

D. M. YATES

IBLA 83-419

Decided September 13, 1984

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting in part oil and gas lease offer OR-26558 (WA).

Affirmed in part and set aside and remanded in part.

1. 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and gas lease offer under 43 CFR 3101.3-3(a) (1982) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

2. Fish and Wildlife Coordination Act -- Wildlife Refuges and Projects: Leases and Permits

Inasmuch as coordination lands are properly deemed to be units of the National Wildlife Refuge System, oil and gas lease offers for such lands may not be granted, unless drainage is occurring, until such time as the Secretary of the Interior promulgates new regulations in conformity with section 137 of the 1984 Continuing Resolution, 97 Stat. 981.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

D. M. Yates has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 24, 1983, rejecting in part noncompetitive oil and gas lease offer, OR-26558 (WA).

On May 1, 1981, appellant filed a noncompetitive oil and gas lease offer for 1,870 acres of land situated in Grant County, Washington, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). In its January 1983 decision, BLM rejected 1,828.86 acres of appellant's lease offer because some of those lands "lie within the boundaries of a National Wildlife Refuge system," 1/ which is generally "exempt from oil and gas

1/ Public Land Order No. (PLO) 243, dated Sept. 6, 1944, withdrew certain lands "as a refuge and breeding ground for migratory birds and other wildlife, the reservation to be known as the Columbia National Wildlife Refuge." 9 FR 11400 (Sept. 15, 1944).

leasing under 43 CFR 3101.3-3(a)." In addition to rejecting appellant's lease offer to the extent it included land within a national wildlife refuge, BLM rejected appellant's offer for other lands, stating that the lands were within the boundaries of Potholes Reservoir, and that the surface management agency had withheld its consent to lease. See 43 CFR 3109.3-1.

On appeal, appellant asserts, with respect to the lands within the Columbia National Wildlife Refuge, that "there is nothing in the record to evidence that the lands were withdrawn 'for the protection of all species of wildlife within a particular area' and therefore are not subject to 43 CFR 3010.3-3(a) [sic]." Appellant further argues that the lands within the Potholes Reservoir fall within the definition of coordination lands, *i.e.*, lands made available to the game commissions of the various states under 43 CFR 3101.3-3(c) (1982), and, therefore, are subject to leasing given appropriate stipulations.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected to the extent it includes withdrawn "wildlife refuge lands" subject to the prohibition of leasing contained in 43 CFR 3101.3-3(a)(1) (1982). See, e.g., D. M. Yates, 73 IBLA 353 (1983); Altex Oil Corp., 73 IBLA 73 (1983). Moreover, the regulatory prohibition represents a formal exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act, *supra*, to permit mineral leasing, independent of any exercise of his withdrawal authority. Therefore, the regulatory prohibition applies regardless of whether the withdrawal, itself, exempts mineral leasing from its scope. T. R. Young, Jr., 20 IBLA 333 (1975).

With respect to the lands within the Columbia National Wildlife Refuge, the record indicates that the subject land was withdrawn pursuant to PLO 243, dated September 6, 1944, "as a refuge and breeding ground for migratory birds and other wildlife, the reservation to be known as the Columbia National Wildlife Refuge." 9 FR 11400 (Sept. 15, 1944). The withdrawal applied to "all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws." Id. The applicable regulation, 43 CFR 3101.3-3(a)(1) (1982), provides that no oil and gas leases will be issued "covering wildlife refuge lands," except where the land is subject to drainage. 2/

Appellant argues that the subject land does not fall within the definition of "wildlife refuge lands," set forth in 43 CFR 3101.3-3(a) (1982), because it does not provide for the protection of all species of wildlife. However, in two recent decisions, we have expressly dealt with appellant's argument, holding that land within the Columbia National Wildlife Refuge, established by PLO 243, qualifies as "wildlife refuge lands" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.3-3(a)(1) (1982). See D. M. Yates, 80 IBLA 160 (1984); D. M. Yates, 73 IBLA 353 (1983).

2/ Effective Aug. 22, 1983, the Department renumbered the regulations applicable to oil and gas leasing in "wildlife refuge lands" as 43 CFR 3101.5-1 (48 FR 33665 (July 22, 1983)), with no substantive change in content. The current prohibition on oil and gas leasing, except in cases of drainage, is contained in 43 CFR 3101.5-1(b). Id.

We conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer, OR-26558 (WA), to the extent it included such lands. See D. M. Yates, 74 IBLA 159, 161 (1983). Moreover, even if the regulatory prohibition were not applicable in this case, the Secretary of the Interior has announced that it is the policy of the Department not to issue oil and gas leases in wildlife refuges outside Alaska except in cases of drainage, and, thus, issuance of a lease for such lands could not be authorized. See BLM Instruction Memorandum No. 84-171, Change 1, dated Mar. 22, 1984.

