

Editor's Note: Errata issued Sept. 29, 1983 -- See 74 IBLA 270A & B below.

EDWARD SEGGERSON, JR. (ON RECONSIDERATION)

IBLA 82-657 Decided July 25, 1983

Petition for reconsideration of the Board's decision styled Edward Seggerson, Jr., 67 IBLA 189 (1982), affirming a decision of the Nevada State Office, Bureau of Land Management, rejecting applications N-31807 through N-31812 for mineral leases of lands within the Lake Mead National Recreation Area.

Petition granted; prior decision affirmed as modified.

1. National Park Service Areas: Generally--Oil and Gas Leases:
Applications: Generally--Oil and Gas Leases: Lands Subject to

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

The Board's decision in Edward Seggerson, Jr., 67 IBLA 189 (1982) is modified to reflect consideration of 43 CFR 3566.3.

APPEARANCES: John W. Burke III, Esq., Office of the Field Solicitor, San Francisco, California, for the National Park Service.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Director, National Park Service (NPS), by and through the Office of the Solicitor, has petitioned the Board to amend its decision in Edward Seggerson, Jr., 67 IBLA 189 (1982). Petitioner seeks the requested amendment to reflect the effect of 43 CFR 3566.3, promulgated on December 21, 1981; 46 FR 62044.

The decision of the Bureau of Land Management (BLM), which was the subject of the appeal, had stated that the consent of NPS was required as a prerequisite to the leasing of lands within the Lake Mead National Recreation Area (LMNRA) because of the mandate recited in 43 CFR 3501.2-6 that '[l]eases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits * * *.'

The Board, citing Rilite Aggregate Co., 26 IBLA 197, 198 (1976), modified BLM's decision on this point, noting that NPS is not

'an executive department, independent establishment, or other instrumentality,' but, rather, is a subordinate agency within the Department of the Interior. Therefore, the State Office's reliance upon the regulation was misplaced in this instance. The Department is not thereby bound by National Park Service's granting or withholding of consent to lease minerals on Park Service lands. Its recommendations, however, are important factors in considering whether or not to lease such lands.

Petitioner has referred our attention to 43 CFR 3566.3, which imposed a requirement that '[a]ny lease or permit respecting minerals shall be issued or renewed only with the consent of the Regional Director, National Park Service,' on lands identified by 43 CFR 3566.2, which include the Lake Mead National Recreation Area. S. Dawson, 73 IBLA 301 (1983); Frances Kunkel, 69 IBLA 205 (1982); De Ann T. Gaeth, 69 IBLA 79 (1982).

The Board correctly noted in Edward Seggerson, Jr., supra at 191, that mineral leasing in the LMNRA is authorized by the Act of October 8, 1964, 16 U.S.C. § 460n-3 (1976), which gives the Secretary or his delegate full discretion to grant or reject lease applications. However, the Board did not consider 43 CFR 3566.3, 46 FR 62044 (Dec. 21, 1981), and the Board hereby grants the petition for reconsideration in order to apply 43 CFR 3566.3 to the case in issue. For the reasons stated below, the result of the decision, Edward Seggerson, Jr., supra, is hereby affirmed but the rationale is amended.

On December 21, 1981, the Department published regulations relating to oil and gas leasing in LMNRA. 46 FR 62938 (Dec. 21, 1981). Those regulations provided in relevant part:

§ 3566.2 Lands to which applicable.

§ 3566.2-1 Boundary maps.

The area subject to the regulations in this subpart are those areas of land and water which are shown on the following maps on file and available for public inspection in the Office of the Director of the National Park Service and in the Superintendent's Office of each area. The boundaries of these areas may be revised by the Secretary as authorized in the acts.

(a) Lake Mead National Recreation Area--The map identified as 'boundary map, 8360-80013A, revised December 1979.'

43 CFR 3566.2 (46 FR 62043 (Dec. 21, 1981)).

§ 3566.3 Consent and consultation.

Any lease or permit respecting minerals shall be issued or renewed only with the consent of the Regional Director, National

Park Service. Such consent shall be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation of the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation, and subject to the condition that site specific approval of any activity on the lease will only be given upon a concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

43 CFR 3566.3 (46 FR 62044 (Dec. 21, 1981)). Thus, the regulations prevent BLM from granting leases in LMNRA without NPS's consent.

