

TRENT J. PARKER

IBLA 80-502

Decided December 2, 1980

Appeal from the decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 32180 and M 32181.

Set aside and remanded.

1. Oil and Gas Leases: Lands Subject to Segregation: Filing of an Application -- Withdrawals and Reservations: Generally

Where an application for withdrawal proposes to withdraw certain lands from the operation of the mineral leasing and mining laws to prevent interference with the use of the land for airport purposes, the Bureau of Land Management should suspend action on oil and gas lease offers filed subsequent to the withdrawal application pending final action on the proposed withdrawal.

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

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Trent J. Parker has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated February 19, 1980, rejecting oil and gas lease offers, M 32180 and M 32181, as to certain lands in T. 13 S., R. 5 E., Principal meridian, Montana, which are included within proposed withdrawal M 15779 for the West Yellowstone Airport. The decision indicated that the proposed withdrawal segregated the lands from location and entry under the mineral leasing laws.

In his statement of reasons, appellant urges that BLM's stated rationale for rejecting his leases in part is no longer valid because BLM has considered cancelling the proposed withdrawal and the Federal

Aviation Administration (FAA) has suggested that oil and gas leases be issued subject to certain stipulations as an alternative. Appellant has submitted copies of a BLM memorandum dated March 17, 1980, and a FAA letter dated January 31, 1980, to this effect. He urges that further action in connection with his offers be withheld pending resolution of the proposed withdrawal matter.

[1] Departmental regulation 43 CFR 2351.3(a), concerning the effect of an application for a withdrawal filed by a Federal agency, states the following: "The noting of the receipt of the application in the tract books or on the official plats * * * shall temporarily segregate such lands as provided in § 2091.2-5." The cited regulation, 43 CFR 2091.2-5, provides that

[t]he 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. [Emphasis added.]

It was incorrect for BLM to have rejected appellant's oil and gas lease offers. Pursuant to the above quoted regulations, BLM should have suspended the applications until final action was taken on the FAA's application for withdrawal. Thus, we must remand the offers for readjudication at such time as a final decision is made on the proposed airport withdrawal. Trent J. Parker, 49 IBLA 209 (1980), Kevin D. Ellis, 24 IBLA 387 (1976).

We think it important to point out that section 204(b)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2751, 43 U.S.C. § 1714(b)(1) (1976), has established procedures, considerably different from those embodied in 43 CFR 2091.2-5, relating to the segregative effect of a withdrawal application. Thus, that section provides:

Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of

the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice. [Emphasis supplied.]

It is clear, however, that the above provision does not apply to the application for withdrawal filed herein. In the first place, the application for withdrawal was published in the Federal Register on June 17, 1970. In any event, section 204(g) of FLPMA, 43 U.S.C. § 1714(g) (1976), provides that pending applications must be processed and adjudicated to conclusion within 15 years of the date of the enactment of FLPMA, and that the segregative effect on any application which was not so processed would terminate after this period.

While we note that section 310 of FLPMA, 43 U.S.C. § 1740 (1976), provides that, prior to the adoption of regulations implementing FLPMA, Federal lands "shall be administered under existing rules and regulations concerning such lands to the extent practical," it seems clear that 43 CFR 2091.2-5, to the extent that it provides that the noting of an application for withdrawal in the tract books effects a segregation of the land, no longer correctly reflects the law. We do not believe, however, that FLPMA repealed that portion of 43 CFR 2091.2-5 which provides that "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." This latter provision we hold to be the present status of the law.

Therefore, 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 set aside and the case remanded for readjudication at the appropriate time.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

