

SIGNAL OIL & GAS CO.

IBLA 72-63
IBLA 72-81

Decided November 20, 1972

Appeal from decisions by the Montana Land Office, Bureau of Land Management, (Mont. 18278, 18286, 18301, 18303, 18304) totally or partially rejecting oil and gas lease offers.

Set aside and remanded.

Act of October 2, 1968 (Wild and Scenic Rivers Act)--Statutory Construction: Legislative History

Lands which constitute the bed or bank or are situated within a quarter mile of the bank of any river listed in Sec. 5(a) of the Wild and Scenic Rivers Act as a potential addition to the wild and scenic river systems are open to mineral leasing, subject to the discretion of the Secretary and to such conditions as he may impose.

Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject to

Lands constituting the bed or bank or within a quarter mile of the bank of a river which is listed as a potential addition to the national wild and scenic river system are not withdrawn from mineral leasing but are subject to the Secretary's discretionary authority in issuance of leases and the Secretary may refuse to issue oil and gas leases where such lands have been inadvertently listed for leasing.

APPEARANCES: Fred Immergluck, Esq., for appellant.

OPINION BY MR. RITVO

Signal Oil & Gas Company has appealed to the Secretary of the Interior from decisions by the Montana Land Office dated July 16, and August 20, 1971, totally or partially rejecting oil and gas lease offers on the grounds that the lands were inadvertently listed and should have been withheld pending legislation implementing the Wild and Scenic Rivers Act of October 2, 1968. 16 U.S.C. § 1271 et seq.

On April 26, 1971, Signal Oil filed a series of oil and gas lease offers subject to the terms of the Mineral leasing Act of February 25, 1920, as amended, 30 U.S.C. § 181 et seq. The lands had been posted in the land office as available for oil and gas lease filing in accordance with the provision of the regulation governing the disposition of lands becoming available for leasing as a result of the termination, cancellation, expiration, or relinquishment of leases. 43 CFR Subpart 3112. The applications covered, in whole or in part, lands which constitute the bed or bank of the Missouri River, or are situated within one-quarter mile of the river. Section 5(a)(13), 16 U.S.C. § 1276(a)(13) (1970) designated a portion of the Missouri River in Montana as a potential addition to the national wild and scenic rivers system. The lands applied for are situated within this portion of the Missouri River. The Land Office stated:

Section 8(b) of the Act withdraws from the operation of the public land laws all public lands which constitute the bed or bank, or are within 1/4 mile of any river listed for study for potential addition to the Wild River system.

The Land Office then concluded that these lands were not available for leasing insofar as they were covered by the Act. Signal Oil then filed timely notices of appeal.

On appeal, Signal Oil Co. agrees that section 8(b), 16 U.S.C. § 1279(b) (1970) withdraws the lands applied for from disposition under the public land laws, but points out that it is section 9(b), 16 U.S.C. § 1280(b), which governs the application of the mineral leasing laws to the withdrawn lands. Its position is well taken.

This Board considered the disposition of oil and gas lease offers covering land under the Wild and Scenic Rivers Act in a similar case, entitled Signal Oil and Gas Co., 8 IBLA 14 (1972). In that decision it was determined that the Act did not proscribe oil and gas leasing of lands constituting the bed or bank, or situated within one-quarter mile of the bank of any river listed as a potential addition to the wild and scenic river system. Therefore, the lands applied for are available for oil and gas leasing. As explained in the previous decision, the fact that lands are available for leasing does not require that they be leased. The Secretary of the Interior, or his delegate, can exercise discretion in determining whether or not public lands should be leased and any conditions to be imposed.

For the reasons given in Signal Oil & Gas Co., supra, and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Land Office is set aside and the case is remanded for further proceedings consistent herewith.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Joseph Goss, Member

