

JAMES M. CHUDNOW

IBLA 82-437

Decided April 27, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offer. U-47685.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James M. Chudnow appeals from a decision dated December 24, 1981, of the Utah State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer U-47685. The decision states:

Part of the lands applied for under the subject oil and gas offer are within the Interstate 70 visual corridor. The environmental analysis now identifies the following-described lands as having outstanding resource values incompatible with oil and gas leasing.

T. 22 S., R. 11 E., SLM, Utah
Sec. 24, S 1/2 S 1/2.

The Interstate 70 visual corridor through the San Rafael Swell has been identified as having scenic and archaeological values such as pictographs and petroglyphs. The corridor has been recommended for withdrawal from all forms of entry, including mineral leasing. The natural, unintruded appearance of the area is an outstanding feature. Recreation-use figures and estimates indicate nearly 540,000 visits occur yearly for sightseeing from

the seven overlooks in the corridor. The open-space quality of this area is highly significant; "wilderness" lies just off the roadside.

Some types of geological materials such as fossils may be collected and removed even though it may be illegal. Increased accessibility as a result of oil and gas roads and trails would contribute to removal or vandalism of the values. Road construction, seismic activity, drilling, development or production would be a serious impact and would result in the loss of primitive values at Mexican Mountain.

The important resource in the I-70 corridor is the scenic value which can be enjoyed by the casual traveler as he passes through relatively untouched areas. If any of the phases of oil and gas development were to take place in this corridor, the scars of the activity would be visible for many years. If it were necessary to build an oil and gas access road in the corridor, it might lead to the opening of new trails and paths by careless individuals. These paths could be susceptible to erosion and deep lasting scars could result.

For these reasons BLM rejected the offer as to the above lands.

In the statement of reasons appellant suggests that leasing subject to stipulations rather than outright rejections might be appropriate for the acreage.

[1] The Secretary of the Interior has full discretion to refuse to issue any lease at all on a given tract. Udall v. Tallman, 380 U.S. 1 (1965). As the Secretary's delegates, officers of BLM are justified in the exercise of such discretion to preserve endangered species, other wildlife, aesthetic, or scenic values. Carol Lee Hatch, 50 IBLA 80 (1980).

A decision of BLM refusing to issue a lease will be upheld provided it sets forth the reasons for doing so and provided the background data and facts of record support the conclusion that the refusal is required in the public interest. Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981); Robert P. Kunkel, 41 IBLA 77 (1979); see Cartridge Syndicate, 25 IBLA 57 (1976). No weight is attached to conclusory declarations of what is required in the public interest where supporting data are not submitted. See James O. Breene, Jr. (On Reconsideration), 42 IBLA 395, 399 (1979).

The record in the case before us contains excerpts from a document entitled "Draft Environmental Assessment Supplement On Operational Revision Of The Oil and Gas Categories For The Moab District." This document evaluates the scenic resource of the lands in question as follows:

Prior to completion of Interstate 70 across the San Rafael Swell, this area was accessible only by unimproved dirt roads and

was not visited extensively by the public. Today, in excess of 600,000 people yearly view the outstanding scenery that can be found along I-70 as it crosses the San Rafael Swell. Outstanding scenery varies from the sawtooth ridged San Rafael Reef on the east across grass covered flats with sandstone mesas and pinnacles on each side of the road. The western portion of this corridor is characterized by brilliant reds and browns. As the Interstate nears the Muddy Creek crossing, the open space quality of the area is highly significant. "Wilderness" lies just off the roadside.

In building this section of Interstate 70, the Utah State Highway Department, in recognition of the high scenic values, went to considerable expense in the construction of seven scenic overlooks to highlight the visual values that can be seen. These roadside developments overlook the Mexican Mountain and Sid's Mountain areas, as well as the deep Eagle Canyon and Ghost Rocks vicinities.

The Lone Warrior pictograph lies within this corridor, along with many other pictographs and petroglyph sites. The natural, unintruded appearance of this area is one of its most outstanding features.

In considering the protection of this visual corridor, the interdisciplinary team considered all available special stipulations and concluded that only a combination of no surface occupancy and suspended or no lease categories could adequately protect the tremendous investment in this scenic highway, as well as the natural features that can be viewed. It was felt that it would be in violation of the extensive planning that has gone into this development to intrude it with oil and gas developments next to the highway. It was felt that both the scars created by the development, and the physical structures themselves would intrude so significantly as to detract from the primary views that they could not be mitigated sufficiently.

As with other areas in the San Rafael Swell, no oil and gas development occurs, nor are there any Known Geological Structures. However, the area is viewed as having potential oil and gas resources. Based on current knowledge and interest in the area, protection of the corridor with the no surface occupancy and suspended or no lease categories would have little impact on domestic oil and gas production.

(Document at 26-27).

The record also contains excerpts from the Price District Oil and Gas Environmental Analysis Record of August 15, 1975, which extol the scenic, archaeological, and primitive values of Mexican Mountain and Sid's Mountain. It refers to the Interstate 70 corridor as an outstanding scenic area with large recreational use and potential.

These excerpts show that leasing the area subject to stipulations was considered, but was rejected, based on the determination that the scenic resource could not withstand the intrusions.

We conclude, based on our review of the record, that BLM properly refused to issue the lease as to the lands in question for reasons of the public interest.

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.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

