

ROBERT W. DAVID

IBLA 78-624
IBLA 78-634

Decided April 16, 1979

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting offers to lease for oil and gas. N 15953, N 15954, N 15955.

Decisions set aside; cases remanded.

1. Administrative Practice—Oil and Gas Leases: Generally

It is proper to set aside a decision which raises questions concerning the facts asserted by BLM in rejecting an oil and gas lease offer, and to remand the case to BLM for further review and consideration of appellant's allegations.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert W. David appeals from two decisions of the Nevada State Office, Bureau of Land Management (BLM), dated August 1, 1978, and August 7, 1978, respectively, rejecting offers to lease for oil and gas N 15953 and N 15955 in part and offer to lease for oil and gas N 15954 in its entirety.

On December 13, 1976, appellant submitted to the Nevada State Office, BLM, three distinct offers to lease for oil and gas involving the following lands in Elko County, Nevada:

N 15953 T. 28 N., R. 58 E., Mount Diablo meridian

Sec. 9: E 1/2 W 1/2, SE 1/4, SW 1/4 SW 1/4

Sec. 16: N 1/2
Sec. 23: NW 1/4
Sec. 25: All
Sec. 36: All

N 15954 T. 29 N., R. 58 E., Mount Diablo meridian

Sec. 13: Lots 1, 2, 3, E 1/2 SE 1/4, SW 1/4 SE 1/4
Sec. 24: NE 1/4 SW 1/4
Sec. 26: Lots 1, 2, 3, SE 1/4 SE 1/4
Sec. 12: All
Sec. 13: Lots 2, 3, 4, 5, 6, 7, 8, W 1/2 NE 1/4,
NW 1/4 SE 1/4, NW 1/4, N 1/2 SW 1/4

Thereafter on August 1, 1978, the State Office rejected offer N 15954 in its entirety. On August 7, 1978, the following portions of offers N 15953 and N 15955 were rejected: 1/

N 15953 T. 28 N., R. 58 E., Mount Diablo meridian

Sec. 9: SE 1/4, E 1/2 NW 1/4, NE 1/4 SW 1/4
Sec. 16: NE 1/4

N 15955 T. 28 N., R. 58 E., Mount Diablo meridian

Sec. 2: Lots 1, 2, 3, 4, 5, S 1/2 N 1/2, N 1/2 S 1/2,
SE 1/4 SW 1/4, S 1/2 SE 1/4
Sec. 3: Lots 1, 2, 3
Sec. 12: W 1/2
Sec. 13: NW 1/4

The reasons for BLM's rejection of appellant's offers are set forth in substantially identical terms in each decision:

1/ The decision of August 7, 1978, also rejected appellant's offer to lease N 15958. This offer involved 80 acres in N 1/2 SW 1/4, section 22, T. 16 N., R. 67 E., Mount Diablo meridian. BLM rejected this offer, because the oil and gas rights thereto were retained by its former private owner upon reconveyance to the United States.

[Lands sought by appellant] have been identified in the Elko Environmental Analysis Record (EAR) as an Ecological Area [2/] (Franklin Lake), and the EAR recommends no leasing to protect these values. The Franklin Lake area is of importance because of the following:

1. Ninety percent of the duck production that occurs in the Franklin Lake-Ruby Marsh complex occurs in the Franklin Lake-Marsh.
2. Sandhill cranes and whooping cranes utilize the area.
3. One percent of the nesting pairs of canvasback ducks in North America nest in the Franklin Lake-Ruby Marsh complex.
4. It is anticipated that the area will be managed for waterfowl if and when it is acquired by the Fish and Wildlife Service.
5. The "John Work-J. C. Fremont, 1843" historical trail runs between Franklin Lake and the Ruby Mountains.

In his statement of reasons for appeal, appellant has requested that we consolidate his appeals from the BLM decisions of August 1, 1978, and August 7, 1978. We grant this request because of the similarity of the facts and issues of law.

On appeal, David disputes a number of facts relied upon by BLM:

1. Whether duck production in the Franklin Lake-Marsh is as high as ninety (90%) percent of the duck production in the Franklin Lake-Ruby Marsh complex;
2. Whether whooping cranes utilize the area;
3. Whether the nesting pairs of canvasback ducks in the Franklin Lake-Ruby Marsh complex constitute as much as one 1% of the nesting pairs of canvasback ducks in North America;

2/ The term "ecological area" has not been defined by BLM. We note that section 103(2) of the Federal Land Policy and Management Act of 1976 (FLPMA), defines the term "area of critical environmental concern" to mean "areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards."

4. Whether the Franklin Lake area is likely to be acquired by the Fish and Wildlife Service for waterfowl; and

5. Whether expeditions by John Work or J. C. Fremont ever travelled through the Ruby Valley, and if so, whether any physical evidence of these expeditions exists to provide a basis for BLM's rejection of appellant's offers.

BLM did not file a pleading in response to appellant's statement of reasons, and hence the questions posed by appellant remain unanswered.

It seems proper to remand these cases to BLM to review the questions raised in the appeal and thereafter to determine if oil and gas leasing may be permitted on the lands heretofore rejected from the subject offers by issuance of:

(1) Special stipulations for protection of special values, if any, in the lands (which values must be set forth accurately and in detail); or,

(2) Lease provisions prohibiting use or occupancy of the surface of the lands if special values exist and cannot be protected by stipulations.

If BLM determines that no oil and gas lease should be issued on any of the disputed lands, positive reasons, supported by the record, must be given.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are set aside and the cases remanded to the State Director for Nevada for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

