

PINNACLE MINING AND EXPLORATION COMPANY, INC.

IBLA 76-756 Decided December 20, 1976

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-31772.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Lands Subject to

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 leasing would not be in the public interest.

2. Oil and Gas Leases: Applications: Generally

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease, except that if the Secretary determines to lease the land applied for the applicant has a preference right to a lease if he is the first fully qualified applicant.

3. Oil and Gas Leases: Discretion to Lease—Oil and Gas Leases: Lands Subject to

The Secretary of the Interior may reject a noncompetitive offer to lease for oil and gas when he determines that it is in the public interest to do so because the lands applied for are within the Interstate 70 scenic corridor and are under consideration for inclusion in a primitive area.

4. Oil and Gas Leases: Discretion to Lease—Withdrawals and Reservations:
Generally

The Secretary in the exercise of his discretionary authority, may refuse to lease public lands for oil and gas, even though the lands are not withdrawn from oil and gas leasing.

5. Oil and Gas Leases: Rentals

Where the BLM deposits the advance rental tendered with the filing of an oil and gas lease offer, that action does not signify acceptance of the offer, nor does it create a contract to lease the land applied for, nor does it give rise to an estoppel against the Government.

APPEARANCES: Steven L. Grow, Esq., Onem, Utah, for appellant.

DECISION BY ADMINISTRATIVE JUDGE RITVO

Pinnacle Mining and Exploration Co., Inc., has appealed from a decision dated July 9, 1976, of the Utah State Office, Bureau of Land Management, rejecting its noncompetitive oil and gas lease offer U-31772. The offer described secs. 33, 34, and 35, T. 21 S., R. 13 E., SLM, Utah. The decision held that it would not be in the public interest to issue a lease because the lands applied for are within the Mexican Mountain proposed primitive area and the Interstate 70 scenic corridor. ^{1/} It pointed out that an oil and gas environmental analysis had been prepared for the lands administered by the Montana Office, Bureau of Land Management. It then stated:

The environmental analysis states that the Mexican Mountain area has potential for designation as a primitive area. It is bordered on the north by the San Rafael River which has been recommended for study, and possible inclusion on the list of wild and scenic rivers. Where the San Rafael River approaches the San Rafael Reef, it forms narrow, steep canyons. Vertical 600 foot cliffs on the north and east of this proposed primitive area and rugged pinyon juniper to the south provide varied color, topography and vegetation.

^{1/} The authority to establish primitive areas and scenic zones is found in 43 CFR Part 6620 and 43 CFR Part 6222, respectively.

The Interstate 70 visual corridor through the San Rafael Swell has been identified as having scenic and archaeological values such as pictographs and petroglyphs. The corridor has been recommended for withdrawal from all forms of entry, including mineral leasing. The natural, unintruded appearance of the area is an outstanding feature. Recreation-use figures and estimates indicate nearly 540,000 visits occur yearly for sightseeing from the seven overlooks in the corridor. The open-space quality of this area is highly significant; "wilderness" lies just off the roadside.

Placing of development structures in close proximity to geological features of interest will distract from their scenic and interpretive value.

Some types of geological materials such as fossils may be collected and removed even though it may be illegal. Increased accessibility as a result of oil and gas roads and trails would contribute to removal or vandalism of the values. Road construction, seismic activity, drilling, development or production would be a serious impact and would result in the loss of primitive values at Mexican Mountain.

The important resource in the I-70 corridor is the scenic value which can be enjoyed by the casual traveler as he passes through relatively untouched areas. If any of the phase of oil and gas development were to take place in this corridor, the scars of the activity would be visible for many years. If it were necessary to build an oil well access road in the corridor it might lead to the opening of new trails and paths by careless individuals. These paths could be susceptible to erosion and deep lasting scars could result.

Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 225 (1970), vests the Secretary of the Interior " * * * with the discretion to refuse to issue any lease at all of a given tract." Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 939 (1965).

It has been determined that the public interest would best be served by invoking the discretionary

authority of the Secretary of the Interior and holding the subject offer to lease for rejection.

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As an alternative to outright rejection, it offered appellant a lease subject to a no surface occupancy stipulation.

In its appeal appellant contends, that the Bureau, having accepted its first year rental payment submitted with the offer, is now estopped to refuse to issue a lease, that it has proceeded with further development and exploration expenses upon the property in expectation that the lease would issue and that it would be unfair to withdraw or reject the lease.

[1, 2] Appellant mistakes the nature of an oil and gas lease offer. An oil and gas lease offer is merely an application for the issuance of a lease. It gives the applicant no rights to explore or develop the land applied. It has only a preference right to a lease, if it is the first qualified applicant to file an application, but the Secretary has the discretionary authority to reject any offer if he finds it in the public interest to do so. C. Burglin, 21 IBLA 234 (1975); Duncan Miller, 20 IBLA 3 (1975). Therefore, the filing of the application and the delay incident upon adjudication provide no particular predicate for the issuance of a lease that would otherwise properly be denied.

[3] Next appellant says that the State Office abused its discretion in denying it a lease for the reasons given because the natural setting of the area could be protected by specific environmental stipulations.

