

AA MINERALS CORPORATION

IBLA 77-88

Decided May 31, 1977

Appeal from decisions of Utah State Office, Bureau of Land Management, which rejected oil and gas lease offers U 34637 and U 34638.

Affirmed.

1. Oil and Gas Leases: Application: Generally! ! Oil and Gas Leases: Lands Subject to! ! Oil and Gas Leases: Discretion to Lease

When the Secretary of the Interior has exercised his discretionary authority over the issuance of oil and gas leases to promulgate a Public Land Order closing an area of public lands to oil and gas leasing for the purpose of preserving and developing the potash deposits therein belonging to the United States, it is proper to reject oil and gas lease offers for such withdrawn lands.

APPEARANCES: John R. Anderson, Vice President, AA Minerals Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

AA Minerals Corporation appeals from decisions of the Utah State Office, Bureau of Land Management, which rejected, in toto, offers to lease for oil and gas, U 34637 and U 34638, in part for the reason that the lands sought are withdrawn by PLO 4870 from oil and gas leasing for the preservation and development of the potash deposits, and in part because the lands were not otherwise available. 1/

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1/ The appeal relates only to the lands within the potash area. The decisions have become final as to the lands rejected for other reasons.

PLO 2379 of May 13, 1961, 26 FR 4333, withdrew certain therein described lands in Utah from appropriation under the oil and gas provisions of the Mineral Leasing Act, 30 U.S.C. § 181 et seq., as amended and supplemented, for the purpose of preservation and development of potash deposits belonging to the United States. The withdrawal was to terminate September 3, 1970; however PLO 4870, 35 FR 12655, August 3, 1970, extended the term of the withdrawal to September 2, 1980.

[1] The Secretary of the Interior is vested with discretionary authority over issuance of oil and gas leases which may be exercised by issuance of a public land order (PLO) closing the land to leasing. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). Section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1970), vests the Secretary "with the discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4 (1965); rehearing denied, 380 U.S. 989. When the Secretary has exercised his discretionary authority over issuance of oil and gas leases to declare by means of a PLO that a potash area is closed to oil and gas leasing because such leasing would be incompatible with the potash development, it is proper to reject any oil and gas lease offer for such land. Duncan Miller, A-29340 (April 29, 1963); Jack V. Walker, A-28556 (September 21, 1962). Lands which have been withdrawn from appropriation under the oil and gas provisions of the Mineral Leasing Act remain so withdrawn until there is a formal revocation or modification of the PLO which effected the withdrawal, and it is immaterial whether exploration for oil and gas could be compatibly conducted on the withdrawn lands. Tenneco Oil Co., 8 IBLA 282 (1972).

The decisions appealed from are correct and must be sustained. There is no authority to issue oil and gas leases on land encompassed within a withdrawal which expressly prohibits such leasing.

Appellant has not pointed out any error in the decisions below, but only contends that oil and gas explorations could be undertaken without damage to the potash resource. That is as may be. This is not the proper forum for review of its contention. It should present its information to the Secretary and petition for a review of the withdrawal. If it is determined that oil and gas operations will not affect the potash resource detrimentally, the lands may be opened to oil and gas leasing, after due notice. Petitioner for such a modification will not gain any preference right to a lease because of his initiation of the modification.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions are affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

