

ROBERT R. WAHL, HOWARD YEE

IBLA 76-664

Decided January 13, 1977

Appeal from decision of Arizona State Office, Bureau of Land Management, rejecting oil and gas lease offers A-8864 and A-8873 for lands in Lake Mead Recreation Area.

Set aside and remanded.

1. Act of October 8, 1964—Oil and Gas Leases: Generally— Public Lands: Leases and Permits

Where the State Office, following a recommendation of the National Park Service rejects an application for an oil and gas lease in the Lake Mead National Recreation Area on the basis of a general environmental review of the consequences of oil and gas leasing in the Recreation Area, but which does not specifically show that the lands involved are of a particular value in the Recreation Area as a whole and that leasing subject to stipulations will not suffice to protect the recreation and other values of the land, the case will be remanded for a particular application of the environmental review to that land.

Appearances: Robert R. Wahl, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Robert R. Wahl and Howard Yee have appealed from a decision dated June 3, 1976, of the Arizona State Office, Bureau of Land Management, rejecting their non-competitive oil and gas lease offers A-8864 and A-8873 for lands on the Lake Mead National Recreation Area. 1/

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1/ These offers were before the Board on another point. Robert R. Wahl, 21 IBLA 262 (1975).

Offer A-8864 covers 640 acres, sec. 5, and offer A-8873, 1,280 acres, sec. 8 and 21, in T. 33 N., R. 15 W., GSR Mer., Arizona. These lands lie in the northeast corner of the Recreation Area on or next to its boundary.

Mineral leasing in the Lake Mead Recreation Area is authorized by the Act of October 8, 1964, 16 U.S.C. §§ 460 n-3 (1970), which gives the Secretary or his delegate full discretion to grant or reject lease applications. Rilite Aggregate Company, 26 IBLA 197 (1976); 43 CFR 3566.03.

The State Office decision pointed out that the Act of October 8, 1964, supra, stresses that the Recreation Area shall be administered with particular attention to recreation and scenic, historic, scientific and other important features of the area. It calls attention to the National Environmental Protection Act, 42 U.S.C. § 4321 et seq, which requires that the environmental impact of certain federal actions be taken into account in determining whether a proposed action should be taken. It then notes the importance of maintaining the quality of the landscape. It refers to an environmental review undertaken by the National Park Service, with which it shares the administration of the area. The review concluded that the overall effects of leasing would be adverse and recommended that the leases be rejected. It then recommended that there should be no further disturbance of the area through oil and gas leases. Convinced by the review, the State Office rejected the offers.

The appellants argue that the land applied for is desolate and that oil or gas development would do no harm. They also point out that the decision does not specifically show what it is that the Bureau is trying to protect in the area they have applied for.

We think these contentions have merit. While as stated above, the State Office, as the Secretary's delegate may reject oil and gas lease offers for lands in the Recreation Area, it should do so only when leasing would be inconsistent with the purposes for which the Recreation Area was established. 43 CFR 3566.0-3. See Rosita Trujillo, 20 IBLA 54 (1973).

We have examined the environmental review for particular references to the lands applied for. It is a careful discussion of how oil and gas lease exploration and development are carried out, and the possible consequences to the flora and fauna and recreational uses of the area. These comments while pertinent are general and would apply to any part of the Recreation Area as well as the particular lands in appellants' offers. The only specific references to the site state:

The proposed area is located approximately five miles northeast of the Grand Wash Bay of Lake Mead and approximately eight miles west of the Grand Wash

Cliffs. The topography in this area consists mainly of rolling hills and intervening tributary washes. Drainage patterns in the area lead generally into Lake Mead. Elevation averages around 2000 feet. p. 5.

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Although ongoing studies by the University of Nevada are not yet complete, there are currently accounts of 23 threatened or endangered plant species occurring in the Lake Mead area as determined by the official list prepared by the Smithsonian Institute. Several of these may occur in the proposed project site. p. 6.

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Two rare species, the desert tortoise (Gopherus agassizi) and Gila monster (Heloderma suspectum) can be found at this site. Several threatened or endangered bird species are transient through the site. They are: bald eagle, prairie falcon, peregrine falcon, ferruginous hawk, osprey, pigeon hawk and burrowing owl. The spotted bat, also endangered, may be found at this site.

This area has been classified as ephemeral range, however, cattle have grazed here on and off for several years. Feral burros inhabit the area using established routes to watering areas along Lake Mead or in the nearby mountains. Big game in the area are limited. Desert bighorn inhabit the nearby mountains and probably pass through this lower valley area.

Because of the remote nature of the site, current human usage in this area is generally light. The recreational visitors that use the area have traveled a great distance to enjoy the solitude, isolation and scenic beauty of the Grand Wash Cliffs and mouth of the Grand Canyon. The site is adjacent to areas currently under consideration as a designated wilderness and very likely would be included in that same wilderness area if not for the existence of two other oil and gas leases.

Historic and archeologic surveys have not been conducted on the proposed lease sites. p. 7

In discussing the possible environmental impact of oil and gas development, the review assumes the maximum possible consequences that could flow from mineral exploitation in this or any other area.

It concludes with the observation that:

[T]he recreation area visitors have travelled a great distance to reach relative solitude and enjoy outdoor recreation at this location. The Lake Mead Act (Public Law 88-639, October 8, 1964), authorized mineral leases "to such extent as will not be inconsistent with either the recreational use or the primary purpose of that portion of the area heretofore withdrawn for reclamation purposes." The development of a large producing oil field certainly is not consistent with the primary recreational use of the area. Issuance of these leases, would therefore, create substantial public opposition.

It is recommended that these leases not be issued on the basis of environmental concerns and conflicts with outdoor recreation. Under no circumstances should any affirmative action be undertaken without a full environmental impact statement and appropriate public input.

These considerations, while serious, are for the most part equally applicable to the entire Recreation Area and would justify a refusal to issue oil and gas leases in any part of it. Neither the statute, the regulation, nor any policy statement we are aware of goes so far. The Department has affirmed the rejection of a mineral lease offer where the land applied for has had some particular significance in the Recreation Area as a whole.

In Rilite, supra, the land applied for was a high density habitat area for bighorn sheep and was part of a study area for desert bighorn (sheep) ecology research. It was also in an area proposed as Wilderness by the National Park Service and had been identified by the Park Service as an Environmental Protection Zone.

In George S. Miles, Sr., 7 IBLA 372 (1972), the Board affirmed the rejection of an application for a mineral lease because the Bureau of Reclamation reported that the land was within "the area designated for the operating protection and security of Hoover Dam" and that it was necessary to maintain a reasonable buffer zone adjacent to the Dam over which the United States exercised complete jurisdiction. It also noted that the National Park Service had designated the area immediately outside the buffer zone as a high density use area. See also Eugene V. Simons, 26 IBLA 208 (1976).

The situation and uses of lands involved in this appeal do not raise such compelling reasons to support a refusal to lease them. The sites are on an edge of the recreation area, they have been leased in the past, and there are outstanding leases adjoining

them. At best they are adjacent to an area currently under consideration as a designated wilderness, but they are not in it. The final objection to leasing—that it would interfere with the primary recreational use of the area—is again generally applicable to the whole Recreation Area and by itself ought not to foreclose leasing.

Accordingly, we conclude that it was error to reject the offers for the reasons given. The offer should be reconsidered to see if there are reasons more particularly applicable to the lands applied for. Further, no lease should issue without careful consideration of whether a full environmental impact statement is required. Finally any lease that issues must be subject to stipulations which will protect the special values of the Recreation Area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is set aside and the case remanded for further proceedings consistent herewith.

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Martin Ritvo  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

