

RACHALK PRODUCTION, INC.

IBLA 84-646

Decided November 27, 1984

Appeal from decisions of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers W-84545 and W-84546.

Affirmed in part, set aside in part, and remanded.

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

The Board will set aside a BLM decision rejecting a noncompetitive oil and gas lease offer pursuant to 43 CFR 3101.3-3(a)(1) (1982) to the extent it includes land in a national wildlife refuge, not subject to drainage, where there is nothing in the record to indicate that the refuge was for the protection of all species of wildlife. However, the Board will instruct BLM to withhold action on the offer where Congress has suspended all action on oil and gas lease offers for lands within wildlife refuges filed prior to Nov. 14, 1983, until the completion of certain necessary steps by the Department.

APPEARANCES: K. Donelson Foose, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Rachalk Production, Inc., has appealed from decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated August 12, 1983, rejecting its noncompetitive oil and gas lease offers W-84545 and W-84546. ^{1/}

^{1/} In a June 11, 1984, letter accompanying transmittal of this case from BLM, the Acting Chief, Oil and Gas Section, BLM, informed the Board that BLM had originally closed the case because the appeal was determined to be untimely, in accordance with 43 CFR 4.411(b), but that on reexamination the appeal was determined to have been filed in a timely manner. Appellant's appeal was filed timely with respect to both lease offers, and the Board has jurisdiction to consider the merits of the appeal in both cases. The record contains a notice of appeal with respect to both lease offers, which was received by BLM on Sept. 19, 1983. The record also contains an explanation by the Acting Chief that appellant did not become aware of closure of the case until it received a refund of its first year's rentals. On June 6, 1984, appellant resubmitted the first year's rental with respect to lease offer W-84546 pursuant to a BLM request. However, there is no indication

On February 17, 1983, appellant filed over-the-counter oil and gas lease offers for 801.05 acres of acquired land situated in Sweetwater County, Wyoming, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). ^{2/} In its August 1983 decisions, BLM rejected appellant's lease offer W-84546 in part because a portion of the land sought is subject to drainage and, thus, available for leasing only under the competitive leasing system in accordance with 43 CFR 3101.3-1 (1982), and rejected both lease offers because the land is within the Seedskaadee National Wildlife Refuge, and, thus, not subject to oil and gas leasing in accordance with 43 CFR 3101.3-3(a)(1) (1982). The record indicates that most of the land included in appellant's lease offer W-84546 and all of the land in lease offer W-84545 is situated within the Seedskaadee National Wildlife Refuge. ^{3/} The lands within the refuge were included by Public Land Order No. (PLO) 4834, dated May 20, 1970 (35 FR 8233 (May 26, 1970)), which withdrew the lands described in the order "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."

In its statement of reasons for appeal, appellant contends that BLM improperly rejected its oil and gas lease offers where the land was never withdrawn from mineral leasing, and PLO 4834 specifically stated that the land was not so withdrawn. Appellant also argues that BLM cannot invoke 43 CFR 3101.3-3(a) (1982), which only precludes oil and gas leasing in the case of a "withdrawal" of the land for the protection of "all species" of wildlife, and that PLO 4834 is not such a withdrawal.

[1] The present case is governed by Departmental regulation, specifically 43 CFR 3101.5-1(b), which applies to oil and gas leasing in wildlife refuge lands. 43 CFR 3101.5-1(b) is the present codification of the relevant portions of 43 CFR 3101.3-3(a)(1) (1982) and was promulgated effective August 22, 1983. See 48 FR 33665 (July 22, 1983). 43 CFR 3101.5-1(b) provides, in relevant part, that: "No offers for oil and gas leases covering wildlife refuge lands shall be accepted * * * except as provided in § 3100.2 of this title [lands subject to drainage]." ^{4/} "Wildlife refuge lands" are

that BLM also required appellant to resubmit the first year's rental with respect to lease offer W-84545. If, after request for payment of the rental for lease offer W-84545, the sum is not tendered within the time stated in the request, the lease offer will be properly rejected in accordance with 43 CFR 3111.1(a) and (f).

^{2/} See Appendix A for a description of the lands.

^{3/} Certain lands were erroneously described as being within the Seedskaadee National Wildlife Refuge. See Appendix A.

