

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-118678
MATTER OF:

DATE: JUL 29 1975

Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System.

DIGEST:

Receipts from oil and gas leases on lands within the National Wildlife Refuge System, and administered by the Fish and Wildlife Service, whether the lands were made part of the System by acquisition or by withdrawal from the public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to the Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in the public lands, because, to the extent there is a conflict between the requirements of the statutes, the more recent one is controlling.

This decision is in response to a request from the Solicitor, Department of the Interior, asking whether we concur in the conclusion of a memorandum prepared by his office, that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be reserved in the discrete "refuge receipts account" established pursuant to 16 U.S.C. § 715s (1970) and distributed according to the scheme established thereby, rather than to be covered into the Treasury pursuant to the Mineral Leasing Act, 30 U.S.C. § 191, and distributed as are other mineral lease receipts under the latter act.

The question arises as a result of the 1964 amendment to 16 U.S.C. § 715s. Prior to the amendment, section 715s provided generally that 25 percent of the net proceeds from the sale or other disposition of " * * * surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges * * *" on national wildlife refuges was to be paid annually by the Secretary of the Treasury to the counties in which the refuges are located, to be used for public schools and roads. Refuges established under the Migratory Bird Conservation Act, or any other law, proclamation, or executive order, and administered by the United States Fish and Wildlife Service, were included.

Pub. L. No. 88-523, 78 Stat. 701, August 30, 1964, amended 16 U.S.C. § 715s to read in pertinent part as follows:

"(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and water-fowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

"(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System * * *; and

"(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, * * * or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive."

Among other changes which it made to section 715s, the 1964 amendment added minerals to the list in subsection (a), quoted above, of sources of revenues in the refuge system to be reserved in a separate fund in the Treasury (referred to as the "refuge receipts account") and to be distributed in accordance with subsection (c).

The Mineral Leasing Act, originally enacted in 1920 (Act of February 25, 1920, ch. 85, 41 Stat. 437, as amended, 30 U.S.C. § 181 et seq. (1970)) authorizes the Secretary of the Interior to lease all lands subject to disposition thereunder which are known or believed to contain oil or gas deposits. 30 U.S.C. § 226 (1970). Lands subject to disposition include lands owned by the United States containing deposits of oil. 30 U.S.C. § 181. All moneys received from sales, bonuses, royalties, and rentals of public lands under the Mineral Leasing Act are required to be paid into the Treasury. Of those amounts, 37 1/2 percent is to go to the State within which the lands are located for roads or schools; 52 1/2 percent is to be paid into the fund established under the Reclamation Act (43 U.S.C. § 371 et seq. (1970)) (except in the case of Alaska, where this amount goes to the State). The remainder is to be credited to miscellaneous receipts.

The question presented is therefore whether receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be disposed of pursuant to the scheme of the Mineral Leasing Act or to that of the 1964 amendment of 16 U.S.C. § 715s. We conclude that disposition of receipts from mineral leases, including oil and gas leases, on lands within the National Wildlife Refuge System, is governed by 16 U.S.C. § 715s, and not by the Mineral Leasing Act.

We agree with the draft memorandum of the Solicitor that oil and gas are included in the term "minerals" in 16 U.S.C. § 715s, as amended. As the memorandum points out, the common understanding of the term "minerals" is that it includes oil and gas. Moreover, if there were any doubt that oil and gas were so included in this case, it would be resolved by the legislative history of the 1964 amendment. It is clear from that history that it was expected that the national wildlife refuge system would be the recipient of revenues from oil and gas. Thus, in reporting on S. 1363, 88th Congress, the bill which was the derivative source of the 1964 amendment to 16 U.S.C. § 715s, the House Committee on Merchant Marine and Fisheries discussed the potential effect of a pending Supreme Court decision which could deprive the United States of oil and gas revenues from a refuge in Louisiana on the

income of the wildlife refuge system. H. Rep. No. 1753, 88th Cong., 2d Sess. 11. As the Solicitor's draft memorandum points out,

"* * * Since the Government could not be deprived of oil and gas revenues unless, except for the court case, it would receive them through the operation of the word 'minerals,' this concern reflects a clear belief on the part of the House Committee, that when the Committee used the word 'minerals,' oil and gas were included."

In view of the requirement of 16 U.S.C. § 715s that revenues received by the Secretary for the sale or other disposition of minerals in connection with the national wildlife refuge system be disposed of as prescribed thereunder, and of the conclusion that oil and gas are minerals within the meaning of that section, there is an apparent conflict between section 715s and the Mineral Leasing Act, which prescribes a scheme for disposition of moneys received from leases of oil and gas on public lands different from that under 16 U.S.C. § 715s. The general rule of statutory construction in such circumstances is that in case of a conflict between a new provision and prior statutes relating to the same subject matter, the new provision, as the later expression of the legislature, is controlling. In accordance with this rule, we conclude that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s, as amended. We note that to hold otherwise, as the Solicitor's memorandum points out, would be to deprive section 715s(c)(1) of title 16, prescribing a specific scheme of distribution for revenues from refuges created by reservation, of any meaning.

The Solicitor's memorandum notes that "refuge withdrawal orders," the administrative actions whereby lands are withdrawn from the public domain for refuge purposes, have commonly included a provision explicitly excluding the Mineral Leasing Act from the effect of the withdrawal. For example, Public Land Order 3999 (31 Fed. Reg. 6907 (1966)) provides for the addition to a wildlife refuge of certain lands by withdrawing them--

"* * * from all forms of appropriation under the public land laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws * * *."

The question was raised whether this fact would change the foregoing conclusion.

If given effect, the exclusion from the withdrawal order of leasing under the mineral leasing laws could result in the distribution of proceeds of mineral leases on the withdrawn lands according to the Mineral Leasing Act rather than 16 U.S.C. § 715s. In view of our conclusion that the law requires proceeds of mineral leases on lands withdrawn from the public domain in order to become part of the national wildlife refuge system to be distributed according to 16 U.S.C. § 715s, the Secretary of the Interior is without authority to promulgate public land orders which would result in a different distribution of proceeds. Accordingly, public land orders which purport to exclude the mineral leasing laws from withdrawal for wildlife refuge purposes are, to that extent, without effect.

Finally, the memorandum addresses the question whether the fact that, at the time of acquisition of certain refuge lands, the United States already held mineral rights with respect to such lands, would have any effect on the requirement for disposition of mineral receipts from such lands. The 1964 amendment to section 715s of title 16 contemplates no distinction in the method of disposition of refuge receipts according to the method of acquisition of the refuge. We agree with the memorandum that, if the lands acquired form part of the National Wildlife Refuge System after acquisition, and are primarily administered by the United States Fish and Wildlife Service, then 16 U.S.C. § 715s applies, requiring that all receipts to which the United States is entitled from the disposition of oil and gas resources within the refuge must enter the refuge receipts account.

R.F. KELLER

Deputy Comptroller General
of the United States