

SHERIDAN L. McGARRY

IBLA 73-422

Decided November 27, 1973

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer, U-20652.

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: Sheridan L. McGarry, pro se.

OPINION BY MR. STUEBING

Sheridan L. McGarry has appealed from a decision of the Utah State Office, Bureau of Land Management, dated May 14, 1973, rejecting his oil and gas offer to lease certain land in the bed of the Green River.

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 land at issue.

McGarry asserts that the river bed strip applied for, comprising 213.06 acres, is the only remaining tract of land owned by the United States in the entire township which is not under lease or not available by reason of the inclusion of a relatively small area in Naval Oil Shale Reserve No. 2. He further asserts that all lands on both sides of the bed of the river applied for are owned by the United States, all of which are under current oil and gas leases. Moreover, he says that the Green River adjacent upstream to the portion applied for is navigable, and therefore is owned by the State of Utah, all of which has been leased by the State for oil and gas. He contends that the lands are leasable under Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 801, 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.

This case is virtually identical to Dean W. Rowell, 13 IBLA 249 (1973), recently decided by this Board, in which the State Office decision was affirmed.

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 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 area. 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.

In the circumstances, the refusal to issue a lease is within the authority of the State Director and those to whom he has delegated his powers.

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.

Edward W. Stuebing, Member

We concur:

Joseph W. Goss, Member

Newton Frishberg, Chairman