^{4/} 43 CFR 3100.2-1 currently provides that lands subject to drainage may be "offered for lease in accordance with Part 3120 of this title," i.e., under the competitive leasing system. 43 CFR 3100.2-1 is the successor to 43 CFR 3101.3-1 (1982). Thus, with respect to land sought by appellant within the Seedskaadee National Wildlife Refuge which is subject to drainage, such land is not subject to leasing pursuant to a noncompetitive lease offer and appellant's offer W-84546 was properly rejected in part on this basis. See Arnold R. Gilbert, A-29123 (Jan. 14, 1963). The affected land is described as lots 4, 6, and 7, T. 23 N., R. 111 W., sixth principal meridian, Sweetwater County, Wyoming.

defined as "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).

We have long held that promulgation of the regulation prohibiting oil and gas leasing in wildlife refuge lands is pursuant to the Secretary's discretionary authority under the mineral leasing statutes to refuse to lease, which is independent of his authority to withdraw land. Therefore, we hold that the prohibition on noncompetitive oil and gas leasing in "wildlife refuge lands" applies even where, as in the present case with respect to PLO 4834, the withdrawal itself specifically exempts mineral leasing. D. M. Yates, 73 IBLA 353 (1983); T. R. Young, Jr., 20 IBLA 333 (1975).

Appellant, however, contends that the regulatory prohibition on oil and gas leasing is not applicable because PLO 4834 does not state that the Seedskaadee National Wildlife Refuge was withdrawn for the protection of all species of wildlife. We find nothing in the record or in the language of the withdrawal order to indicate the purpose for the Seedskaadee National Wildlife Refuge. Therefore, we are unable to conclude that 43 CFR 3101.5-1(b) is or is not applicable. See TXO Production Corp., 79 IBLA 81 (1984). However, we need not reach this question because issuance of oil and gas leases in units of the national wildlife refuge system has been suspended by congressional action. 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, holds 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, we hereby set aside the August 1983 BLM decisions to the extent they rejected land sought by appellant within the Seedskaadee National Wildlife Refuge, not subject to drainage, and instruct BLM to withhold any action on the lease offers with respect to this land until the necessary steps have been completed. Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (1984). A portion of the land sought by appellant in lease offer W-84546 has been determined to be subject to drainage under 43 CFR 3100.2 and, thus, section 317 of the 1984 Continuing Resolution does not apply. However, as previously noted, we conclude that BLM properly rejected appellant's lease offer to the extent it included such land. That portion of the August 1983 BLM decision with respect to those lands described in lease offer W-84546 found

to be subject to drainage is affirmed. With respect to that land described in lease offer W-84545 which is not within the refuge, the BLM decision is set aside and remanded to BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part, set aside in part, and the cases are remanded to BLM for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX A

Land in sixth principal meridian, Sweetwater County, Wyoming.

	<u>Tp.</u>	<u>Range</u>	<u>Sec.</u>	<u>Subdivision</u>
Offer W 84545	22 N	110 W	2	SW 1/4 NW 1/4 NE 1/4 SW 1/4 NW 1/4 SE 1/4 S 1/2 SE 1/4
	22 N	110 W	3	Lot 1 Lot 2 SE 1/4 NE 1/4
Offer W 84546	23 N	111 W	22	Lot 4 Lot 6 Lot 7 SE 1/4 SW 1/4 SW 1/4 SE 1/4
	23			Lot 11 Lot 13 Lot 16 NW 1/4 SW 1/4
	25			Lot 11 Lot 14
	26			Lot 13 Lot 14

	<u>Acres</u>	<u>W/i</u>	<u>Not w/i</u>	<u>Subject</u>	<u>Subject</u>
		<u>Refuge</u>	<u>Refuge</u>	<u>to</u>	<u>To Prior</u>
				<u>Drainage</u>	<u>Lease</u>
Offer W 84545	40.00	x			
	40.00	x			
	40.00	x			
	80.00	x			
	39.57	x			
	39.61	x			
	40.00	x			
Offer W 84546	34.11	x		x	
	25.80	x		x	
	36.63	x		x	
	40.00		x 1/		W 40137
	40.00		x 1/		W 0313535
	23.23	x			
	42.60	x			
	39.49	x			
	40.00	x			
	56.08	x			
	42.86	x			
	32.73	x			
	28.34	x			

1/ The oil and gas plat included in the record incorrectly places these parcels in the SE 1/4 NW 1/4 and SW 1/4 NE 1/4, sec. 22, T. 23 N., R. 111 W., sixth principal meridian, which is within the wildlife refuge. While not within the refuge, the tracts described are noted as being subject to prior leases.

