

THOMAS F. MANERA

IBLA 78-48

Decided January 23, 1978

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting in part oil and gas lease offer CO 25634.

Set aside and remanded.

1. Oil and Gas Leases: Lands Subject to

Where the Bureau of Land Management rejects in part an oil and gas lease offer because the subject lands are within a coal permit, and where a general policy determination as to the compatibility of concurrent development of these minerals is pending, the case will be remanded to be suspended and subsequently acted upon in light of whatever general policy is formulated.

APPEARANCES: Thomas F. Manera, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Thomas F. Manera appeals from a decision dated September 30, 1977, of the Colorado State Office, Bureau of Land Management (BLM), which rejected in part his oil and gas lease offer CO 25634, drawn first in the June 1977 simultaneous filing.

The lands deleted from Appellant's lease application, lots 5, 6, 7, sec. 18, T. 12 N., R. 88 W., sixth principal meridian, are included in coal permit C-3606. The decision rejecting the lease offer as to these lands states as follows: "Because of incompatibility in developing these minerals on the same land it has been determined not to issue an oil and gas lease on the land at this time."

In a memorandum to the Board dated October 31, 1977, the Acting State Director offered the following supplementary information:

The rejected land was inadvertently posted to the simultaneous oil and gas list. Prior to posting of the list, it had been decided that lands in conflict with

existing coal leases, preference right lease applications and known recoverable coal resource areas would be withheld from the simultaneous list pending a determination as to the compatibility of concurrent development of oil and gas and coal.

Although the coal status plat shows the contested lands are in coal prospecting permit C-3606, the permittee filed a preference right lease application prior to the expiration of the permit and has submitted materials to satisfy the "initial showing" requirements of the regulations. Because of a recent Solicitor's opinion, our office must determine the existence of mining claims within the area embraced by the PRLA. Therefore, case file C-3606 is being retained in this office. If it is a prerequisite for your decision, the case will be forwarded immediately upon your request.

In his statement of reasons Appellant challenges the decision as arbitrary because the BLM had apparently failed to investigate the possibility of simultaneous development of minerals as allowed by 43 CFR 3100.4 which provides:

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

[1] Where public lands have not been withdrawn from mineral leasing, they are ordinarily subject to oil and gas leasing in the discretion of, and under conditions imposed by the Secretary, Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976). In the exercise of this discretion, ordinarily the BLM should make a determination whether leasing the lands with appropriate stipulations would be in the public interest. Fred P. Blume, 28 IBLA 58 (1976). If, after appropriate consideration, BLM determines that a lease, or as in this case, a part thereof should not issue, it should issue a decision setting forth the reasons. Kenneth F. Cummings, 28 IBLA 73 (1976).

However, the file in the present case contains a memorandum from the State Director, directing the removal from the June 1977 simultaneous list of those lands, inter alia, in conflict with existing coal prospecting permits. The final paragraph of the memorandum states: "Additional information needs to be developed before a decision is made regarding conflicting oil and gas applications for lease

and/or their priority ranking with known coal resources." No such additional information, if any has been developed, has been included in the file, and apparently no such general policy has been enunciated. No general determination of the compatibility or feasibility of developing coal and oil and gas has apparently been made, although the formulation of such a policy is envisaged by the State Director's memorandum. We stated in Adrian Overton, 29 IBLA 66, 67 (1977), as follows:

The listing of lands as available for simultaneous oil and gas lease offers does not constitute a determination that such lands will, in fact, be leased. Rather, it merely indicates that BLM will accept offers to lease the land subject to a subsequent determination of whether a lease should be granted. See Stanley Ustan, 13 IBLA 89 (1973). Nevertheless, when, in its simultaneous filing procedures, BLM has solicited oil and gas lease offers for a parcel of land not otherwise withdrawn from leasing, and thereafter called upon the successful drawee for submission of the annual rental payment, subsequent rejection of all offers should not be lightly made. See Milan S. Papulak, 24 IBLA 278 (1976); Chevron Oil Company, 24 IBLA 159 (1976).

BLM should make the general policy determination concerning concurrent leasing of oil and gas and coal resources and set forth its reasons therefor prior to any action as to the subject lands not included in Appellant's lease, and act appropriately according to the general determination of policy. Until that time, the offer will be held in suspense as to the lands in issue.

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 is remanded to BLM for further consideration consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

