

NUGGET OIL CORP.

IBLA 81-578

Decided December 31, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. N-32288 through N-32307

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 refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

APPEARANCES: Stephen C. Heidecker, President, Nugget Oil Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Nugget Oil Corporation (Nugget) has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting its 20 noncompetitive oil and gas lease offers, N-32288 through N-32307, because the land sought lies within the boundaries of the Desert National Wildlife Range, withdrawn for the protection, enhancement, and maintenance of wildlife resources, including bighorn sheep. The offers were filed pursuant to section 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

[1] The regulation cited by BLM, 43 CFR 3101.3-3(a)(1), provides, in relevant part, that "[n]o 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 [lands subject to drainage]." "Wildlife refuge lands" are defined as follows:

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. [Emphasis added.]

43 CFR 3101.3-3(a).

In its statement of reasons for appeal, Nugget contends that: (1) The land was never withdrawn from oil and gas leasing; (2) the standard for determining permitted uses of wildlife refuge lands is "compatibility" as enunciated in the National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. § 668dd (1976), and no determination of compatibility was made and (3) the prohibition of oil and gas leasing is not consistent with "current national energy policy." Nugget argues that oil and gas leasing would be compatible with the relevant wildlife resources upon the imposition of appropriate protective stipulations.

The Desert National Wildlife Range was created pursuant to Public Land Order (PLO) No. 4079 (31 FR 11547 (Sept. 1, 1966)), as amended by, 31 FR 12564 (Sept. 23, 1966), which provides that certain public lands are "withdrawn from all forms of appropriation under the public land laws, but not from location under the mining laws * * * nor leasing under the mineral leasing laws, and reserved as the Desert National Wildlife Range." (Emphasis added.)

As we have stated on many occasions, in the same context, the Secretary's withdrawal authority is distinct from his discretionary authority under section 17 of the Mineral Lands Leasing Act. Accordingly, even though the lands at issue were not withdrawn from oil and gas leasing, the Secretary could still exercise that discretionary authority not to accept lease offers for those lands. See, e.g., John R. Anderson, 50 IBLA 38 (1980); T. R. Young, Jr., 20 IBLA 333 (1975).

The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3(a) is a formal exercise of the Secretary's discretion

under section 17 of the Mineral Lands Leasing Act and 43 CFR 3101.3-3(a) is applicable in the present case. The lands at issue were established as part of a "wildlife range" pursuant to PLO No. 4079, supra, which effected a withdrawal of the lands "for the protection, enhancement, and maintenance of wildlife resources." Lands of the Desert National Wildlife Range must be considered "wildlife refuge lands" within the meaning of 43 CFR 3101.3-3(a), since they were withdrawn for the protection of wildlife.

Pursuant to the National Wildlife Refuge System Administration Act of 1966, "wildlife ranges" were formally made a part of the "National Wildlife Refuge System." 16 U.S.C. § 668dd(a)(1) (1976). Nugget directs our attention to section 4(c) of that Act, 16 U.S.C. § 668dd(c) (1976), which provides, in relevant part: "That 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 October 15, 1966, unless subsequently withdrawn under other authority of law." The citation of this statutory language does not aid Nugget. As correctly noted in its statement of reasons, 43 CFR 3101.3-3(a) was adopted in its present form in January 1958. See 43 CFR 192.9 (23 FR 227 (Jan. 11, 1958)). Therefore, "prior to October 15, 1966," the Secretary had already exercised his discretionary authority to prohibit oil and gas leasing in "wildlife refuge lands."

Nugget also maintains that BLM must determine whether oil and gas leasing is compatible with the wildlife resources which are sought to be protected. It cites section 4(d) of the National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. § 668dd(d) (1976), which provides, in relevant part, that:

(d)(1) The Secretary is authorized, under such regulations as he may prescribe, to--

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established * * *.

43 CFR 3101.3-3(a) is not inconsistent with this statutory provision. See Tucker & Snyder Exploration, Inc., 49 IBLA 176 (1980). The provision does not require a finding of incompatibility where the Secretary chooses to exercise his authority under section 17 of the Mineral Lands Leasing Act to refuse to accept oil and gas lease offers. It merely authorizes the permitting of other uses in the National Wildlife Refuge System contingent on a finding of compatibility.

Furthermore, 43 CFR 3101.3-3(a) is not inconsistent with the multiple use principle embodied in the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701(a)(7) (1976). There is no provision of FLPMA which precludes the Secretary from exercising his authority under section 17 of the Mineral Lands Leasing Act to refuse to accept oil and gas lease offers.

Appellant has presented no arguments which require a departure from the Department's long-standing policy and our previous decisions regarding oil and gas leasing in "wildlife refuge lands," particularly the Desert National Wildlife Range. See, e.g., John R. Anderson, *supra*; Dean Rowell, 45 IBLA 225 (1980); Kenneth F. Cummings, 43 IBLA 110 (1979). Accordingly, we find that BLM properly rejected appellant's oil and gas lease offers.

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 affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

