

**Editor's note: Reconsideration granted, BLM decision set aside -- See Rachalk Production, Inc. (On Reconsideration), 71 IBLA 360 (March 28, 1983)**

RACHALK PRODUCTION, INC.

IBLA 82-511

Decided July 12, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 49417.

Affirmed in part; set aside and remanded in part.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

APPEARANCES: K. Donelson Foose, Esq., Rachalk Production, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Rachalk Production, Inc., appeals from the January 19, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting noncompetitive over-the-counter oil and gas lease offer U 49417. The land covered by the lease offer was listed as: "T 34 S, R 12 E; Salt Lake Meridian; All of sections 25, 26, 27, 28, 33, 34, and 35. Total area: 4,480.00 Acres."

In rejecting the land covered by the lease offer, BLM stated in the decision that:

All of the lands applied for under the subject oil and gas offer are within the proposed Little Rockies primitive area. The area is presently in a natural state. Within it are vast areas

of slick rock, steep canyons, mountain peaks, and lands bordering Lake Powell. The present use of the area is mainly for recreation and livestock grazing.

Approximately one-half of the proposed primitive area lies within the Glen Canyon Recreation Area. The Glen Canyon Master Plan indicates that this area is being considered for wilderness proposal. Much of the recreation pressure experienced now is from the National Recreation Area. People travel up from the flooded canyons and camp. Many hiking trips have been routed into the Little Rockies from the access source. The Park Service has expressed interest and support for this proposal since it will provide an effective buffer for the National Recreation Area. They have also proposed initiating shuttle boat trips from Hite or Bullfrog to the backs of Little Rockies so people can hike the canyon bottoms.

BLM also noted that this area provides habitat for bighorn sheep.

The case record contains excerpts from an oil and gas environmental analysis record (EAR) which had been prepared for the BLM Richfield District together with oil and gas plats on which BLM encircled the areas sought by appellant and noted that the areas were within the "Little Rockies."

On appeal appellant states that: "[I]n fact, parcels of the lands applied for on subject lease application lie outside of the boundaries of the Little Rockies Primitive Area. \* \* \* Because said lands do lie outside of this designated primitive area they are therefore available for oil and gas mineral leasing."

Appellant attached a list of those lands it asserts are outside of the primitive area. It describes those lands as:

1)	Section 28	All	640.00
2)	Section 27	W 1/2	320.00
3)	Section 33	NW 1/4	<u>160.00</u>
			1,120.00

Appellant does not contest the rejection as to the other 3,360 acres in its offer, therefore, that part of BLM's decision is affirmed.

The basis for BLM's rejection of the lease offer is the EAR. The EAR is dated May 20, 1975. While the EAR refers to the Little Rockies as a proposed primitive area, there is no map in the case file showing the extent of that proposed primitive area. Subsequent to the preparation of that EAR, the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976), was enacted. Section 603(a) of FLPMA directed the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976).

Pursuant to that mandate BLM in Utah conducted inventories and designated certain areas wilderness study areas (WSA). See BLM Intensive Wilderness Inventory, Final Decision on Wilderness Study Areas, Utah November 1980. Page 211 of that decision relates to the Little Rockies WSA. The Little Rockies unit, UT-050-247, contained 66,600 acres. The decision announced that of that acreage 38,700 acres were being designed a WSA. The maps accompanying this WSA decision indicate that the 1,120 acres described on appeal by appellant are outside the boundaries of the Little Rockies WSA. However, this does not lead inescapably to the conclusion that these lands must be leased.

[1] Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1960). Accordingly, the Secretary 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 mineral leasing laws. Id. However, a decision to refuse to lease land must be supported by facts of record that the refusal is required in the public interest. Tucker and Snyder Exploration Co., Inc., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

In this case we cannot discern from the record whether the justification given by BLM for refusing to lease specifically refers to the lands involved in this appeal. Therefore, we will set aside the decision as it relates to those lands and remand the case for a determination by BLM of whether a lease may issue for those lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed, except for that part which rejected the offer for the W 1/2 sec. 27, all of sec. 28, and the NW 1/4 of sec. 33. That part is set aside and the case is remanded for action consistent with this decision.

Bruce R. Harris  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