[1] LMNRA was established by the Act of October 8, 1964, 16 U.S.C. § 460n (1976). The Secretary of the Interior is directed to administer the area for the general purposes of public recreation, benefit, and use in a manner that will preserve, develop, and enhance the recreation potential and in a manner that will preserve the scenic, historic, scientific, and other important features of the area. Mineral leasing may be permitted only to the extent it will not be inconsistent with the recreational use. 16 U.S.C. § 460n-3 (1976). The regulation at 43 CFR 3566.3 provides that oil and gas leases within the area shall be issued only with the consent of the Regional Director, NPS, after his determination that the lease will not have a significant adverse effect upon the administration of the area pursuant to its authorizing legislation. Chevron U.S.A., Inc., 74 IBLA 92, 94 (1983); S. Dawson, 73 IBLA 301, 303 (1983); Frances Kunkel, *supra* at 205, 206.

Unless the Mineral Leasing Act or a withdrawal specifically provides otherwise, lands withdrawn for a specific purpose are available for oil and gas leasing if the issuance of a lease will not be inconsistent with or materially interfere with the purpose for which the land is withdrawn. Chevron U.S.A., Inc., 52 IBLA 278 (1981). Here, where NPS has declined to give consent to issuance of a lease, based on a reasonable analysis of the problem, BLM may not issue an oil and gas lease for the lands sought within LMNRA. Therefore, an oil and gas lease offer is properly rejected where the lands sought are within LMNRA and NPS has declined, under 43 CFR 3566.3, to give consent to issuance of the lease. Chevron U.S.A., Inc., 74 IBLA 92 (1983); S. Dawson, *supra*; Frances Kunkel, *supra*; De Ann T. Gaeth, *supra*.

Accordingly, the Board's decision is modified to reflect that, notwithstanding the status of the NPS as a component of this Department, a recently promulgated regulation requires that the issuance or renewal of mineral leases and permits for lands identified by 43 CFR 3566.2 can be accomplished only after consent by the Regional Director, NPS. 43 CFR 3566.3; 46 FR 62044 (Dec. 21, 1981). Therefore, the denial of such consent in this instance conclusively foreclosed BLM's authority to grant the leases.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, and the Board's prior decision styled Edward Seggerson, Jr., 67 IBLA 189 (1982), is affirmed as modified for the reasons set forth herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

74 IBLA 270

Sept. 29, 1983

IBLA 82-657 : N 31807-31812
74 IBLA 267 :
EDWARD SEGGERS, JR. : Mineral Leases
(ON RECONSIDERATION) :

ERRATA

The following changes are made to the above-captioned decision.

- (1) The index topics and subtopics for headnote 1 on page 267 are revised to read as follows:

'National Park Service Areas: Generally--Mineral Lands:
Leases--Public Lands: Leases and Permits'

- (2) The words 'An oil and gas lease offer' on page 267 (headnote 1) are changed to 'An offer to lease minerals other than oil and gas.' The words 'oil and gas leasing' on page 268 (fourth paragraph) are changed to 'leasing of minerals other than oil and gas.' The words 'oil and gas leases' on page 269 (first full paragraph) are changed to 'leases for minerals other than oil and gas.'

In the second full paragraph on page 269 the following changes are made: The words 'oil and gas leasing' (lines 2 and 3) are changed to 'the leasing of minerals other than oil and gas.' The words 'an oil and gas lease' (line 7) are changed to 'a lease for minerals other than oil and gas.' The words 'oil and gas lease offer' (line 8) are changed to 'offer to lease minerals other than oil and gas.'

- (3) The word 'See' is inserted before the following case citations on page 269 (first full paragraph): Chevron U.S.A., Inc., 74 IBLA 92, 94 (1983); S. Dawson, 73 IBLA 301, 303 (1983); Frances Kunkel, supra at 205, 206. The word 'See' is also inserted before the following case citations on page 269 (second full paragraph): Chevron U.S.A., Inc., 74 IBLA 92 (1983); S. Dawson, supra; Frances Kunkel, supra; De Ann T. Gaeth, supra.

74 IBLA 270A

- (4) The typographical error, '43 CFR 3501.3', on page 267 (headnote 1) is resed to read '43 CFR 3566.3.' The typographical error, '46 FR 62938 (Dec. 21, 1981),' on page 268 (fourth paragraph) is revised to read '46 FR 62038 (Dec. 21, 1981).'

Anne Poindexter Lewis
Administrative Judge

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