

INTERIOR BOARD OF LAND APPEALS

Richard D. Sawyer

127 IBLA 392 (October 29, 1993)

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RICHARD D. SAWYER

IBLA 91-196, 91-213, 91-214

Decided October 29, 1993

Appeals from decisions of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers, CACA 27801, CACA 26792, and CACA 26773.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Federal Onshore Oil and Gas Leasing Reform Act of 1987--Oil and Gas Leases: Lands Subject To--Oil and Gas Leases: Offers to Lease

Lands included within a wilderness study area are not subject to leasing pursuant to the Mineral Leasing Act of 1920. An oil and gas lease offer filed for lands which are not subject to leasing by reason of inclusion in a wilderness study area is properly rejected without suspending adjudication of the offer pending the ultimate determination whether the lands will be designated as wilderness.

APPEARANCES: Richard D. Sawyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Richard D. Sawyer has appealed from decisions of the California State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offers CACA 27801, CACA 26792, and CACA 26773, in whole or in part. BLM rejected the lease offers as to those lands included in the offers which are within the Caliente Wilderness Study Area (WSA) because lands included within BLM administered WSA's are not subject to oil and gas leasing. We have consolidated these appeals for review at the request of appellant as they present the same issue.

In his statement of reasons for appeal, appellant contests neither the fact that the rejected lands lie within the WSA nor the fact that lands within a WSA are unavailable for leasing. Rather, appellant contends the offers for the lands at issue should be retained by BLM in a suspended status pending a determination by Congress whether or not to designate the lands as wilderness. Appellant asserts the law precludes leasing of such lands, but not the retention of unaccepted offers pending resolution of the wilderness status of the land. Appellant argues that the pending lease offers will serve as a demonstration of leasing interest relevant

to the legislative determination whether to designate the lands as a wilderness. Further, appellant contends his offers may give him priority in receiving a lease if the lands are ultimately made subject to leasing and there are no bids at a competitive lease sale.

[1] Lands included within a WSA have been withdrawn from mineral leasing by terms of statute amending the Mineral Leasing Act. Federal Onshore Oil and Gas Leasing Reform Act of 1987, section 5112, 30 U.S.C. § 226-3(a)(2) (1988). This statutory exception from leasing is noted specifically in the regulations excluding lands within a WSA from oil and gas leasing. 43 CFR 3100.0-3(a)(2)(viii).

This Department has long had a policy of rejecting offers to lease public lands which are unavailable for leasing at the time the lease offers are adjudicated and not suspending consideration of such offers pending future events which might cause the land to become subject to leasing. In J. G. Hatheway, 68 I.D. 48 (1961), the Department rejected the lease offeror's contention that the offers should be continued as pending offers which would be entitled to priority at any time in the future that the lands might become available for leasing:

As the appellants recognize, the Department has long followed the policy, as to applications for mineral leases and other interests in public lands, of rejecting all applications for lands which are not available for requested disposition at the time they are filed or considered. Noel Teuscher et al., 62 I.D. 210 (1955); D. Miller, 60 I.D. 161 (1948). This rule has been followed whether the lands applied for were unavailable because of a statute, 4/ a withdrawal, 5/ a temporary disposition, 6/ or the exercise of the Secretary's discretion. 7/

4/ Noel Teuscher et al., 62 I.D. 210, 214 (1955).

5/ Mary E. Brown, 62 I.D. 107 (1955).

6/ R. B. Whitaker et al., 63 I.D. 124 (1956).

7/ Grace F. Holbeck, A-27357 (August 20, 1956).

J. G. Hatheway, 68 I.D. at 51. After noting that the policy serves the purpose of public land administration by avoiding a large number of applications which cannot be acted upon in the foreseeable future and that the policy is consistent with the practice of not allowing an applicant to obtain priority by filing an application at a time when the public land records show that the land is unavailable, the Department in Hatheway declined to grant appellant's request to hold the lease offers pending possible future availability of the land. 68 I.D. at 52; see Paul C. Kohlman, 75 IBLA 171, 173 (1983).

Subsequently, this practice has been embraced in a Departmental regulation codified at 43 CFR 2091.1:

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and

cannot be held pending possible future availability of the lands
or interests in lands * * * when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision
applicable to the lands;

* * * * *

(7) The fact that, for any reason, the lands have not been made
subject to, restored or opened to operation of the public land laws,
including the mineral laws.

This regulation is controlling on the facts of the present case. The lands at issue have been withdrawn from mineral leasing by statute. Accordingly, appellant's lease offers were properly rejected to the extent they described lands within a WSA.

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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge