

CHESTER L. PRINGLE

IBLA 82-874

Decided January 25, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 53145.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to

A determination pursuant to 43 CFR 3101.3-3(c) not to subject coordination lands to oil and gas leasing 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, an agreement has been reached that land within the Sun River Winter Elk Range, Montana, will not be subject to noncompetitive oil and gas leasing.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits, or to lease oil and gas deposits owned by the United States in patented lands, upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing would be incompatible with the management of the Sun River Winter Elk Range for wildlife conservation purposes.

APPEARANCES: Chester L. Pringle, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Chester L. Pringle appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer M 53145 because the lands sought are within the Sun River Winter Elk Range.

BLM based its decision on the fact that representatives of BLM, the Bureau of Sport Fisheries and Wildlife, and the Montana Department of Fish and Game have, in accordance with 43 CFR 3101.3-3(c)(1), agreed that these lands shall not be subject to oil and gas leasing, such activities being incompatible with the management of the elk range for wildlife conservation purposes. BLM stated that the Secretary of the Interior, by Notice of Approval of Classification Agreement published in the Federal Register on January 29, 1964, has approved this agreement.

On appeal, appellant contends that he will suffer financial loss if the lease is not issued and that the exploration by Sun Exploration Company, with which he had an agreement regarding the lease, would be in jeopardy; that leasing would serve the public interest because of royalty income earned by the Government; that exploration and development of the lands involved would improve the nation's fuel self-sufficiency; that the petroleum industry has developed the ability and willingness to cooperate with stipulations and operating conditions that would not have been feasible in 1964; that some of the lands might be developed by directional drilling techniques, or alternatively, by occupying the property only when the elk are not present.

Appellant submits a copy of a stipulation form to demonstrate that BLM may issue a lease with surface occupancy restriction stipulations. Appellant submits a letter from the Forest Service stating that new information is being considered to provide a "less restricted posture" while still abiding by the various laws protecting wildlife in the general area in question.

The regulation cited by BLM regarding reserved and segregated lands, 43 CFR 3101.3-3(c)(1), provides:

(c) Coordination lands. These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the U.S. Fish and Wildlife Service as the custodial agency of the Government.

(1) Leasing. As to coordination lands, representatives of the Bureau of Land Management and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.

The Notice of Approval of Classification agreement signed by the Secretary of the Interior and published in the Federal Register on January 29, 1964 (29 FR 1483-1484), reads in pertinent part as follows:

Notice is hereby given that representatives of the Bureau of Land Management and the Bureau of Sport Fisheries and Wildlife of this Department and of the Montana Department of Fish and Game have, in accordance with the regulations 43 CFR 192.9, 1/ agreed that the following-described lands shall not be subject to oil and gas leasing, such activities being incompatible with the management thereof for wildlife conservation purposes. Group I comprises the lands in the Sun River project in which both the surface and the mineral interests are federally-owned, whereas the lands identified in Group II are former public domain lands which were patented under the public land laws with a reservation of the oil and gas deposits therein to the United States.

Group I

[Land descriptions omitted]

Group II

[Land descriptions omitted]

1. The lands described in Group I, containing a total of 4,144.83 acres, were withdrawn by Public Land Order 766 of November 23, 1951, and were made available for the use and control of the Montana Department of Fish and Game by a Cooperative Agreement effective May 19, 1952, under the provisions of the Coordination Act (60 Stat. 1080).

2. The lands described in Group II, containing a total of 6,807.16 acres, are patented lands in which the oil and gas deposits are owned by the United States. A majority of these tracts have been acquired by the Montana Department of Fish and Game and, together with certain Stateowned school lands, some privately-owned lands which are leased, and the withdrawn public domain lands, comprise the 20,000-acre Sun River Winter Elk Range.

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1/ 43 CFR 192.9 is a previous version of 43 CFR 3101.3-3.

3. This project provides winter range for about 3,000 head of elk that summer on the adjacent National forest lands. This elk herd is very wild due to the isolation of the summer range and, therefore, particularly susceptible to disturbances.

4. In accordance with the regulations 43 CFR 192.9(b)(3), the classification agreement closing to oil and gas leasing the public lands withdrawn by Public Land Order 766 for the Sun River Winter Elk Range and described in Group I is hereby approved. It has also been determined that the leasing of the oil and gas deposits owned by the United States in the patented lands within this elk range area, described in Group II, would be incompatible with the use and development of the range. Therefore, such reserved oil and gas deposits will not be subject to lease.

[1, 2] Public Land Order (PLO) No. 766 (16 FR 12095-12096 (Nov. 30, 1951)), to which the above agreement refers withdrew certain lands from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. The order specified that these lands were "reserved under the jurisdiction of the Department of the Interior for use by the Department of Fish and Game of the State of Montana in connection with the Sun River Winter Elk Range, under such conditions as may be prescribed by the Secretary of the Interior."

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., Nugget Oil Corp., 61 IBLA 43 (1981); John R. Anderson, 50 IBLA 38 (1980).

The determination not to subject certain lands to oil and gas leasing under 43 CFR 3101.3-3(c)(1) is a formal exercise of the Secretary's discretion under section 17 of the Mineral Lands Leasing Act and 43 CFR 3101.3(c)(1) is applicable in the present case. Some of the lands in issue were withdrawn in connection with the Sun River Winter Elk Range pursuant to PLO 766, supra, and were made available for the use and control of the Montana Department of Fish and Game by a Cooperative Agreement effective May 19, 1952. Therefore, these lands are withdrawn by the Government and made available to the State as envisioned by 43 CFR 3101.3-3(c)(1) and pursuant to agreement such lands are not subject to oil and gas leasing.

In addition to the lands withdrawn by PLO 766, supra, the Notice of Approval of Classification Agreement also stated that leasing of oil and gas deposits owned by the United States in the patented area would be incompatible with the use and development of the range and that such reserved deposits would not be subject to lease. As previously stated, the Secretary has the authority to refuse to lease oil and gas deposits. However, a decision to refuse to lease must be supported by facts of record that the refusal is required in the public interest. James M. Chudnow, 68 IBLA 128 (1982). Such

a decision will be affirmed in the absence of compelling reasons for modification or reversal. James M. Chudnow, supra; Esdras K. Hartley, 57 IBLA 319 (1981).

Protection of the habitat of a species of wild animal is in the public interest. James M. Chudnow, supra; Placid Oil Co., 58 IBLA 294 (1981). In the Notice of Approval of Classification Agreement, the Secretary stated that the Sun River Winter Elk Range provides winter range for about 3,000 head of elk that summer on adjacent National Forest lands. The Secretary explained that this elk herd is very wild due to the isolation of the summer range and, therefore, is particularly susceptible to disturbances. While we appreciate appellant's argument that technology has advanced since 1964, the underlying rationale for the decision is valid and supports the "no lease" decision. We find that the decision below is correct and, accordingly, it should be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

