

D. M. YATES

IBLA 82-1323; 82-1349

Decided June 14, 1983

Appeal from decisions of Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. OR 26063, et al.

Vacated and remanded in part; affirmed in part.

1. Fish and Wildlife Coordination Act -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

2. Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes noncompetitive leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

3. Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Patented or Entered Lands

The Bureau of Land Management properly rejects a noncompetitive oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

4. Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

D. M. Yates has appealed from various decisions of the Oregon State Office, Bureau of Land Management (BLM), dated July 23 and 28 and August 5 and 19, 1982, rejecting her noncompetitive oil and gas lease offers, OR 26063, OR 26076, OR 27766, and OR 34443. 1/

On March 16 and 17, 1981, appellant filed noncompetitive oil and gas lease offers OR 26063 and OR 26076 for 1,417.68 acres of land situated in Kittitas County, Washington, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). 2/ By decisions dated July 23 and August 5, 1982, BLM rejected the lease offers because the lands "lie within the boundaries of a National Wildlife Refuge system," which is generally "exempt from oil and gas leasing under 43 CFR 3101.3-3(a)." The record indicates that the lands are within the Colockum Game Range, created by Public Land Order (PLO) 4339 (OR 26063) and PLO 1054 (OR 26076). Both PLO's provide that, subject to valid existing rights, the described land is withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws. PLO 4339 (32 FR 20775 (Dec. 23, 1967)); PLO 1054 (20 FR 548 (Jan. 25, 1955)).

In her statements of reasons for appeal, appellant contends that the lands included in lease offers OR 26063 and OR 26076 are not subject to 43 CFR 3101.3-3(a) because the PLO's specifically exempt mineral leasing from the withdrawal and because the withdrawal does not apply to "all species of wildlife," as set forth in the regulation. Appellant also argues that

1/ IBLA 82-1323 involves oil and gas lease offers OR 26063, OR 26076, and OR 27766. IBLA 82-1349 involves oil and gas lease offer OR 34443.

2/ OR 26063 involves the following described land:

T. 19 N., R. 21 E., Willamette meridian
sec. 24: NW 1/4 NE 1/4, NE 1/4 SE 1/4

OR 26076 involves the following described land:

T. 20 N., R. 21 E., Willamette meridian
sec. 2: Lots 1 through 12
sec. 8: N 1/2 NE 1/4, W 1/2 SW 1/4, S 1/2 SE 1/4
sec. 10: NW 1/4, W 1/2 NE 1/4
sec. 12: N 1/2, N 1/2 S 1/2

the lands could be considered coordination lands, i.e., lands made available to the game commission of the various states under 43 CFR 3101.3-3(c), and, therefore, subject to leasing under appropriate stipulations.

[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 * * * except as provided in § 3101.3-1 [lands subject to drainage]." "Wildlife refuge lands" are defined as "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." 43 CFR 3101.3-3(a).

In D. M. Yates, 70 IBLA 240 (1983), we recently dealt with the question of noncompetitive oil and gas lease offers for land within the Colockum Game Range. We recognized initially that game ranges are expressly included in the "National Wildlife Refuge System," as designated by section 4 of the Act of October 15, 1966, as amended, 16 U.S.C. § 668dd (1976). Any area of the National Wildlife Refuge System, except wildlife management areas, is termed a "national wildlife refuge." 50 CFR 25.12.

However, the question is not whether a particular area can be considered a "national wildlife refuge," but rather, whether it can be considered part of "wildlife refuge lands," within the meaning of 43 CFR 3101.3-3(a)(1). Esdras K. Hartley, 57 IBLA 319, 323 n.4 (1981). As noted above, "wildlife refuge lands" are those lands embraced in a withdrawal for the protection of all species of wildlife within a particular area. See Bernard A. Holman, 64 IBLA 13 (1982). Moreover, because the Secretary's authority to withdraw land is independent of his discretionary authority under section 17 of the Mineral Leasing Act, supra, to refuse to lease, as exercised in the promulgation of 43 CFR 3101.3-3(a), we have held that the prohibition of noncompetitive oil and gas leasing in "wildlife refuge lands" applies even where the withdrawal itself specifically exempts mineral leasing. T. R. Young, Jr., 20 IBLA 333 (1975).

The applicable regulation, 43 CFR 3101.3-3, limits oil and gas leasing in three categories of land, "wildlife refuge lands," "game range lands and Alaska wildlife areas," and "coordination lands." Wildlife refuge lands are as defined, supra. Such lands are subject to the "[s]ole and complete jurisdiction" of the U.S. Fish and Wildlife Service (FWS). 43 CFR 3101.3-3(a). Game range lands are those lands withdrawn for the "protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources." 43 CFR 3101.3-3(b). Such lands are under the joint jurisdiction of BLM and FWS. Id. Coordination lands are those lands withdrawn or acquired by the United States and made available to the states in part by "cooperative agreements" entered into between FWS and state game commissions, in accordance with the Fish and Wildlife Coordination Act, as amended, 16 U.S.C. § 661 (1976). 43 CFR 3101.3-3(c).

