

W. T. STALLS

IBLA 74-225

Decided September 13, 1974

Appeal from decision by Colorado State Office, rejecting oil and gas lease application C-19902.

Set aside and remanded.

1. Mineral Leasing Act: Environment--Oil and Gas Leases:
Applications: Generally--Oil and Gas Leases: Consent of Agency

Where an oil and gas lease offer for public lands in a national forest is rejected by reason of Forest Service advice that it cannot make any informed recommendation until it makes an environmental impact statement, and where it appears that if such a statement is required under law the lead agency would be the Bureau of Land Management, the rejection of the offer will be set aside and the case remanded for the Bureau to make such studies as it deems appropriate and then to act on the offer.

APPEARANCES: W. T. Stalls, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

W. T. Stalls has appealed from a decision of the Colorado State Office, Bureau of Land Management, dated February 13, 1974, which rejected his oil and gas lease offer C-19902. The offer was rejected for the stated reasons that:

All of the lands in the application are within the Forest Service Inventoried Roadless Area GT. The Forest Service recommends rejection of the offer since oil and gas leasing would not be compatible with the wilderness area.

The appeal asserts in essence that the lands in issue have a high potential for favorable accumulation of hydrocarbons, appellant would protect the lands and their surface values, and the energy shortage dictates making lands available for oil and gas development.

The decision of the State Office rests upon the following letter of February 5, 1974, from the Forest Service:

We recommend rejection of all the lands applied for in oil and gas lease offering C-19902, as they are within Forest Service Inventoried Roadless Area GT.

On November 28, 1972, the Forest Service decided to file NEPA Environmental Statements on Inventoried Roadless Areas prior to taking any actions which would change an area's wilderness character. This decision came about as a consequence of the preliminary injunction imposed by the Court in Sierra Club, et al. v. Butz, et al. (Civil No. 72-1455 SC, U.S.D.C., ND Calif.) which enjoined us from cutting timber, building roads, or taking any action "which would change the wilderness character" of any roadless or undeveloped areas, except pursuant to contracts entered into prior to July 1, 1972. We were further enjoined from entering into any contract on or after July 1, 1972, which would change the wilderness character of any roadless or undeveloped areas listed in our inventories unless and until an environmental statement was filed and acted upon in accordance with the National Environmental Policy Act and the Guidelines of the Council on Environmental Quality. The Court assumed that wilderness is a management alternative in each inventoried area, and therefore any management decision involving development required an environmental statement regardless of whether that development would have any significant impact on potential wilderness areas.

Since a road would have to be constructed into the area should the applicant decide to drill for oil and gas, the wilderness character of the area would be irreversibly damaged. Pursuant to our November 28, 1972, policy we can then make no recommendation for issuance of the lease until we have

made land allocation decisions through the environmental statement process.
(Emphasis supplied.)

The main thrust of the foregoing is the pronouncement of the Forest Service that it can "make no recommendation for issuance of the lease until we have made land allocation decisions through the environmental statement process."

In essence, Forest Service's position is, despite the opening sentence, that it is not in a position to make an informed recommendation until it prepares an environmental impact statement.

[1] The determination to lease or not to lease public lands in a national forest for oil and gas is properly made by this Department. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing, George A. Breene, 13 IBLA 53 (1973), in contradistinction to acquired land leasing. See O. C. Welch, 11 IBLA 163 (1973); Susan D. Snyder, 9 IBLA 9 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

It seems clear that under Council on Environmental Quality Guidelines the Department of the Interior is the federal agency "which has primary authority for committing the Federal Government to a course of action with significant environmental impact" if indeed, an environmental impact statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (1970).

Accordingly, the decision below is set aside and the case is remanded to the Bureau of Land Management for consideration whether a NEPA impact statement is appropriate under the Act. If the Bureau concludes that such a statement is appropriate, it shall follow the mandate of 42 U.S.C. § 4332 (1970), in consulting with and obtaining the views of the Forest Service. After completion of the impact statement, the offer should be reevaluated in the light of the statement. If, however, the Bureau finds that a NEPA statement is not required, it shall make such studies as it deems appropriate to furnish a sufficient predicate for a proper judgment on the pending application and then take appropriate action on the application.

Therefore, 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 set aside and the case remanded for appropriate action 1/ in the light of this decision.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ We note that in Rainbow Resources, Inc., 17 IBLA 142 (1974), the Forest Service advised it had no objection to the issuance of oil and gas leases embracing lands in a Forest Service Inventoried Roadless Area if certain stipulations were executed by the offeror, even though that record does not reflect whether an environmental impact statement had been prepared.

