

JOHN R. ANDERSON

IBLA 79-510

Decided February 29, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offers N-20684, N-20685, N-20686, and N-20687.

Affirmed.

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

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a June 28, 1979, decision by the Nevada State Office, Bureau of Land Management (BLM), rejecting the above-designated lease offers as follows:

The lands in your offers lie within the boundaries of the National Desert Wildlife Range. According to the Department of the Interior Sacramento Regional Solicitor's office in a memorandum dated March 22, 1979, the Range has

been withdrawn for the specific purpose of "the protection, enhancement and maintenance of wildlife resources, including bighorn sheep."

"43 CFR 3101.3-3(a) * * * provides that lands withdrawn for the sole purpose of protecting all species of wildlife in a particular area are wildlife refuge lands * * *." Wildlife refuge lands are specifically exempt from oil and gas leasing under 43 CFR 3101.3-3(a) except when these lands are subject to drainage and in those instances, leases will be offered only under competitive bidding. [1/]

Appellant contends that these regulations are contrary to Federal statute, illegal, and an abuse of Secretarial authority. Specifically appellant cites Public Land Order (PLO) No. 4079 and the National Wildlife System Administration Act, as amended, 16 U.S.C. § 668dd (1976). 2/ Appellant contends that the decision whether to grant an

1/ The cited regulation reads as follows:

"§ 3101.3-3 Reserved and segregated lands.

"(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 land 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."

Section 3101.3-1 involves lands subject to drainage.

2/ PLO 4097 withdrew certain lands from all forms of appropriation under the public land laws except from location under the mining laws, or leasing under the mineral leasing laws, reserving them as the Desert National Wildlife Range.

The National Wildlife Refuge System Administration Act indicates "[t]hat the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to [the effective date of the Act], unless subsequently withdrawn under other authority of law." 16 U.S.C. § 668dd(c) (1976).

oil and gas lease must rest on the criterion of compatibility with the purposes for which the lands were withdrawn. Appellant contends that the decision not to allow leasing is also contrary to the national energy policy. Appellant concludes that the regulations at 43 CFR 3101.3-3 exceed the Secretary's authority and should be declared void.

[1] All of these arguments have previously been considered by the Board. In T. R. Young Jr., 20 IBLA 333 (1975), we held:

Under the provisions of the Mineral Leasing Act of 1920, and amendment thereto, 30 U.S.C. § 181 et seq. (1970), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased by the Secretary." (Emphasis added) 30 U.S.C. § 226(a) (1970). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-5 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id. The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under section 17 of the Act. Richard K. Todd, 68 I.D. 291, 296 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); George N. Keyston, Jr., Newton H. Neustadter, Jr., A-28350, A-28528 (Aug. 7, 1962).

We recently reaffirmed this analysis in Kenneth F. Cummins, 43 IBLA 110 (1979), which held that lands within the Desert National Wildlife Range are not subject to noncompetitive oil and gas leasing. See also Carol Lee Hatch, 45 IBLA 4 (1980). In Cummins the appellant also argued that the compatibility criterion had not been met. The regulations at 43 CFR 3101.3-3(a) are a formal exercise of the Secretary's discretion. We cannot say that they are contrary 3/ to the statutes cited by appellant. Under the plain language of those regulations, the rejection of the subject oil and gas lease offers must be affirmed.

3/ Even assuming, arguendo, that the regulation was contrary to the statute, Boards of Appeal of this Department have no authority to declare a duly promulgated regulation invalid. Sombrero Ranches, 38 IBLA 327 (1978); Arizona Public Service Co., 20 IBLA 120, 123 (1975).

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.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

