

TXO PRODUCTION CORP.

IBLA 83-993

Decided February 16, 1984

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting TXO Production Corporation's noncompetitive acquired lands and public domain oil and gas lease offers W-86310 and W-86311.

Vacated and remanded.

1. Mineral Leasing Act: Lands Subject to -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, the lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

2. Mineral Leasing Act: Lands Subject to -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Wildlife Refuges and Projects: Environmental Impact Statements -- Wildlife Refuges and Projects: Leases and Permits

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon affected oil and gas lease applications or offers filed before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

APPEARANCES: Joseph R. Binford, senior attorney, TXO Production Corporation, Dallas, Texas.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

TXO Production Corporation (TXO) has appealed from two separate decisions issued by the Wyoming State Office, Bureau of Land Management (BLM). The first decision, issued on August 19, 1983, rejected TXO's noncompetitive public domain oil and gas lease offer W-86311. BLM rejected this offer because a portion of the lands was embraced in a preexisting oil and gas lease W-69482, and because the balance of the lands fell within the Seedskaelee National Wildlife Refuge, and, thus, was considered to be unavailable for leasing under the provisions of 43 CFR 3101.5-1(b). ^{1/}

BLM rejected the second noncompetitive acquired lands oil and gas lease offer, W-86310, on August 26, 1983, because the lands were within the Seedskaelee National Wildlife Refuge and, thus, considered to be unavailable for leasing under the provisions of 43 CFR 3101.5-1(b).

TXO filed its notice of appeal and statement of reasons on September 16, 1983. TXO's statement of reasons alleges error on the part of the Wyoming State Office, BLM, on the grounds that the decision is in direct conflict with the public land orders establishing the Seedskaelee National Wildlife Refuge and the provisions of 43 CFR 3101.5-1(a). Appellant did not contest the determination with respect to those lands subject to lease W-69482. Thus, as to those lands BLM's decision is final.

43 CFR 3101.5-1 provides:

§ 3101.5-1 Wildlife refuge lands.

(a) Wildlife refuge lands are those lands 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 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.

(b) No offers for oil and gas leases covering wildlife refuge lands shall be accepted and no leases covering such lands shall be issued except as provided in § 3100.2 of this title. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge

^{1/} Although BLM cited 43 CFR 3101.5-1(b) as the controlling regulation, that regulation, as published in the Federal Register at 48 FR 33665 (July 22, 1983), did not become effective until Aug. 22, 1983. However, the language of 43 CFR 3101.5-1(b) relied on by BLM was contained in the regulations at 43 CFR 3101.3-3 prior to the July 1983 revision.

except with the consent and approval of the Secretary with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau on a form approved by the Director.

The lands in question are within the Seedskadee National Wildlife Refuge. These lands were incorporated within the refuge by two public land orders. The pertinent portions of these orders are as follows:

Public Land Order No. 4834

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the public and acquired lands in the following described areas, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved for the Seedskadee National Wildlife Refuge, provided, that the nonpublic lands described in this paragraph shall become a part of said refuge and subject to all laws, rules and regulations applicable thereto, upon acquisition of title thereto, by the United States[.]

35 FR 8233 (May 26, 1970).

Public Land Order No. 5440

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws, and reserved as an addition to, and for use in conjunction with those lands withdrawn by Public Land Order No. 4834 of May 20, 1970, for the Seedskadee National Wildlife Refuge[.]

39 FR 39556 (Nov. 8, 1974).

[1] In general, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws if issuance of a mineral lease will not be inconsistent with or materially

interfere with the purpose for which the land is withdrawn or reserved. Western Interstate Energy, Inc., 71 IBLA 19 (1983); Douglas E. Smith, 69 IBLA 343 (1982); Esdras K. Hartley, 54 IBLA 38 (1981); Chevron U.S.A., 52 IBLA 278 (1981). In the case before us the withdrawals specifically excluded leasing under the mineral leasing laws from the provisions of the withdrawals. Therefore, the withdrawals do not preclude issuance of an oil and gas lease. They, however, do not constitute an authorization for acceptance of an oil and gas lease offer. The Secretary of the Interior may still exercise his discretionary authority under 30 U.S.C. § 226(a) (1976) not to accept such offers.

Promulgation of 43 CFR 3101.5-1(b) represents an exercise of Secretarial discretion not to lease wildlife refuge lands, except where lands are subject to drainage. Wildlife refuge lands are those lands "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 3101.5-1(a). There is nothing in the record or in the language of the withdrawal orders to indicate the purpose for the Seedskafee Wildlife Refuge. Therefore, we are unable to conclude that 43 CFR 3101.5-1(b) is or is not applicable.

[2] Irrespective of any determination that the lands may or may not be leased under the present regulations, it is clear that action regarding issuance of leases is now suspended. Section 317 of the 1984 Continuing Resolution (98 Stat. 151) signed by the President on November 14, 1983, provided:

No funds in this or any other Act shall be used to process or grant oil and gas lease applications on any Federal lands outside of Alaska that are in units of the National Wildlife Refuge System, except where there are valid existing rights or except where it is determined that any of the lands are subject to drainage as defined in 43 CFR 3100.2, unless and until the Secretary of the Interior first promulgates, pursuant to section 553 of the Administrative Procedure Act, revisions to his existing regulations so as to explicitly authorize the leasing of such lands, hold a public hearing with respect to such revisions, and prepares an environmental impact statement with respect thereto.

The effect of the above-quoted legislation was to suspend all action upon oil and gas lease applications or offers for lands within the National Wildlife Refuge System, outside Alaska, with certain exceptions, until further regulations are promulgated, a public hearing is held and an environmental impact statement is prepared and finalized. Therefore, BLM should withhold any action on the lease offers filed by appellant until the necessary steps have been completed. If, as a result of the contemplated action, the lands in question are made available for consideration, appellant's offers should receive the appropriate priority for lease issuance, all else being in order.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, except as otherwise

noted in this decision, the decisions appealed from are vacated and remanded to the Wyoming State Office, BLM, for further action consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