The January 1983 decision also rejected a part of appellant's offer to lease, embracing the N 1/2 NE 1/4 and NW 1/4 sec. 10, T. 17 N., R. 28 E., Willamette Meridian, because the lands were located in the Potholes Reservoir and, pursuant to 43 CFR 3109.3-1 (1982), the consent of the surface management agency was required as a precondition to lease issuance. BLM stated, however, that this consent had been withheld.

With reference to this holding, we are constrained to note that we share appellant's confusion over the exact reason that her offer was rejected. In this regard, not only is BLM's decision singularly unenlightening, but a review of the case record heightens rather than alleviates the confusion.

In the first place, it is unclear, even after reviewing the record, which agency, if any, refused its consent. Thus, the record discloses that by memorandum dated October 6, 1982, the State Office inquired of the Project Manager, Columbia Basin Project, Bureau of Reclamation (BuRec), as to recommendations for leasing the N 1/2 NE 1/4 and NW 1/4 sec. 10, and the NE 1/4 SW 1/4 sec. 12, T. 17 N., R. 28 E., Willamette Meridian. On October 18, 1982, the following reply, dated October 14, 1982, was received.

A portion of the land in the subject request as shown on the enclosed map is under the jurisdiction of the United States Fish and Wildlife Service. That agency should be contacted for leasing. A portion of the area in Section 10 is occupied by O'Sullivan Dam and a portion is within Potholes Reservoir waters. The land within Potholes Reservoir and a portion of land in Section 12 has been transferred to the Washington State Game Department. Any lease on the land not under United States Fish and Wildlife Service jurisdiction should be made subject to the standard United States Bureau of Reclamation stipulations in Form 3109-1, nonsurface occupancy stipulations and stipulations for wildlife lands.

Thus, far from objecting to issuance of a lease, this reply would support leasing subject to specific restrictions, at least insofar as BuRec was concerned. However, a penciled addendum was placed on this memorandum on January 14, 1983. The words "nonsurface occupancy stipulation" are underlined and the following note appears: "disregard as per telecom. w/ Don Kulawik." Since Don Kulawik had been identified in the October 14, 1982, reply from BuRec as the person to contact for any further information, it seems reasonably clear that he had, in fact, been contacted by personnel of the Oregon State Office. From the fact that the only phrase underlined was "nonsurface occupancy stipulation" it might also be surmised that BuRec had decided not to insist on this restriction. The only problem with such conjecture is the fact that the offer for land within the Potholes Reservoir was rejected by

BLM. ^{3/} Since no other document in the case file even refers to surface agency approval, we are left in the dark as to what was the substance of the phone conversation.

But, more to the point, even assuming that the subject lands were under the jurisdiction of BuRec, the citation to 43 CFR 3109.3-1 is mystifying. In the first place, that regulation applies only to acquired lands, and the lands in sec. 10 are public domain, not acquired lands. ^{4/} Second, as we have noted many times, even assuming that the lands were acquired, the Acquired Lands Leasing Act, 30 U.S.C. §§ 351-359 (1982), merely requires the consent of the head of the agency having administrative jurisdiction over the land. Since BuRec is a component of the Department of the Interior, BLM is not required to reject the lease application merely because BuRec objects. See Amoco Production Co., 69 IBLA 279, 281 n.1 (1982); Mardam Exploration, Inc., 52 IBLA 296, 297-98 (1981). Thus, under no possible theory could BLM's decision on this issue be correct. Even were we to assume that the rejection was occasioned by an independent review by BLM of BuRec's concerns, it would be impossible to sustain the decision on the present record since the only document from BuRec supports issuance of the lease and there is not a scintilla of evidence that BLM independently considered any objection that BuRec might have made.

The obvious difficulty in discerning the basis for BLM's rejection is directly occasioned by the fact that, rather than compose an individual decision, BLM utilized a form rejection, indicating specific grounds merely by checking boxes. We fully recognize that such form decisions expedite adjudications in the state offices of BLM and, in most instances, readily provide an applicant with sufficient information so that he or she might ascertain the basis of the state office action. But not every action of BLM should or can be translated or compressed into a one-line generalization. Where, as here, it is impossible to discern from the form decision the actual predicate of the State Office's action, the State Office is required to tailor a decision so that both the offeror and this Board might understand the reason the offer is being rejected.

