

IDA LEE ANDERSON

IBLA 80-81  
80-163

Decided April 10, 1980

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers, N 22230-N 22234, N 24155, and N 24274.

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 THOMPSON

By decisions issued October 9, 1979, and November 14, 1979, the Nevada State Office, Bureau of Land Management (BLM), rejected noncompetitive oil and gas lease offers N 22230-N 22234, N 24155, and N 24274. Ida Lee Anderson appeals from both decisions, which were consolidated for review by order of this Board dated December 18, 1979.

Both BLM decisions rejected the offers for the following reasons:

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of the Interior Sacramento Regional Solicitor's office in a memorandum dated March 22, 1979, the Range has been withdrawn for the specific purpose of "the protection, enhancement and maintenance of wildlife resources, including bighorn sheep."

"43 CFR 3101.3-3(a) \* \* \* provides that lands withdrawn for the sole purpose of protecting all species of wildlife in a particular area are wildlife refuge lands \* \* \*" Wildlife refuge lands are specifically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 argues that 43 CFR 3101.3-3 should be declared null and void because it exceeds the authority granted to the Secretary of the Interior by the statutes which govern mineral leasing and the administration of Federal wildlife refuges. In particular, appellant emphasizes that both Public Land Order (PLO) No. 4079 (31 FR 11547 (Sept. 1, 1966), as amended by 31 FR 12564 (Sept. 23, 1966)), which created the Desert National Wildlife Range, and the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. § 668dd (1976), explicitly provide for mineral leasing on wildlife refuge

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1/ 43 CFR 3101.3-3 reads:

"(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."

43 CFR 3101.3-1 refers to lands subject to drainage.

lands. Appellant argues that BLM must analyze the compatibility of oil and gas leasing with the purposes for which a given tract was withdrawn, and that here, BLM failed to consider possible compatibility of leasing and wildlife.

[1] The Board has considered all of these arguments previously. In T. R. Young, Jr., 20 IBLA 333 (1975), where an oil and gas lease offer for lands withdrawn for waterfowl production was rejected pursuant to 43 CFR 3101.3-3(a)(1), the Board held:

Under the provisions of the Mineral Leasing Act of 1920, and amendments 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).

The Board reaffirmed this analysis in a recent series of similar cases which held that lands within the Desert National Wildlife Range are not subject to noncompetitive oil and gas leasing. John R. Anderson, 46 IBLA 123 (1980); Dean W. Rowell, 45 IBLA 225 (1980); Carol Lee Hatch, 45 IBLA 4 (1980); Kenneth F. Cummings, 43 IBLA 110 (1979).

The records before the Board do not indicate whether or not the Fish and Wildlife Service has been requested to comment on potential compatibility of oil and gas leasing with management of the Desert National Wildlife Range. However, this omission is of no consequence under the plain language of 50 CFR 25.12 and 43 CFR 3101.3-3(a). Cummings, supra. Therefore, the Board must affirm the rejection of appellant's oil and gas lease offers.

We note that the Board of Land Appeals lacks authority to declare a duly promulgated regulation invalid. Anderson, supra; Cummings, supra; 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.

Joan B. Thompson  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

James L. Burski  
Administrative Judge

