

GREAT WHITE, INC.

IBLA 82-505

Decided July 13, 1982

Appeal from separate decisions of the Utah State Office of the Bureau of Land Management rejecting noncompetitive lease offers U-47632 and U-47704.

Affirmed.

1. 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 upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has accomplished an oil and gas environmental analysis which supports the rational conclusion that leasing would be detrimental to its efforts to manage the lands for recreational, scenic, and wildlife values, rejection of the lease offer will be affirmed.

APPEARANCES: Steven H. Findeiss, president, Great White, Inc.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Great White, Inc., has appealed from the separate decisions of the Utah State Office of the Bureau of Land Management (BLM) rejecting noncompetitive oil and gas lease offers U-47632 and U-47704. The subject lands are situated in BLM's Richfield District, in Garfield County, Utah, and comprise part of the proposed Little Rockies Primitive Area. The two lease offers embrace 11,348 acres.

In rejecting the offers BLM stated in part:

[A]n oil and gas environmental analysis has been prepared for lands within the area administered by the Richfield District Office, Bureau of Land Management.

The proposed Little Rockies primitive 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.

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Bighorn Sheep is one of the nation's most sought after big-game animals. These animals require solitude and low human disturbance to survive, and there are very few places left in Utah or the nation which meet the criteria needed for a productive Bighorn Sheep herd.

The Little rockies area is remote, comparatively roadless and for the most part lacks man-caused disturbance. These factors are ideal for reestablishment of Bighorn Sheep. Also, this area was historically the home of this animal. Oil and gas activities could impact the area so that the habitat would be unsuitable for reintroduction or survival of the sheep.

In its appeal, Great White, Inc. (appellant), argues that an earlier "lease category system" employed by BLM in this district was violative of the (unspecified) mandate of Congress that an environmental assessment "weigh the merits of both leasing and refusing to lease." Therefore, says appellant, the fact that when BLM subsequently accomplished its oil and gas environmental analysis report (EAR) the lease category plats remained "essentially unchanged by the results" indicates that the EAR "did not make a serious evaluation of potential oil and gas benefits, and thus merely rubber-stamped the earlier set of leasing decisions." Appellant asserts that the EAR is therefore inadequate, "and BLM's refusal to grant a lease is thus contrary to statute as provided in FLPMA [Federal Land Policy and Management Act] and the Final Wilderness Management Plan."

We are unable to find that appellant's assumptions that BLM did not evaluate the potential for oil and gas production or weigh the benefits of

such potential production are well founded. The object of the oil and gas EAR is stated in the initial paragraphs, wherein it is assumed, for purposes of the analysis, the possibility of each lease reaching full production, while recognizing that on a nationwide basis fewer than 10 percent of the Federal oil and gas leases achieve production. The geologic setting for petroleum occurrence was detailed in the Draft Environmental Impact Statement and summarized as Appendix A of the EAR. The participating staff who compiled the EAR included a geologist. At page 129 the EAR notes that, "the District's current contribution to the nation's oil and gas demands is less than 10 barrels per day," but acknowledges that there are geologic structures within the district which may have oil and gas resources. The impact of oil and gas activities on the other land and resource values is considered at length, and the conclusion reached that, as to these particular lands, oil and gas leasing would not comport with the public interest.

Appellant argues that the EAR "implicitly assumes that there is no way to extract oil and gas without noticeable, permanent damage to the environment, and that this assumption, while correct when oil was priced at less than a dollar per barrel, is no longer correct today, thus bringing into question all of the EA's conclusions about the negative effects of oil and gas leasing."

Although appellant invokes the question, it makes no effort to respond to it. Appellant does not deny the existence of the other resource values deemed worthy of protection, nor does it make any effort to explain how and why the conclusion that these values would be diminished by oil and gas activities is wrong. Moreover, it does not point to any language in the decisions below or in the EAR which reaches the conclusion that oil and gas extraction would effect "permanent damage to the environment"; and we find no such assertion.

It has been well established that the Secretary of the Interior, through his authorized representative, BLM, has the discretion 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 (1965); United States v. Wilbur, 283 U.S. 414 (1930); Burglin v. Morton, 527 F.2d 486 (9th Cir. 1976); Great White, Inc., 65 IBLA 207 (1982). This discretion may be exercised in favor of such considerations as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); Carol Lee Hatch, 50 IBLA 80 (1980); R. C. Hoefle, 41 IBLA 174 (1979); Rosita Trujillo, 21 IBLA 289 (1975).

Appellant has provided little more than unsubstantiated argument that the EAR was inadequate and that BLM's decisions were therefore contrary to law. However, we conclude that the delegated discretionary authority of the Secretary was exercised in these cases on a rational basis, and that BLM's action was not arbitrary, capricious, an abuse of discretion, or is in disregard of applicable law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge

