

Appeal from decision of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA 11110.

Vacated and remanded.

1. Fish and Wildlife Coordination Act--Fish and Wildlife Service--Oil and Gas Leases: Lands Subject to

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

APPEARANCES: Roger K. Stewart, Esq., Fresno, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Bob G. Howell appeals from the May 25, 1982, rejection of his noncompetitive oil and gas lease offer by the Bureau of Land Management (BLM), limited to portions of his offer located in secs. 3, 4, and 9, T. 28 N., R. 14 E., Mount Diablo meridian, a site in the Honey Lake wildlife area, a California Department of Fish and Game waterfowl management area. The remainder of the lands included in appellant's offer, also located within the Honey Lake wildlife area, fall within locations closed to oil and gas leasing by Secretarial order dated August 15, 1960, which order also gave notice that as to remaining portions of the area not closed to leasing, a cooperative agreement between BLM, the Bureau of Sport Fisheries and Wildlife (now the Fish and Wildlife Service) and the California Department of Fish and Game was established for purposes of administration. See 25 FR 8036 (Aug. 19, 1960). Appellant's offer to lease, so far as it concerns the lands in secs. 3, 4, and 9, is outside the area closed to leasing. The record on appeal indicates that this portion of appellant's offer is located at a place in the refuge designated the Dakin Unit. As to secs. 3 and 4 and similar portions of the refuge, the August 15, 1960, order provides:

2. The balance of the public lands withdrawn for the Honey Lake Area have been classified as subject to oil and gas leasing

under the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437, 30 U.S.C. 181), and the regulations thereunder as prescribed in 43 CFR, Parts 191 and 192. All offers to lease must comply with the requirements of the regulations * * *

* * * * *

4. All leases issued pursuant to the regulations in § 192.9 will be subject to the conditions contained in the standard wildlife stipulations (Form 4-1383) to assure full protection of the wildlife values of the leased lands.

In the May 25, 1982, decision rejecting appellant's offer as to lands in secs. 3, 4, and 9, BLM explained that "leasing is incompatible with and detrimental to the wildlife objectives of the Honey Lake Wildlife Area, a California Department of Fish and Game Waterfowl Management Area." The basis for this conclusion is apparently correspondence appearing in the record from the California Department of Fish and Game directed to BLM, which states in pertinent part:

Honey Lake Wildlife Area is managed primarily for the benefit of waterfowl. Many other species of wildlife are also benefited by the wetlands habitat that has been developed and maintained on this area. The upland habitat adjacent to the wetlands is also important to waterfowl, upland game, and a large variety of other wildlife species. The primary management objective on this area is to enhance waterfowl reproduction. Other important objectives are to provide habitat suitable for feeding, resting, and staging areas for waterfowl and other birds on their spring and fall migration flights, provide food drops to help alleviate crop depredations on private lands, and provide areas for public hunting and other compatible public use activities.

Considerable time, effort, and money have gone into developing and improving the wildlife habitat and the wildlife values on the Dakin Unit since it was purchased in 1944. These accomplishments would be subject to various degrees of degradation if the withdrawals are opened to oil and gas leasing. Such leasing would be incompatible with and detrimental to our wildlife management objectives on the withdrawn lands and on the contiguous lands which are owned in fee by the California Department of Fish and Game.

(Letter dated Apr. 2, 1982, A. E. Naylor to C. Rex Cleary).

In his brief on appeal, Bob G. Howell argues that the Secretarial order of August 15, 1960, is dispositive of the question of which lands in the Honey Lake wildlife area were necessarily excluded from oil and gas leasing. He contends that the use of a lease containing conditions which limit surface disturbances will sufficiently protect the wildlife on the lands affected by his lease offer for secs. 3, 4, and 9, and that the action taken by BLM denying his lease as to that portion of his offer was done without sufficient reason, and was solely based upon the conclusory recommendation of the California Department of Fish and Game.

The regulation currently in effect which implements Departmental policy concerning the administration of coordination lands which are jointly administered under agreement between states and the Department is 43 CFR 3101.5-2 (formerly codified at 43 CFR 3101.1-3(c) (1982) and 43 CFR 192.9 (1958)) which provides:

(a) Coordination lands are those lands withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the 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 longterm 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 Fish and Wildlife Service as the custodial agency of the Government.

(b) Representatives of the Bureau and the Fish and Wildlife Service shall, 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. Coordination lands not closed to oil and gas leasing shall be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the Fish and Wildlife Service, and the Bureau. [1/]

[1] The record on appeal indicates that secs. 3 and 4, included in appellant's lease offer, were withdrawn by Public Land Order No. (PLO) 759, 16 FR 10948 dated October 22, 1951, for a "Federal-aid wildlife-reservation project * * * to be administered * * * as the Honey Lake Waterfowl Management Area." 2/ This withdrawal therefore preceded the August 19, 1960, Federal Register notice quoted above in this opinion. The August 19, 1960, notice entitled "Preliminary Approval of Agreement" was issued pursuant to 43 CFR 192.9 (1958), requiring the state and Federal officials concerned to confer and determine by agreement those areas which "shall not be subject to leasing." The notice therefore represents the consensus of the concerned agencies on August 19, 1960, regarding which of the affected lands within the Honey Lake project should be closed to oil and gas leasing. As appellant points out, by the plain terms of the regulation, coordination lands not closed to oil and gas leasing are subject to leasing upon such conditions as may be imposed by the administering agencies. Unless there was an agreement, subsequent to

1/ 43 CFR 3101.5-2 was published in the Federal Register on July 22, 1983, 43 FR 33665, with an effective date of Aug. 22, 1983. The definition of coordination lands and the process for determining whether or not to lease those lands has remained constant since the 1958 promulgation.

2/ The plat appearing in the record identifies this order incorrectly as "PLO 1449."

1960, which has been omitted from the record, it appears a lease should issue to this land.

The land included in appellant's lease offer which is located in sec. 9, however, was not withdrawn until the issuance of PLO 5038, 36 FR 6893 (Apr. 10, 1971), and was not, therefore, contemplated by the agreement published on August 19, 1960. There is no indication in the record on appeal that there has ever been any action pursuant to 43 CFR 3101.5-2(a) between the coordinating officials concerning the land in sec. 9. While it appears from the letter by the California official dated May 25, 1982, quoted above, the State official concerned favors closing the lands to oil and gas leasing, it does not affirmatively appear that an agreement pursuant to provision of 43 CFR 3101.5-2(a) has been made. Under the circumstances, it is not clear whether sec. 9 is closed to leasing or not. It is, however, apparent that the land in sec. 9 must be regarded differently from that found in secs. 3 and 4, so far as appellant's lease offer is concerned, because the order withdrawing sec. 9 for use as coordination land comes after the agreement which initially closed some of the Honey Lake project to leasing.

As to the land in secs. 3 and 4, therefore, the BLM decision must be vacated and the matter remanded to the State Office to allow leasing, in the absence of an agreement subsequent to August 19, 1960, between the coordination lands officials concerned, which prohibits oil and gas leasing. If a lease is issued, it must conform to the requirement of 43 CFR 3101.5-2(b) that it be "subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the Fish and Wildlife Service, and the Bureau." As concerns the land in sec. 9, however, the matter is remanded to permit the conference contemplated by 43 CFR 3101.5-2(a) to determine whether the land in sec. 9 should be subject to oil and gas leasing. See D. M. Yates, 70 IBLA 240 (1983).

Accordingly, 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 vacated. The record is remanded to BLM for further proceedings consistent with this opinion.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