[2] Normally, insofar as the lands assertedly under the jurisdiction of BuRec are concerned, we would have no choice but to remand the case for further adjudication and the preparation of a record adequate to support BLM's decision. However, a review of the present record, sparse though it is, leads us to conclude that the lands are actually under the jurisdiction of the Washington State Game Department rather than BuRec, and, as such, are properly deemed to be coordination lands.

Coordination lands are lands withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between

^{3/} The lands located in sec. 12 which were outside of the Columbia National Wildlife Refuge were included in the lease which issued pursuant to appellant's offer, subject, however, to the three stipulations mentioned in the Oct. 14, 1982, memorandum. This fact merely serves to exacerbate the confusion in this record.

^{4/} Indeed, had the lands been acquired, the offer should have been rejected for the simple reason that it had been made on an improper form. See Leroy Gatlin, 4 IBLA 272 (1972).

the U.S. Fish and Wildlife Service and the game commissions of the various states in accordance with the Act of March 10, 1934, as amended, 16 U.S.C. § 661 (1982). As is not only clearly stated in the text of the October 14, 1982, response from BuRec, but is also so depicted on a map accompanying the response, the land within Potholes Reservoir had been transferred to the Washington State Game Department. At the time that this offer was filed, leasing of coordination lands was regulated pursuant to 43 CFR 3101.3-3(c)(1) (1982): 5/

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 coordination 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 as are agreed upon by the State Game Commission, the Fish and Wildlife Service and the Bureau.

On the present record, of course, it is impossible to ascertain whether the coordination lands in sec. 10 were closed to leasing pursuant to this regulation. It is unnecessary, however, to examine this question further in light of legislative enactments which have occurred during the pendency of the appeal.

On November 14, 1983, the President signed the 1984 Continuing Resolution, P.L. 98-151. Section 137, 97 Stat. 981, 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, holds a public hearing with respect to such revisions, and prepares an environmental impact statement with respect thereto.

Pursuant thereto, the Director, BLM, issued Instruction Memorandum No. 84-171, directing, inter alia, the suspension of all pending oil and gas lease offers and applications until revision of the regulations and preparation of an environmental impact statement (EIS). Similarly, in TXO Production Co., 79 IBLA 81 (1984), this Board vacated a decision rejecting an oil and gas lease offer for land within the Seedskadee National Wildlife Refuge, but directed that BLM suspend any further action on the offer until completion of the steps mandated by section 137.

The only question which remains to be decided is whether coordination lands are "units of the National Wildlife Refuge System" and, accordingly, subject to the congressional prescription. The answer is clearly in the affirmative. The applicable regulation, 50 CFR 25.12(a), defines "National

5/ This regulation is now found, with only editorial changes, at 43 CFR 3101.5-2(b) (1983).

Wildlife Refuge System" as including "wildlife management areas." This latter term is, itself, defined as follows:

"Wildlife management area" (sometimes referred to as "coordination areas") means any area of acquired land or public land withdrawn by the U.S. Fish and Wildlife Service and made available to the various States, or instrumentalities thereof, by cooperative agreement for management of wildlife resources in accordance with the Act of March 10, 1934 (48 Stat. 401; 16 U.S.C. 661), as amended.

Thus, since coordination lands are, in fact, units of the National Wildlife Refuge System, no leasing may be permitted until new regulations are promulgated and an EIS is prepared.

We recognize, that, unlike the situation concerning leasing in national wildlife refuges, particular procedures had been promulgated for consideration of leasing insofar as coordination lands are concerned. The same, however, was true of leasing in game ranges. See 43 CFR 3103.3-3(b)(1) (1982). Nevertheless, this Board has already held that the Department lacks authority to process lease offers for game ranges until there has been compliance with section 137 of the Continuing Resolution. See Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (1984). A similar ruling is compelled for coordination lands. Accordingly, insofar as the decision rejected appellant's offer for lands in sec. 10 administered by the Washington State Game Department, the decision is set aside and the case is remanded to the State Office with instructions to suspend all further processing of the offer until such time as new regulations are promulgated in compliance with section 137. 6/ In all other respects, the decision of the Oregon State Office is affirmed for the reasons stated herein.

Therefore, 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 affirmed in part and set aside and remanded in part.

James L. Burski
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris,
Administrative Judge

6/ In this context, we would note that Change 1 to Instruction Memorandum No. 84-171, dated Mar. 22, 1984, noted that, pursuant to a policy determination by Secretary Clark, there are no plans for leasing in any wildlife refuges outside Alaska in the foreseeable future and thus no revisions of the regulations were contemplated, nor were any further expenditures for preparation of an EIS envisioned. In light of this, the desirability of maintaining pending offers in a suspended category, rather than rejecting them, is open to question, and appellant might desire at the present time to relinquish her offer insofar as these lands are concerned.

