

Editor's note: Overruled to the extent inconsistent with 57 IBLA 319 (Sept. 1, 1981)

DAVID A. PROVINSE

IBLA 79-500

Decided July 28, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 43294 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

2. 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 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 Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

APPEARANCES: David A. Provinse, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

David A. Provinse has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated June 1, 1979, rejecting oil and gas lease offer M 43294 (ND) Acq. The decision states that the U.S. Fish and Wildlife Service (FWS) had reported that the lands

in the offer are within the Lake Ilo National Wildlife Refuge and that, therefore, in accordance with 43 CFR 3101.3-3, the lands are not subject to leasing except in the case of drainage.

The offer covers the SE 1/4 of sec. 30, N 1/2 of sec. 31, SW 1/4 of sec. 32, and N 1/2 NW 1/4, SW 1/4 NW 1/4, N 1/2 SW 1/4 of sec. 34, T. 145 N., R. 94 W., fifth principal meridian. In his statement of reasons, appellant argues that these lands were acquired by FWS in conjunction with those acquired for the purpose of the Lake Ilo refuge, but that they are outside, rather than inside, the legal boundaries of the refuge as set by Executive Order 8154 (June 12, 1939). ^{1/} Appellant contends that the purchase of the additional lands would not automatically extend the boundaries of the refuge and that the lands are subject to leasing as acquired lands.

[1, 2] Under provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976), 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." 30 U.S.C. § 226(a)(1976). 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, 624-25 (D.C. Cir. 1960); E. L. Lockhart, 121 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

^{1/} Exec. Order No. 8154 established the Lake Ilo Migratory Waterfowl Refuge as "all lands owned or controlled by the United States within the following-described area:"

- T. 144 N., R. 94 W.
 - sec. 6, fractional N 1/2
- T. 145 N., R. 94 W.
 - sec. 20, SE 1/4
 - sec. 27, S 1/2 NW 1/4 and SW 1/4
 - sec. 28, NE 1/4, SE 1/4 NW 1/4, and S 1/2
 - sec. 29, all
 - sec. 32, N 1/2 and SE 1/4
 - sec. 33, all
 - sec. 34, S 1/2 SW 1/4

Presidential Proclamation 2416, dated July 25, 1940, changed the name of the refuge to the Lake Ilo National Wildlife Refuge.

discretion under section 17 of the Act. Carol Lee Hatch, 45 IBLA 4 (1980); T. R. Young, Jr., 20 IBLA 333 (1975); 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).

Pursuant to Chapter 17 of Title 16 of the U.S. Code concerning the protection of migratory game and insectivorous birds, 16 U.S.C. § 701-718h, the Migratory Bird Commission, upon recommendation of the Secretary of the Interior, may approve purchase of areas by the Secretary for use as inviolate sanctuaries for migratory birds and wildlife refuges. FWS has submitted to this Board various documents indicating that the Migratory Bird Commission approved acquisition of the lands in appellant's oil and gas lease offer for the purpose of inclusion in the Lake Ilo National Wildlife Refuge on March 25, 1941, for a portion of those lands and on March 11, 1958, for the remaining lands. Therefore, in accordance with 43 CFR 3101.3-3, BLM has properly rejected appellant's offer.

Accordingly, pursuant to the authority of the Board of Land Appeals delegated by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

