

Editor's note: Reconsideration denied by order dated Nov. 21, 1979

R. C. HOEFLE

IBLA 79-33

Decided June 22, 1979

Appeal from decisions of Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offers I-10961, etc.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, and the regulations issued pursuant to that Act, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease. The Secretary, through BLM, his duly authorized representative, may reject any offer to lease public lands for oil and gas upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. When the land, situated in Hell's Half Acre, has geological, ecological, scenic, and recreational values and is under study for its wilderness potential, and where BLM recommends that the lands not be leased pending further studies of the area, rejection of the lease offer will be affirmed, in the absence of compelling countervailing reasons.

APPEARANCES: Raymond K. Peete, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

R. C. Hoefle appeals from seven decisions of the Idaho State Office, Bureau of Land Management (BLM), dated October 6, 1978,

rejecting oil and gas lease offers I-10961, I-10990, 1/ I-10992, I-10993, I-10994, I-10995, I-10996 for the following reasons: "The land is within 'Hell's Half Acre' which has been formally designated as a 'Landmark'. Geological, ecological, scenic and primitive [sic] recreation natural values of the site are to be preserved as far as possible."

In his statement of reasons, Hoefle contends that the decisions based on the above-stated reason that the lands are within "Hell's Half Acre" which has been formally designated as a "Landmark," are invalid on the following grounds:

(1) Neither the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, nor the regulations in 43 CFR Part 3100 authorizes the rejection of an offer to lease for this specified reason.

(2) National natural landmarks are administered by the Heritage Conservation and Recreation Service which has no authority to recommend the rejection of offers to lease because of such "landmark" designation.

(3) The decisions were primarily as a result of decisions made by the BLM District Office, Idaho Falls, Idaho, presumably after consulting with the Heritage and Recreation Service, and the District Office does not have authority to reject leases, but only to make recommendations to the State Office, which does have the authority to reject leases.

[1] The Secretary of the Interior, through BLM, his duly authorized representative, 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. James O. Breene, Jr., 38 IBLA 281, 282 (1978); Dell K. Hatch, 34 IBLA 274, 275 (1978); L. A. Idler (Supp.), 28 IBLA 8 (1976); Cartridge Syndicate, 25 IBLA 57, 58 (1976); T. R. Young, Jr., 20 IBLA 333, 335 (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). As the Supreme Court noted in Udall v. Tallman, 380 U.S. 1, 4 (1965):

The Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1958 ed.), gave the Secretary of the Interior broad power to issue oil and gas leases on public lands not within any known geological structure of a producing oil and gas field. Although the Act

1/ This appeal does not concern that portion of the decision in I-10990 wherein the offer was rejected in part because the mineral rights in the land are not owned by the United States.

directed that if a lease was issued on such a tract, it had to be issued to the first qualified applicant, it left the Secretary discretion to refuse to issue any lease at all on a given tract. United States ex rel. McLennan v. Wilbur, 283 U.S. 414. [Emphasis supplied.]

43 CFR 3101.1-1 emphasizes the discretionary authority of the Secretary as follows: "All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior." (Emphasis supplied.)

Thus the Secretary, through BLM as his delegate, is authorized by both the Mineral Leasing Act, supra, and the regulations issued pursuant to that Act, to refuse to issue an oil and gas lease. 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. James O. Breene, Jr., supra at 283; Dell K. Hatch, supra.

In a memorandum dated August 3, 1978, to the State Director, the District Manager, Idaho Falls, set forth reasons for recommending that the lands in issue not be leased:

Forty four thousand acres of the Hell's Half Acre lava flow have been designated a "National Natural Landmark" because of the geological and ecological values. In addition, the flow contains outstanding scenic and primitive recreation values and is under study for its wilderness potential. When BLM agreed to have the site formally designated as a "Landmark", we assumed the responsibility to manage the area so as to "preserve, in so far as possible, the significant natural values contained in the site".

Therefore, we feel that the lands within the National Landmark should not be leased until BLM's Wilderness Review Process is completed and the U.S. Congress has included this special area in the National Wilderness Preservation System or returned it to multiple use management. [Emphasis in original.]

Where the record describes a devotion of the 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 the absence of compelling reasons for its modification or reversal. James O. Breene, supra; Dell K. Hatch, supra; Rosita Trujillo, 21 IBLA 289, 291 (1975); Jack E. Griffin, 7 IBLA 155-57 (1972). Appellant has offered no such reasons.

Appellant's contention that the decisions were primarily the decisions of the District Manager who does not have the authority to reject the lease offers is without merit. The District Office did not reject the lease offers. The State Office issued the decisions rejecting the leases, based on the recommendation of the District Office. This procedure was proper.

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 affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the opinion, but would hope that in the near future a procedure will be promulgated whereunder the property may be made available for leasing subject to appropriate surface protective restrictions.

Joseph W. Goss
Administrative Judge

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