

Editor's note: Reconsideration denied by order dated May 4, 1976

JAMES DONOGHUE ET AL.

IBLA 76-138, 76-161, 76-164, 76-168,
76-169, 76-203, 76-205

Decided March 23, 1976

Appeal from decisions of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers (W-49414 etc.).

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Generally

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

APPEARANCES: John R. Moran, Esq., of Moran, Reidy & Voorhees, Denver, Colorado, for appellant, James Donoghue; Robert W. David, Esq., pro se; C. M. Peterson, Esq., of Poulson, Odell & Peterson, Denver, Colorado, for appellants, Barbara St. John, Robert W. David, Leah P. Golden, James Donoghue, and Kansas-Nebraska National Gas Company, Inc. Erol R. Benson, Esq., Office of the General Counsel, U.S. Department of Agriculture, for the Government.

OPINION BY ADMINISTRATIVE JUDGE RITVO

James Donoghue, Robert W. David, Barbara J. St. John, Robert D. St. John, Leah P. Golden and Kansas-Nebraska Natural Gas Company Inc., 1/ have appealed from various decisions of the Wyoming State Office, Bureau of Land Management (BLM) rejecting noncompetitive oil and gas lease offers listed in Appendix A for lands within the Teton National Forest. The lease offers were rejected for the reason that all the lands are within the Teton National Forest, north of the 11th standard parallel, and were withheld from leasing by the Secretary of the Interior on August 15, 1947. In addition, the State Office stated that the Forest Service has continually expressed its objection to the issuance of leases in this area, due to the wilderness and other public values possessed by the lands.

As stated, the lands covered by the lease applications are all within the Teton National Forest. In addition, most are within the Teton Wilderness Area, an inventoried roadless area, a memorial parkway, or other special category.

Appellants assert that all of the lease applications were improperly rejected by the BLM. They contend the following: the lands in the offers are available for leasing; the wilderness areas are available for leasing under the Wilderness Act; the fact that a portion of the applied for lands are within the Teton Wilderness Area does not constitute a sufficient basis to reject the lease applications; the Secretary's memorandum of August 15, 1947, is not a withdrawal; the Forest Service objections are not a sufficient basis to reject the offers; the Secretary's discretion to lease must be exercised in the public interest and in a reasonable manner; and the Secretary's memorandum should be reviewed before their offers are rejected.

Appellant's interpretation of the effect of the provisions of the Wilderness Act on oil and gas leasing is correct. The mere inclusion of public lands in a wilderness area does not preclude leasing of these designated lands. The Wilderness Act of September 3, 1964, 16 U.S.C. §§ 1131, 1133(d)(3), specifically provides that lands which are in approved national forest wilderness areas may be leased for their minerals until December 31, 1983, to the same extent as prior to the Act. The leases would be subject

1/ Kansas-Nebraska holds an option to acquire leases when issued for the offers listed in IBLA 76-164, 76-203 and 76-205.

to reasonable regulations by the Secretary of Agriculture governing ingress and egress consistent with the mineral use of the land, and to reasonable stipulations imposed by the Secretary of Agriculture, for the protection of the wilderness character of the land consistent with the mineral use of the land. 43 CFR 3567.

However, lands embraced within oil and gas lease offers which contain such wilderness area lands must still be considered for leasing under the terms of the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 181 et seq. (1970). Under section 17 of that Act the Secretary of the Interior has plenary discretion to refuse an offer to lease. Udall v. Tallman, 380 U.S. 1 (1965); Duesing v. Udall, 350 F.2d 749 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). This Board, while considering offers to lease lands in both proposed and existing wilderness areas has recently emphasized that in the absence of a withdrawal of land from mineral leasing, public lands in national forests are subject to leasing for their oil and gas deposits in the discretion of the Secretary of the Interior, and under the conditions imposed by the Secretary of the Interior for lands in a proposed wilderness area and under conditions imposed by the Secretary of Agriculture for lands within an established or proposed wilderness area. Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Esdras K. Hartley, 23 IBLA 102 (1975).

