

ROBERT P. KUNKEL

IBLA 78-631

Decided May 31, 1979

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N 16050.

Vacated and remanded.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act.

2. Oil and Gas Leases: Stipulations

The Bureau of Land Management may require the execution of special stipulations to protect environmental and other land use values when deciding to issue a lease.

APPEARANCES: Robert P. Kunkel, pro se.

OPINION OF ADMINISTRATIVE JUDGE BURSKI

Robert P. Kunkel appeals from the July 26, 1978, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer N 16050. 1/ BLM rejected appellant's offer for the following reasons:

The subject lands are located in the vicinity of the Echo Bay Resort and Rogers Spring areas. Section 1 is

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1/ The lands subject to the lease offer are situated in Clark County, Nevada and constitute all of secs. 1, 24, 25, and 36, of T. 18 S., R. 67 E., Mount Diablo meridian.

within 1/2 mile of Blue Point Spring (hot water), an area proposed for an endangered fish refuge. Section 24 is within 1/4 mile of a spring, within 1/8 mile of Lake Mead overlooking Rogers Bay and within 1/4 mile of Northshore Road, the only access road into the area. Both sections are within view of visitors traveling between the Echo Bay and Overton Beach Resort areas and visitors are afforded outstanding scenic vistas of the desert and views of Lake Mead along this route. Due to the potential detrimental effect on high scenic values, the close proximity to the lakes and springs, the National Park Service feels the development of this oil and gas lease would be inconsistent with the proper management of the recreation area and recommends no leasing. This office concurs in NPS's recommendation.

Appellant asserts to the contrary that potential drilling sites in the south half of section 1 are completely obscured from Lake Mead visitors by more than 600 feet of topographic relief. Also, in the other three sections, 300 feet of topographic relief make it possible to locate drilling rigs or oil field equipment so that they would not be seen from the highway or Lake Mead. Appellant claims that section 1 is "dry and barren with absolutely no water of any kind" and that there is no geologic or topographic relationship of the section to the proposed endangered fish refuge. In addition, appellant suggests that it is inconsistent with the national energy problem and the multiple use concept of public domain lands "to withdraw lands from oil and gas exploration just because of proximity to a scenic view," when the view could be preserved by proper stipulations.

[1] The Secretary of the Interior, through his duly authorized representative, BLM, has the authority to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the general mining and mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4 (1963); James O. Breene, Jr., 38 IBLA 281 (1978); Dell K. Hatch, 34 IBLA 274 (1978); L.A. Idler (Supp.), 28 IBLA 8 (1976); Cartridge Syndicate, 25 IBLA 57, 58 (1976); Rosita Trujillo, 21 IBLA 289 (1975); Richard K. Todd, 68 I.D. 291, 295-96 (1961), aff'd sub nom. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

The Board has held that BLM may refuse to issue a lease, provided that it sets forth its reasons for doing so, and provided that the background data and facts of record support the conclusion that the refusal is required in the public interest. Cartridge Syndicate, supra at 59. Where the record describes a devotion of land to a public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue the lease will be

affirmed in absence of compelling reasons for its modification or reversal. Duncan Miller, 31 IBLA 371 (1977); Duncan Miller, 31 IBLA 351 (1977); Duncan Miller, 30 IBLA 350, 352 (1977); L. A. Idler (Supp.), *supra* at 10; Rosita Trujillo, *supra* at 291.

BLM has rejected appellant's lease offer on the basis that issuance of an oil and gas lease on the subject lands would be inconsistent with the area's scenic and recreational use as well as potentially detrimental to the area's lakes and springs and, in particular, to a proposed nearby endangered fish refuge. The record indicates that BLM's rejection was based solely on a report of the National Park Service. That report confirms that there may be valid reasons for refusing to issue a lease for sections 1 and 24, two of the four sections in appellant's offer. However, we find that the points made by the appellant in his statement warrant consideration and there is nothing in the record which reasonably rebuts those points.

[2] Appellant suggests that it may be possible to eliminate any adverse impact on scenic and recreational uses in this instance by the imposition of special stipulations. BLM has the authority to require the execution of special stipulations to protect environmental and other land use values when deciding to issue a lease. Dean W. Rowell, 37 IBLA 387, 389 (1978); Questa Petroleum Co., 33 IBLA 116, 118 (1977); Vern K. Jones, 26 IBLA 165 (1976); 43 CFR 3109.2-1. As we noted in Stanley M. Edwards, 24 IBLA 12, 18 (1976), "[c]omplete rejection of a lease offer is a more extreme measure than the most stringent stipulation." BLM should have considered whether leasing subject to clear and reasonable stipulations would have been sufficient to protect the public interest concerns raised by the Park Service. The record here does not reflect any such consideration by BLM.

BLM also does not appear to have given any consideration to the merits of leasing sections 25 and 36, since neither the Park Service report nor BLM's rejection letter specifically addresses those sections. Clearly, therefore, BLM has not provided the necessary background data and reasons to support its decision to reject appellant's lease offer as to sections 25 and 36.

For these reasons, we consider it necessary to remand this case for readjudication based on a fuller consideration of the competing interests involved in the issuing of an oil and gas lease for these lands. 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 vacated and remanded for further consideration consistent with this opinion.

James L. Burski  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Douglas E. Henriques  
Administrative Judge

