

DEAN W. ROWELL

IBLA 73-334

Decided October 12, 1973

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer, U-21290.

Affirmed.

Act of October 2, 1968, 16 U.S.C. §§ 1271-1278 (1970) (Wild and Scenic Rivers Act)! ! Oil and Gas Leases: Discretion to Lease! ! Oil and Gas Leases: Lands Subject to

An oil and gas offer, embracing lands within an area under consideration as a potential wild and scenic river area under sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(d) (1970), is properly rejected in the exercise of the Secretary's discretion in leasing. An offer by appellant to stipulate to no surface occupancy does not vitiate the propriety of the action.

APPEARANCES: Dean W. Rowell, pro se.

OPINION BY MR. FISHMAN

Dean W. Rowell has appealed from a decision of the Utah State Office, Bureau of Land Management, dated January 24, 1973, rejecting his oil and gas offer to lease for 317 acres of land in the bed of the Green River, in Ts. 14 and 15 S., R. 17 E., S.L.M., Utah.

The State Office rejected appellant's offer for the stated reason that, as to the area known as Desolation Canyon, the State Office had determined that no uses will be permitted which would result in any surface disturbance. The decision below further stated that the lands were within a proposed wild and scenic river area. Appellant states that he is willing to stipulate to no surface occupancy of the 317 acres at issue. He also states that

nothing in the public records of the Utah State Office, or in the public records generally, show any proposed wild and scenic river area in Desolation Canyon. He contends that, therefore, the lands are leasable under Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181, et seq. (1970), and requests his application be approved with an attached "no surface occupancy" stipulation.

Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970), vests the Secretary of the Interior "* * * with the discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). The Secretary has the discretion to refuse to issue a lease even where lands were inadvertently listed as available for leasing, Signal Oil and Gas Co., 8 IBLA 150 (1972). That lands are available for leasing, however, does not necessitate their leasing.

A stipulation against surface occupancy is similarly not equivalent to one barring surface disturbance. It appears from the record that this area has been delineated for no surface disturbance. In a memorandum from the Manager of the Price District Office, Bureau of Land Management, in which Desolation Canyon is located, it is noted:

Access to the described area could only be by helicopter, river boat or by building a road. We would not allow a road for access because of the inevitable surface disturbance in the no surface disturbance area as well as the restricted area adjacent. If access was by boat it would still necessitate moving equipment across the no surface disturbance area to the restricted area to drill on a slant.

It is conceivable that this proposal for a wild and scenic river area in Desolation Canyon may die aborning. However, while the lands are under consideration by the State Director for a suggested proposal for possible inclusion under the Wild and Scenic Rivers Act of 1968, 16 U.S.C. §§ 1271-1287 (1970), the Secretary of the Interior, through his delegates, has the discretion to refrain from leasing the tract in question. Section 5 of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), mandates consideration by federal agencies of potential national wild, scenic and recreation river areas. Similarly, Section 4 of the Act, 16 U.S.C. § 1275(a) prescribes that the Secretary

of the Interior shall from time to time submit proposals to the Congress and the President for additions to the national wild and scenic rivers system for certain rivers.

In the circumstances, we believe the refusal to issue a lease in the instant case is proper.

Accordingly, 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 hereby affirmed.

Frederick Fishman
Member

We concur:

Martin Ritvo
Member

Anne Poindexter Lewis
Member

