

CARTRIDGE SYNDICATE

IBLA 76-303, 76-304

Decided May 20, 1976

Appeals from decisions of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 24181, NM 24182, NM 23894, in part, and requiring special stipulations as to the portions of the offers accepted for leasing.

Set aside and remanded.

1. Oil and Gas Leases: Applications--Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

2. Oil and Gas Leases: Applications--Oil and Gas Leases: Stipulations

The execution of special stipulations as a condition precedent to the issuance of an oil and gas lease may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

3. Oil and Gas Leases: Applications--Oil and Gas Leases: Discretion to Lease

While the Bureau of Land Management may reject oil and gas lease offers or require

stringent protective stipulations in order to protect the environment, such action must be supported by facts of record. Where such action is taken and is supported only by statements that leasing would not be in the public interest, the case will be remanded to the Bureau for a more complete exposition of the basis for the action.

APPEARANCES: Jack M. Campbell, Esq., Campbell and Bingaman, P.A., Santa Fe, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Cartridge Syndicate 1/ appeals from the September 25, 1975, decisions of the New Mexico State Office, Bureau of Land Management (BLM), which rejected several lease offers in part and required special protective stipulations for those parts of the lease offers not rejected. The only reason given for these actions is the statement that "[i]t is not in the best interest of the Government to lease the \* \* \* lands." 2/

Appellant asserts that there is nothing in the records (case files) to support the action taken by the New Mexico State Office. Appellant also asserts that the New Mexico State Office does not have the authority to effectively withdraw the lands in question from leasing without complying with the regulations pertaining to withdrawals.

[1] The authority of the Secretary of the Interior to lease or refuse to lease lands in his discretion pursuant to section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(a) (1970), is independent of his authority to withdraw lands from the operation of the general mining and mineral leasing laws. T. R. Young, Jr., 20 IBLA 333, 335 (1975); Richard K. Todd, 68 I.D. 291, 295-96 (1961), aff'd sub nom Duesing v. Udall, 350 F.2d 748

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1/ It appears from the case file that the lease offer in NM 23894 was made by one Robert Mosbacher. There is nothing in the case file to suggest any relationship between Mosbacher and the Cartridge Syndicate. However, counsel's notice of appeal and statement of reasons for appeal are on behalf of the Cartridge Syndicate and include lease offer NM 23894. Therefore, the appeal of that rejection will be considered on its merits.

2/ The offeror of NM 23894 did inquire as to the meaning of "the public interest." The BLM replied that the land would be within a proposed primitive area. That conclusion alone does not indicate why lease offers should be rejected. See Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976).

(D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). As the Supreme Court noted in Udall v. Tallman, 380 U.S. 1, 4 (1963):

The Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1958 ed.), gave the Secretary of the Interior broad power to issue oil and gas leases on public lands not within any known geological structure of a producing oil and gas field. Although the Act directed that if a lease was issued on such a tract, it had to be issued to the first qualified applicant, it left the Secretary discretion to refuse to issue any lease at all on a given tract. United States v. Wilbur, 283 U.S. 414.

[2] The Secretary of the Interior may also require that lessees accept reasonable stipulations for the protection of the environment as a condition precedent to the issuance of oil and gas leases. A. A. McGregor, 18 IBLA 74 (1974); Bill J. Maddox, 17 IBLA 234 (1974); 43 CFR 3109.2-1; 43 CFR 3109.4. In each case the need for the stipulation should be clear, and the means to accomplish the intended purpose should be clear, and the means to accomplish the intended purpose should be reasonable. Bill J. Maddox, 22 IBLA 97, 98 (1975). While the stipulation should be adequate to accomplish the protective purpose, it should not be so restrictive that it precludes any right of enjoyment; in that case a lease should simply not be issued, Earl R. Wilson, 21 IBLA 392 (1975); A. Helander, 15 IBLA 107 (1974), unless the offeror manifests his willingness to accept such a lease embodying those stringent conditions. Cf. Leland A. Hodges, Trustee, 23 IBLA 142 (1975).

Appellants assert in their notice of appeal that the stipulations are too restrictive without stating with any specificity why they are unacceptable. For example, there is no indication that slant drilling is not possible in this area.

[3] However, the decisions to reject part of the offers, as well as the requirements of "no surface occupancy" as to the balance of the land, all suffer from the same defect. There is nothing in the record to support the conclusion that the action is required "in the public interest." We have obtained the two pertinent environmental analysis reports (EARs) and have examined them. They both contain detailed descriptions of the hazards and benefits of oil and gas leasing as well as extensive discussion of the ecosystems involved in the entire Las Cruces District, involving some 5 1/2 million acres of public land. However, there is nothing in either of the reports indicating that the particular land in the lease offers is any different from the rest of the land described in the environmental analysis reports, or that oil and gas leasing of the land should be precluded to achieve some specific goal.

We noted in Carolyn S. Edwards, 14 IBLA 141 (1974), that the Department is not likely to give much weight to conclusory recommendations that a particular course of action should be followed in the absence of supporting background material or other data indicating the reasons for the recommendation. Moreover, as we noted in Bill J. Maddox, 22 IBLA at 98, the need for the action should be clear. Because no specific reasons have been cited to support the decisions, we deem it necessary to remand the cases for further consideration. In so doing, we do not mean to suggest that another environmental analysis be made. What we do require is a readjudication based upon consideration of the conditions actually prevailing on these particular lands. If it is determined that the lease offers should be rejected or leased without allowing any surface occupancy, such decisions must be supported by a statement of the reasons therefore.

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 remanded for further consideration consistent with this opinion.

Edward W. Stuebing

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Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Frederick Fishman  
Administrative Judge

