

DONALD EPPERSON

IBLA 80-515

Decided September 30, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers M 41308 and M 43232.

Set aside and remanded.

1. Oil and Gas Leases: Lands Subject to-- Segregation--Withdrawals and Reservations: Generally

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

APPEARANCES: Raymond K. Peete, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Donald Epperson has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated February 19, 1980, rejecting oil and gas lease offers M 41308 and M 43232, filed on August 1, 1978, and April 6, 1979, respectively.

BLM rejected the offers for the following reasons:

The offers are rejected as to the lands listed below, because the lands are included within a proposed withdrawal for the West Yellowstone Airport. The proposed withdrawal

is a segregation of lands from location and entry under the mineral leasing and general mining laws.

M 41308 - T. 14 S., R. 5 E., P.M.M.

Sec. 5: Lots 1, 2, 3, 4, SW 1/4 NE 1/4,
W 1/2 SE 1/4 NE 1/4, S 1/2 NW 1/4

Sec. 6: NE 1/4 of Lot 1, S 1/2 of Lot 1,
SE 1/4 SW 1/4 NE 1/4, SE 1/4 NE 1/4

(381.68 acres - Gallatin County)

M 43232 - T. 13 S., R. 5 E., P.M.M.

Sec. 21: E 1/2, E 1/2 W 1/2, E 1/2 SW 1/4 SW 1/4

(500.00 acres - Gallatin County)

The aforesaid proposed withdrawal for the West Yellowstone Airport was contained in withdrawal application M 15779 and filed by the Department of Transportation, Federal Aviation Administration (FAA), on June 1, 1970. The above-described lands, plus other lands, all containing 2,870 acres, were included in the FAA application.

Notice of the proposed withdrawal of the lands in question is given as follows in 35 FR 9935 (June 17, 1970):

Notice of Proposed Withdrawal and
Reservation of Land

June 9, 1970.

The Department of Transportation, Federal Aviation Administration, on behalf of the Montana Aeronautics Commission, has filed application, M15779, for the withdrawal of national forest lands described below, from location and entry under the mineral leasing and general mining laws, subject to existing valid claims.

The land is being used for the West Yellowstone Airport, and the applicant wants the land protected from any activities that would interfere with its use for airport purposes. [Emphasis supplied.]

Furthermore, as provided in the Notice of Proposed Withdrawal as republished in 42 FR 41484 (Aug. 17, 1977):

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of

1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior. [Emphasis supplied.]

Appellant argues that, in view of the energy crisis, the lands should be available for oil and gas leasing subject to appropriate stipulations. Appellant avers to a memorandum dated March 17, 1980, from the Chief, Lands Adjudication Section, BLM, in response to an inquiry from the FAA, wherein the FAA suggested that in lieu of cancellation of withdrawal application M 15779, oil and gas leases be issued subject to such stipulation requirements as proposed by the FAA. In addition, appellant alleges that this memorandum indicates that such a proposal would be acceptable to the United States Forest Service.

The application for withdrawal was noted on the State Office records and therefore was effective to segregate ^{1/} the lands covered thereby from any appropriation inconsistent with the withdrawal if consummated. 43 CFR 2351.3 and 43 CFR 2091.2-5. See Mrs. Ethel H. Myers, 65 I.D. 207, 210 (1958); cf. Marion Q. Kaiser, 65 I.D. 485 (1958); Lyla S. Lofgren, A-28358 (July 20, 1960).

The segregative effect of the application for withdrawal began on June 17, 1970. The oil and gas lease offers were filed on August 1, 1978, and April 6, 1979; at a time when at least part of the lands therein were segregated from mineral leasing. The issue to be decided, therefore, is to what extent should such offers be considered by the BLM. 43 CFR 2091.2-5(a) and (b) provide:

§ 2091.2-5 Withdrawal or reservation of Federal lands.

(a) Application. The noting of the receipt of the application under §§ 2351.1 to 2351.6 in the tract books or on the official plats maintained in the proper office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

^{1/} The amendment of the Notice of Proposed Withdrawal and Reservation of Lands, published December 28, 1973 (38 FR 35507-8), makes clear that the previous publications in issue were worded in a manner effective to segregate the lands from mineral leasing.

(b) Amendments. (1) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The authorized officer of the Bureau of Land Management will have a notice published in the Federal Register specifying the date and hour that the lands so eliminated will be relieved of the segregative effect of the agency's application and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.
[Emphasis supplied.]

As we recently held in Trent J. Parker, 49 IBLA 209 (1980), it is clear from the regulation that an oil and gas offer, filed while the land has been segregated, is to be suspended, pending final action on the withdrawal application, and that to the extent that the offer is not inconsistent with the terms of any amendment to the withdrawal application, it may be processed on its merits. See The Law of Federal Oil and Gas Leases, § 2.12, pp. 74-75.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is set aside and the case remanded for appropriate action consistent with this opinion. 2/

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

2/ This decision is based on an assumption that the offers are not defective for other reasons. There would be no reason to suspend the offers because of the withdrawal application if the offers are subject to rejection for other reasons. For example, see 43 CFR 3112.1-1. Nothing in this decision precludes consideration of the offers by BLM for other reasons and appropriate action if warranted. The offers should be suspended only if the withdrawal application and its segregative effect is the only apparent bar to lease issuance.

