

FRANCES H. RODKE

IBLA 81-87

Decided March 4, 1981

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting oil and gas lease offer A 14597 in its entirety.

Affirmed in part; reversed in part and remanded.

1. Oil and Gas Leases: Acreage Limitations -- Oil and Gas Leases: Discretion to Lease

The Secretary may, in his discretion, reject any 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a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. When the Secretary determines not to lease a certain area for oil and gas and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Where BLM rejects an isolated 15-acre tract for oil and gas because of its relatively small size, such decision will be reversed as arbitrary and capricious.

APPEARANCES: Frances H. Rodke, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frances H. Rodke appeals from the Arizona State Office, Bureau of Land Management (BLM), decision of September 26, 1980, which rejected her noncompetitive oil and gas lease offer A 14597 in its entirety for the reason that all but 15 acres described in the offer are within the corporate limits of the city of Tombstone and so are not subject to oil

and gas leasing under the Mineral Leasing Act, 30 U.S.C. § 226 (1976), and for the additional reason that it would be contrary to BLM practice to issue a lease for the remaining isolated tract of 15 acres.

Appellant concedes the correctness of the rejection of the lands within the corporate limits of the city of Tombstone, but argues for issuance of a lease for the isolated 15-acre tract on the presumption that the lease could be unitized with other Federal lands in the area to form an exploratory drilling block.

We are unaware of any Departmental policy of refusing to issue oil and gas leases on small areas of public land. Case law would seem to support the proposition that each case is to be disposed of according to its circumstances. Thomas D. Chace, 72 I.D. 266, 268 (1965), and cases cited therein.

[1] It is well-settled law that if an oil and gas lease is to be issued for a particular tract of public land, it must be issued to the first qualified applicant. Nevertheless, the Department has plenary discretion to refuse to issue any lease at all for such tract. Udall v. Tallman, 380 U.S. 1, 4, (1965), rehearing denied, 380 U.S. 989 (1965). The filing of an oil and gas lease offer does not generate any legal interest, Duesing v. Udall, 350 F.2d 748, 750 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966), other than the preference right accorded the first qualified applicant. And even though the offeror is the first qualified applicant, the Department retains its discretion to reject his application. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960).

The Secretary may, in his discretion, reject any 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 from leasing under the Mineral Leasing Act. Pinnacle Mining and Exploration Co., Inc., 28 IBLA 249 (1976); Cartridge Syndicate, 25 IBLA 57 (1976).

When the Secretary determines not to lease a certain area for oil and gas, and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Jack E. Griffin, 7 IBLA 155 (1972). The Department may, in its discretion, reject offers to lease public lands for oil and gas, but such rejections must be based upon facts of record and background data indicating that leasing would be contrary to the public interest. Placid Oil Co., 44 IBLA 209 (1979).

Review of the oil and gas plats for the area surrounding the isolated 15-acre tract in sec. 1, T. 20 S., R. 22 E., Gila and Salt River meridian, indicates that the public land is almost entirely under

lease for oil and gas. It has not been shown, on the record, that issuance of a lease on the 15-acre parcel would be contrary to the public interest. Rather, it appears that refusal to issue an oil and gas lease for the tract is arbitrary and capricious. That holding must be reversed.

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 reversed insofar as it rejected the offer to lease for the 15-acre tract in sec. 1, T. 20 S., R. 22 E., and the case is remanded for further action consistent with the views expressed in this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