As we have seen, the State Office rejected the offers because they cover lands in that part of the Teton National Forest for which the Secretary of the Interior had directed that no oil and gas leases be issued.

Appellants contend in essence that the Secretary of the Interior's memorandum of August 15, 1947, does not constitute a withdrawal of the subject lands from oil and gas leasing and should, therefore, not be given the same effect.

The memorandum provides in pertinent part:

* * * I have concluded that unit plans may be approved, oil and gas leases issued, and drilling authorized on lands in the Teton National Forest south of the 11th standard parallel, * * *.

* * * * *

The lands north of the area herein shall continue to be temporarily withheld from leasing under the oil and gas provisions of Mineral Leasing Act unless the

lands in T. 45 N., R. 113 W., 6th P.M., Wyoming outside the Jackson Hole National Monument and outside the Teton Wilderness Area are deemed necessary to establish or complete a logical unit area.

The Forest Service has responded on appeal asking that the Wyoming State Office decisions be upheld. From our review of the case we agree with the Forest Service position that the Secretary's memorandum is still in full force and effect and is dispositive of this appeal. The Secretary has specifically made a policy determination that lands in the Teton Wilderness area above the 11th standard parallel are not to be available for oil and gas leasing. In publishing the memorandum in the Federal Register (12 F.R. 5859) he has formally exercised his plenary discretion under the Mineral Leasing Act, *supra*, to refuse to issue leases within the area in question. That Secretarial order established the guidelines for the leasing of lands within this wilderness area that have remained in effect without change to date.

Although the memorandum is not a withdrawal of the land, the Secretary has discretionary authority over the issuance of oil and gas leases and may exercise his discretionary authority in a formal manner by regulation or some other announcement of general impact. Hunter v. Morton, F.2d (10th Cir. 1976) (No. 75-1145, January 26, 1976). While such an action may have the same effect as a withdrawal, it is not a withdrawal. T. R. Young, Jr., 20 IBLA 333 (1975); Richard K. Todd, 68 I.D. 291 (1961), *aff'd*, Duesing v. Udall, *supra*. In Todd, *supra* at 296, the Department in discussing an agreement which closed half of the Kenai Moose Range in Alaska to oil and gas leasing reviewed this duality:

The formal exercise by the Secretary of his discretionary authority is nothing new in the administration of the Mineral Leasing Act. Thus, on February 6, 1939, the Acting Secretary, for the purpose of protecting and conserving potash deposits, ordered that "until further notice, no lease under the oil and gas provisions of * * * [the Mineral Leasing Act] will be issued for the following-described lands [in New Mexico], and no application for oil and gas leases will be accepted, nor will any rights be acquired by the filing of an application therefor * * *" (4 F.R. 1012). Again, in a memorandum dated April 18, 1942, to the Commissioner of the General Land Office, the Department adopted the policy of not issuing oil and gas leases in the Ivanpah Valley, California. See Marie E. Tuttle et al., A-27481 (January 28, 1958).

And, on January 27, 1953, the Department issued Order No. 2714 (18 F.R. 700) declaring that "until further notice, no oil and gas lease under the Mineral Leasing Act * * *, shall be issued" for described wild areas in the Los Padres National Forest, California, and the Santa Fe National Forest, New Mexico. The area comprised wilderness areas. See Cecil H. Phillips et al., fn. 3, supra. These formal actions did not purport to be and did not constitute withdrawals of land. They were merely formalized exercises of discretion, just as the agreement of July 24, 1958, is. [Emphasis added.]

Similarly, the language of the Secretary's memorandum of August 15, 1947, was obviously intended to preclude oil and gas leasing in a restricted portion of the Teton National Forest without purporting to be a withdrawal.

