to state that "\* \* \* and no leases covering such lands will be issued except as provided in § 3101.3-1." 43 CFR 3101.3-1 provides for competitive oil and gas leasing on lands described in § 3101.3-3 and determined by the Geological Survey to be subject to drainage.