In the present case, the land was withdrawn and reserved either "for use by the Department of Game of the State of Washington" (PLO 1054) or "for management in cooperation with the State of Washington" (PLO 4339). On appeal, FWS provided copies of cooperative agreements entered into between FWS and the State of Washington, dated February 11, 1955, and between BLM, FWS (formerly the Bureau of Sport Fisheries and Wildlife), and the State

of Washington, dated March 22, 1963, with respect to the lands involved herein. ^{3/} A review of these agreements indicate that the lands within the Colockum Game Range are "coordination lands," within the meaning of 43 CFR 3101.3-3(c). Chester L. Pringle, 70 IBLA 254 (1983).

With respect to oil and gas leasing in "coordination lands," 43 CFR 3101.3-3(c)(1) provides that

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 record establishes that oil and gas leasing has not been limited "by agreement" as to the lands involved herein. The March 1963 cooperative agreement, which applies by its terms in part to the land included in lease offers OR 26063 and OR 26076, states at 2: "It is the recommendation and conclusion of the representatives of the aforementioned agencies following the joint review that the public lands may be open to oil and gas leasing, provided the leases are made subject to the approved wildlife lands lease stipulations (form 4-1383, or the successor thereto.)" Accordingly, we remand these offers to BLM to consider leasing subject to appropriate stipulations. There was no outright prohibition on noncompetitive oil and gas leasing under 43 CFR 3101.3-3(a).

On June 29, 1981, appellant filed noncompetitive oil and gas lease offer OR 27766 for 3020.91 acres of land situated in Benton County, Washington, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976). ^{4/} By decision dated July 28, 1982, BLM rejected

^{3/} The February 1955 cooperative agreement applies in part to the land included in lease offer OR 26076. The March 1963 cooperative agreement applies in part to the land included in lease offer OR 26063. At the time of the latter agreement, the land was not withdrawn but rather, was "under withdrawal application dated Mar. 27, 1957." Memorandum of Agreement, at 1. ^{4/} OR 27766 involves the following described land:

T. 4 N., R. 24 E., Willamette meridian
 sec. 1: All
 sec. 2: All
 sec. 3: All
 sec. 4: Lots 1, 2, 3, 4, S 1/2 N 1/2, E 1/2 SW 1/4, W 1/2 SE 1/4,
 NE 1/4 SE 1/4
 sec. 5: Lot 1, S 1/2 NE 1/4, SE 1/4
 sec. 8: Lots 1, 2
 sec. 9: Lots 1, 2, 3
 T. 5 N., R. 24 E., Willamette meridian
 sec. 32: E 1/2 SE 1/4 SE 1/4
 sec. 33: S 1/2 SW 1/4, S 1/2 SW 1/4 SE 1/4
 sec. 35: S 1/2 SE 1/4
 sec. 36: S 1/2 S 1/2 NE 1/4, S 1/2

the lease offer because the lands "lie within the boundaries of a National Wildlife Refuge System," which is generally "exempt from oil and gas leasing under 43 CFR 3101.3-3(a)," and because the lands have been patented without a reservation of oil and gas. BLM did not identify the patented lands.

By letter dated July 19, 1982, BLM was informed by the Regional Director, Fish Wildlife Service, Portland, Oregon, that "[a]ll of the lands" described in oil and gas lease offer OR 27766 and certain other offers were "acquired or withdrawn for the protection of wildlife and are part of the National Wildlife Refuge System." The record indicates that a portion of the lands involved herein are within the Umatilla National Wildlife Refuge.

In her statement of reasons for appeal, appellant contends that the lands included in lease offer OR 27766 are not subject to 43 CFR 3101.3-3(a) because there is no record that the lands have been withdrawn for the protection of all species of wildlife. Appellant states that the only reference to the refuge appears on the township plats and the historical index page of T. 4 N., R. 24 E., Willamette meridian, which states: "Wdl Umatilla NWR 12/1971 Acq by Pur."