That policy has never been rescinded and has been repeatedly reaffirmed over the years by the Department's continued refusal to lease lands in that restricted area withheld from leasing. 2/ The Department has never made a further determination that these lands are deemed necessary for leasing to establish or complete a logical unit area as required by the Secretary's order. Therefore, unless or until that condition exists, or the policy is expressly changed by a formal pronouncement, the memorandum has the same full force and effect as when issued. 3/

Appellants ask that a continuing review be made of policy considerations before BLM takes action on lease applications within the wilderness area. At the same time they indicate that the Bureau has been advised by the Office of the Solicitor as recently as 1966 (after the enactment of the Wilderness Act, supra) of the then still binding effect of the Secretary's original suspension. Where an established Departmental policy has been continually administered without change by the BLM and that agency is aware of its current controlling application, as in this case, there is no reason to seek further review on an individual case-by-case basis to reject these lease offers.

2/ Appellants recognize that a correspondence file (W-0210726) has been maintained in the Wyoming State Office, BLM, that indicates other lease offers have been rejected for these wilderness area lands. They also indicate that this correspondence file shows that modification of the Secretary's suspension area has been repeatedly proposed but not accepted.

3/ We note that the land status plats maintained at the State Office carry a notation such as this:
"All Tp included in Temp. Wdl. from O & G Leasing SO 8/15/1947."

When the appellants' lease applications were filed, BLM had no authority to issue a lease because of the existing policy directive. To countermand or change the policy directive of a previous Secretary, action must be taken by the Secretary. The appropriate procedure for seeking such a change is by filing a petition to the Secretary for reconsideration of the 1947 directive. The filing of the lease applications did not constitute such a petition, nor may these appeals serve as such a petition. Because BLM was not authorized to issue oil and gas leases in the area in question, the offers were properly rejected. In effect what appellants now desire is to have their offers suspended and this office, or BLM, petition the Secretary for them so that they may retain priority of filing from the date their applications were filed. We believe that affirming the rejection of these applications rather than suspending them is the most appropriate action to take in the circumstances of these cases.

By regulation applications must be rejected and cannot be held pending possible future availability of the land when approval of the application is prevented by a withdrawal or reservation of lands, or the fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws. 43 CFR 2091.1(a) and (e). It has also been a long established policy reflected in Departmental decisions to reject applications generally where there are title questions and land status problems rather than to suspend the applications. The rule has developed as a sound administrative practice to prevent an unmanageable backlog of applications for unavailable lands which may not be acted upon in the foreseeable future. J. G. Hatheway, 68 I.D. 48, 52 (1961). It is only in very special and compelling circumstances where it has appeared unfair to reject an application that an application has been suspended. See Energy Partners, 21 IBLA 352 (1975), and cases cited therein. The situation in these present appeal cases is not of such a special or compelling circumstance. Notice of the Secretarial policy was reflected upon the records of the Bureau, so the applicants were aware of the policy. The situation here is very akin to the situations reflected in the regulation which mandate rejection of the applications. The rationale reflected in those circumstances prevails here. Therefore, we believe the rejection should be affirmed.

Since the offers must be rejected for this reason, we need not consider other contentions raised by appellants. For the same reason we do not believe oral argument could present anything not fully discussed in the briefs and, therefore, appellant's request for one is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

APPENDIX A

<u>IBLA Docket No.</u>	<u>Appellant</u>	<u>Lease Offer No.</u>	<u>BLM Decision</u>	<u>Date of</u>	
75-138 Donoghue	James W-49415	W-49414	July 31, 1975		
76-161 W-49434	Robert W. W-49435 W-49436	W-49432	July 31, 1975		David
76-164 W-49416	James W-49417	W-20661	August 14, 1975		Donoghue
76-168 W-50256 thru W-50277	Barbara W-50288 thru W-50290 W-50302 thru W-50308	W-50237 thru W-50244	August 17, 1975		J. St. John
76-169 W-50321 thru W-50324	Robert D. W-50326 thru W-50329 W-50320	W-50230 thru W-50235	August 5, 1975		St. John
76-203 76-205 W-49431	Leah P. Robert W. W-49433	W-50989 W-49430	August 14, 1975 August 14, 1975		Golden David