In addition to the justification set out in its decision, the State Office informed appellant in a letter dated September 1, 1969, of the long continued public and private interest in preserving the scenic corridor in the San Rafael Swell. It also said:

1. The I-70 scenic corridor is a strip of land along Interstate 70 in the San Rafael Swell which forms the foreground for views from the highway and its scenic overlooks. It begins at the San Rafael River in T. 22 S., R. 14 E. and ends at the Muddy River in T. 23 S., R. 6 E. The corridor extends a minimum of one mile on each side of the highway and frequently includes lands which are up to two miles distance from the interstate.

2. The first document available in this office which deals with the preservation of scenic

values along I-70 in the San Rafael Swell is the July 9, 1971 report to Governor Calvin L. Rampton by the Governor's I-70 Coordinating Committee. This committee, composed of eight representatives from state agencies, four local government representatives, two federal agency employees, and one private party, recognized the value of maintaining the natural and scenic quality of the San Rafael Swell. In discussing the lands along the interstate the committee stated, "Any disturbances such as those normally associated with mining and oil and gas would have a serious impact on the quality of the recreation experience and should not be permitted." The committee report went on to recommend a number of specific actions designed to control or prevent the destruction of the inherent values of the area.

The next public document which discusses the issue is a report entitled "Land Use in the Canyon Country: Tourism, Interstate 70 and the San Rafael Swell". This report was prepared for the Four Corners Regional Commission by the Institute for the Study of Outdoor Recreation and Tourism, Utah State University. This report specifically recommended that the BLM withdraw the I-70 scenic corridor "from all forms of appropriation or entry under the public land laws including location and entry under the General Mining Laws and leasing under the Mineral Leasing Laws." The report also recommended designation of the Mexican Mountain vicinity as a primitive area. The area recommended for primitive area designation is essentially the same as that now under consideration by the BLM.

Finally, the BLM's Multiple Use Management Plan for National Resource Lands, San Rafael Swell which was published in June 1973 recommended: "Withdraw the national resource lands within the visual corridor and service zone from all forms of entry. Prohibit construction of buildings or structures outside of road rights-of-way within the visual corridor."

The plan also recommended management action to: "Designate and manage the Coal Wash and Mexican Mountain areas and the Cat Canyon-Hebe Canyon area and Keesle Country area as primitive areas."

In short, the decision to place the I-70 scenic corridor and the Mexican Mountain area in the no lease, suspended, or no surface occupancy categories is based

on the Bureau's planning system and study report recommendations originating both within and outside the BLM.

3. The proposed dimensions of the Mexican Mountain primitive area are shown on the attached map. Detailed study of the resources of this area, including a minerals report, could result in these dimensions being expanded at some points and reduced at others. Previous study and planning efforts in the San Rafael Swell have established that this area is worthy of designation as a primitive area. The primary question that remains is one of exactly which lands should be included in the designated area. Designation of primitive areas is an administrative action for which the Bureau of Land Management has full authority under 43 CFR 6220. The proposal has not been presented to Congress, because unlike wilderness areas, primitive areas do not require Congressional action.

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5. The Bureau has been reviewing its leasing policies for the past 1 1/2-2 years in order to make more land available for oil and gas. In the interim, lease issuance in these areas was suspended. Those leasing studies are now complete. Less than 3% of the lands administered by BLM in Utah have been categorized as "no lease." As part of the reviewing process, public meetings were conducted by each district office as well as two public meetings conducted by the State Office in the Salt Palace in order to receive public input. Notification was published in local newspapers as well as BLM news releases sent to interested parties.

6. Geophysical exploration is allowed in this area under regulations in 43 CFR 3045. However, there is no intention now to issue leases in these areas until further studies are conducted. The only condition under which leases would be issued is with a "no surface occupancy stipulation.["] This will facilitate "blocking up" of an area as is commonly practiced.

The decision and letters provide ample support for the determination not to lease the lands applied for, except with a no surface occupancy stipulation. Rosita Trujillo, 20 IBLA 54 (1975); John Oakason, 19 IBLA 191 (1975).

[4] The appellant then points out that the land has not been withdrawn from oil and gas leasing. This, while true, is immaterial.

The Secretary can reject a lease offer in the exercise of his discretionary authority even though the land has not been withdrawn from oil and gas leasing. Cartridge Syndicate, 25 IBLA 57 (1975); T. R. Young, Jr., 20 IBLA 133 (1975).

Finally, appellant stresses its belief that there are extractable oil and gas resources in the area. This contention is still theoretical, but even if true, would only be a factor to be taken into consideration and not in itself dispositive of the issue.

[5] Appellant also requests return of the payments it submitted with its offer. Repayment is made as a matter of course when a lease offer is rejected.

A check for the amount of the advance rental which is tendered with an offer to lease for oil and gas is routinely deposited by BLM in an "unearned" account. This creates a record of the payment, safeguards it, and brings it under accounting control. If the offer is rejected and an appeal is filed, the money is retained on deposit to preserve the viability of the offer. If the offer is finally rejected the money is refunded by Treasury check. The depositing of the rental check does not signify that the lease offer has been accepted by the Bureau, nor create a contract, nor does it create an estoppel against the Government.

Robert L. Williams, 24 IBLA 311 (1976); Edward Malz, 24 IBLA 251, 81 I.D. (1976); John J. Nordhoff, 24 IBLA 73 (1976).

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 affirmed.

Martin Ritvo
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