[2] In D. M. Yates, 71 IBLA 126 (1983), we recently considered noncompetitive oil and gas lease offers for land within the Umatilla National Wildlife Refuge. We concluded that the record was insufficient to establish whether the lands involved could be considered "wildlife refuge lands," within the meaning of 43 CFR 3101.3-3(a), because there was no evidence that the lands were embraced in a withdrawal for the protection of all species. We are confronted with a similar situation in this case, in that there is no information in the file concerning the creation of the Umatilla National Wildlife Refuge. For this reason, we are unable to determine whether the lands sought are covered in a withdrawal as defined in 43 CFR 3101.3-3(a). Therefore, we must remand the case to BLM to ascertain whether the lands are within such a withdrawal, and if not to consider leasing subject to appropriate stipulations. 5/ See Bernard A. Holman, supra.

[3] With respect to the patented lands, it is well established that BLM may properly reject an oil and gas lease offer for lands in which the United States has conveyed title to the oil and gas deposits. W. E. Haley, 62 IBLA 294 (1982). In her statement of reasons, appellant argues that BLM erred in rejecting the lease offer as to those lands, because of its failure to identify the patented lands in its decision, or to make title data available to her. We disagree. That information can be determined from the BLM land status plats for T. 4 N., R. 24 E., and T. 5 N., R. 24 E., Willamette meridian, Washington. While review of the applicable land status plats indicates which of the lands included in her lease offer have been patented, the patent number, and what interests were reserved by the United States, under the circumstances herein, we think BLM should have included some description in its decision to distinguish the patented land from that in the Umatilla Wildlife Refuge. BLM, however, has no authority to lease oil and gas deposits on private lands.

5/ The record indicates that the land may be subject to the primary jurisdiction of the Army Corps of Engineers, which would necessitate its concurrence prior to any leasing, in accordance with 30 U.S.C. § 352 (1976). BLM should also inquire into this matter.

On March 30, 1982, appellant filed noncompetitive oil and gas lease offer OR 34443 for 1540.11 acres of land situated in Grant County, Washington, pursuant to section 17 of the Mineral Leasing Act, supra. 6/ By decision dated August 19, 1982, BLM rejected the lease offer because the lands "lie within the boundaries of a National Wildlife Refuge System," which is generally "exempt from oil and gas leasing under 43 CFR 3101.3-3(a)." The record indicates that the lands are within the Columbia National Wildlife Refuge, created by PLO 243. PLO 243 provides that, subject to valid existing rights, the described land is withdrawn from all forms of appropriation under the public laws, including the mining laws, but not from leasing under the mineral leasing laws. 9 FR 11400 (Sept. 15, 1944).

In her statement of reasons for appeal, appellant contends that the lands included in lease offer OR 34443 are not subject to 43 CFR 3101.3-3(a) because the PLO specifically exempts mineral leasing from the withdrawal and because the withdrawal does not apply to "all species of wildlife," as set forth in the regulation.

[4] As noted above, the prohibition on noncompetitive oil and gas leasing in "wildlife refuge lands" applies even where the withdrawal itself specifically exempts mineral leasing. T. R. Young, Jr., supra.

The express purpose of PLO 243 was to establish a "refuge and breeding ground for migratory birds and other wildlife." 9 FR 11400 (Sept. 15, 1944). Appellant interprets "other wildlife" to mean "other forms of 'migratory animals,'" and not to include "all species of wildlife." We disagree. We do not read the word "migratory" as qualifying "other wildlife." The term "wildlife" should be read to include "all species." All national wildlife refuges are maintained as a rule for the purpose of "developing a national program of wildlife and ecological conservation and rehabilitation." 50 CFR 25.11(b). They are considered to be "areas for the protection and conservation of fish and wildlife including those that are threatened with extinction." 50 CFR 25.12(a). We, therefore, conclude that the Columbia National Wildlife Refuge should be considered part of "wildlife refuge lands" and, thus, subject to the prohibition on noncompetitive oil and gas leasing, under 43 CFR 3101.3-3(a). BLM properly rejected oil and gas lease offer OR 34443.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions with respect to OR 26063 and OR 26076 (IBLA 82-1323) are vacated and the case is remanded to BLM for further action consistent herewith, the decision with respect to OR 27766 (IBLA 83-1323) is affirmed in part and vacated in part

6/ OR 34443 involves the following described land: T. 16 N., R. 25 E., Willamette meridian sec. 18: Lot 4, SE 1/4 SW 1/4, S 1/2 SE 1/4 sec. 20: N 1/2, SW 1/4 sec. 24: NE 1/4, N 1/2 S 1/2 sec. 26: N 1/2 NW 1/4, SW 1/4 NW 1/4 sec. 30: Lots 1, 2, 3, E 1/2 NW 1/4, NE 1/4 SW 1/4, E 1/2 SE 1/4, NE 1/4

and the case is remanded to BLM for further action consistent herewith, and the decision with respect to OR 34443 (IBLA 82-1349) is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

