

D. L. PERCELL

IBLA 78-540

Decided October 20, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting oil and gas lease offers A 10360, A 10366-A10369, and A 10374.

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 recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

APPEARANCES: D. L. Percell, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

D. L. Percell has appealed from a decision dated June 30, 1978, by the Arizona State Office, Bureau of Land Management (BLM), rejecting the above-designated noncompetitive oil and gas lease offers covering parcels within the Lake Mead Recreation Area. 1/

1/ The offers are described as follows:

A 10360 T. 30 N., R. 21 W., GSR Mer., Arizona
sec. 15: All,
sec. 22: All,
sec. 27: All,
sec. 34: All. [2,560 acres]

Mineral leasing in the Lake Mead Recreation Area is authorized by the Act of October 8, 1964, 16 U.S.C. §§ 460n-3 (1970), which gives the Secretary of the Interior or his delegate full discretion to grant or reject lease applications. Rilite Aggregate Company, 26 IBLA 197 (1976); 43 CFR 3566.0-3.

The State Office decision cited the following portions of 43 CFR 3111.1-3(e)(4) pertinent to mineral leasing in the Lake Mead Recreation Area:

Excepted areas. Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(i) All lands within 200 feet of the center line of any public road * * *.

* * * * *

(iv) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA-L.M. 2297),

fn. 1 (continued)

- A 10366 T. 30 N., R. 20 W., GSR Mer., Arizona
 - sec. 1: Lots 1-4, S 1/2 N 1/2, S 1/2 (All),
 - sec. 12: All,
 - sec. 13: All. [1,920.08 acres]
- A 10367 T. 30 N., R. 19 W., GSR Mer., Arizona
 - sec. 4: All,
 - sec. 20: All,
 - sec. 21: All. [1,920 acres]
- A 10368 T. 30 N., R. 19 W., GSR Mer., Arizona
 - sec. 9: All,
 - sec. 16: All,
 - sec. 17: All,
 - sec. 18: Lots 1-4, E 1/2 W 1/2, E 1/2 (All).
[2,555.60 acres]
- A 10369 T. 30 N., R. 19 W., GSR Mer., Arizona
 - sec. 5: All,
 - sec. 6: All,
 - sec. 7: All,
 - sec. 8: All. [2,560 acres]
- A 10374 T. 30 N., R. 17 W., GSR Mer., Arizona
 - sec. 1: Lot 4,
 - sec. 2: All,
 - sec. 3: All,
 - sec. 10: Lots 1-4, N 1/2, SW 1/4,
 - sec. 14: W 1/2 [2,257.80 acres]

of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

BLM's rejection of the leases was based upon the recommendations of the National Park Service. The reasons are stated as follows in the decision appealed from:

A 10366 is within 200 feet of a public road (south end), and in full view of the public from Temple Bar access road.

A 10367 is within 200 feet of public roads, encompassing a public airplane landing strip, and within an accepted public use zone.

A 10368 is within 200 feet of public roads and in full view of a developed public use area.

A 10369 is within 200 feet of public roads, portions are within an excepted public use zone, and in full view of a developed public use area.

A 10374 is within 200 feet of a public road and within full public view from the South Cove-Pearce Ferry access road.

A 10360 - Although this tract does not come within the specific exceptions of 43 CFR 3111.1-3(e)(4), approval is not recommended due to the proximity of the four sections involved to a heavily used access road to Temple Bar and Bonelli Landing.

In his statement of reasons, appellant generally asserts that pursuant to the above-cited regulation over 13,000 acres of applied-for lands were rejected whereas only approximately 956 acres fall within the definition of excepted areas. Appellant points out that with respect to four of the lease offers - A 10366, A 10368, A 10369, and A 10374 only 48 acres, 67 acres, 96 acres, and 67 acres, respectively, fall within 200 feet of a public road. As to A 10367, appellant concedes that 640 acres fall within excepted areas and withdraws this portion of the offer, pointing out, however, that of the remaining 1,280 acres, only 38 fall within 200 feet of a public road. As to A 10360, appellant asserts that no specific reasons for rejection were cited in the decision and that the major portion of the four sections included in this offer are at least 1 mile from the cited access roads. Appellant asserts that use could be made of protective stipulations in leasing those lands within public view.

[1] While the recommendations of the National Park Service are important factors in considering whether or not to lease mineral or Park Service lands, we do not believe that they provide a sufficient basis for rejecting in their entirety the lease offers here filed. Part (i) of the regulation relied on precludes only those lands from leases which are within 200 feet of the center line of any public road. Accordingly, we believe that only those 40-acre parcels so situated should be excluded from any prospective lease. Part (iv) of the regulations excepts "concentrated public use area[s]" or areas of "outstanding recreation significance as designated by the Superintendent on the map (NRA-L.M. 2297, of Lake Mead Recreation Area." Only two of the lease offers rejected - A 10367 and A 10369 - are stated in the decision as being within such areas. Four of the offers - A 10366, A 10368, A 10369, and A 10374, are stated as being "within view" of public use areas. The regulation, however, does not proscribe leasing in the event of this circumstance. Nor is the reason given for rejection of A 10360 - proximity to heavily used access roads - listed anywhere in the regulation as a proscription to leasing.

While those portions of the lease offers falling within excepted areas are properly excluded from leasing, the decision does not state the quantity of land so situated, nor does it cite compelling reasons justifying the rejection of the considerable remaining acreage. It is also not stated what proportion of the lands are concentrated public use areas or whether such areas were in fact designated on the map of Lake Mead Recreation Area pursuant to part (iv) of the regulation.

We conclude that it was error to reject the offers in their entirety for the reasons given. Each offer should be carefully reconsidered to see if there are reasons more particularly applicable to the lands applied for which are not within excepted areas. Cf. Robert R. Wahl, 28 IBLA 305 (1977). The perimeters of those lands within excepted areas should be clearly set forth.

We set the decision aside and remand the case for further consideration. On remand, BLM should amplify its reasons for rejecting the sought lands and/or determine whether leasing of lands not in excepted areas with protective stipulations is appropriate.

Accordingly, 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 the case remanded for further consideration consistent with this opinion.

Frederick Fishman
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

