

RACHALK PRODUCTION, INC.

IBLA 82-290

Decided October 21, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulation and rejecting in part oil and gas lease offer U-49407.

Affirmed in part; set aside and remanded in part.

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

A determination by BLM refusing to issue an oil and gas lease on the ground that the lands applied for are within outstanding natural areas will be set aside and remanded for clarification where BLM's declarations as to the public interest are conclusory and where the record indicates that approximately half the lands rejected may not actually lie within areas of outstanding environmental values.

APPEARANCES: K. Donelson Foose, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated November 23, 1981, by the Utah State Office, Bureau of Land Management (BLM), requiring the acceptance of a no-surface occupancy stipulation and rejecting in part noncompetitive oil and gas lease offer U-49407.

The offer described 5,463.06 acres in T. 35 S., R. 5 E., Salt Lake meridian, Utah:

sec.

3	ALL
4	Lot #1; Lot #2; Lot #3
10	ALL
11	W 1/2; NE 1/4; W 1/2 SE 1/4; SE 1/4 SE 1/4
13	N 1/2 NW 1/4; W 1/2 SW 1/4; SE 1/4 SW 1/4

sec.	
14	ALL
15	ALL
22	E 1/2
23	W 1/2; SE 1/4; NE 1/4 NE 1/4
26	S 1/2; S 1/2 NW 1/4; NE 1/4
27	E 1/2 SE 1/4
34	N 1/2 NW 1/4; NE 1/4 NE 1/4
35	W 1/2; W 1/2 E 1/2

The decision states that the lands applied for are within the North-Escalante Canyon and The Gulch Outstanding Natural Areas. As to sec. 34, NE 1/4 NE 1/4 and sec. 35, W 1/2 E 1/2, SW 1/4, the decision conditioned issuance of a lease on execution of a no-surface occupancy stipulation. Appellant, in the statement of reasons, states that it does not wish to appeal that part of the decision, and that it is willing to accept the stipulation. Therefore, these lands are not at issue in the appeal, and this part of the decision is affirmed.

The decision rejected the offer to lease as to the majority of the lands applied for on the ground that the resource values of the lands were incompatible with oil and gas leasing. It described these values as follows:

The North-Escalante Canyon and The Gulch Outstanding Natural Areas were given special designation under 43 CFR 2071.1(b)(1) in December 1970, to maintain scenic splendor and natural condition. The areas are made up primarily of the drainages of the Escalante River. They are nearly roadless and contain few trails along the Escalante drainage and few livestock trails leading to the higher mesa tops. The canyon walls are highly colored and the erosion within the channel has sculptured out many interesting rock formations and meanders which are interesting to the increasing number of backpackers visiting the areas. Several clear perennial streams flow within the areas. The areas are essentially free from man's influence and are essentially the same as it was 100 years ago. The Escalante River and its side drainages qualify for study for possible inclusion within the Wild and Scenic River system. The areas are one of the most popular primitive hiking areas in the district.

Much of the pristine and primitive condition of the areas would be lost through oil and gas operations. Visual scars would remain long past exploration or operative periods in slick rock areas. Existing vegetation would be damaged or destroyed and would be especially damaging to riparian vegetation in the canyon bottoms. Existing archaeological values could be lost and the visual quality of the highly scenic area would be reduced. Values within the Glen Canyon National Recreation Area could be damaged as this area borders the National Resource Area.

The decision lists the following described lands as those incompatible with oil and gas leasing:

T. 35 S., R. 5 E., SLM, Utah
 Sec. 3, all;
 Sec. 4, lots 1-3;
 Sec. 10, all;
 Sec. 11, N 1/2, SW 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4;
 Sec. 14, and 15, all;
 Sec. 22, E 1/2,
 Sec. 23, NE 1/4 NE 1/4, W 1/2, SE 1/4;
 Sec. 26, NE 1/4 S 1/2 NW 1/4, S 1/2;
 Sec. 27, E 1/2 SE 1/4;
 Sec. 35, NW 1/4

Appellant's position on appeal is that over half the lands applied for lie outside the outstanding natural areas. Appellants' exhibit A purports to describe the lands so situated, totaling 2,883.06 acres.

Appellant asserts that the E 1/2 of sec. 22 as well as parts of secs. 10 and 15 are "in and adjacent to" the North-Escalante Outstanding Natural Area. Appellant contends that the N 1/2 of the NW 1/4 of sec. 34 is also outside this natural area and is surrounded on three sides by oil and gas leases. Further, appellant states that parts of secs. 11, 13, and 14 are outside the Gulch outstanding natural area. Appellant states that BLM "has recently issued oil and gas leases on lands located in the same area and the same distance from the two natural areas * * *" (Statement of Reasons at 2).

The file contains BLM's oil and gas plats date stamped September 11, and December 29, 1981. The earlier map contains an area outlined in yellow marking pen which presumably embraces the outstanding natural areas in question. Included are secs. 3, 10, 11, 14, 15, and parts of secs. 4, 22, 23, 24, 25, 26, 27, 34, and 35. The legend on the maps states in part: "Also segrs from entry, sel and loc lands designated as North Escalante Canyon outstanding natural area." There follows a description of the lands so designated:

Sec 10 -- SE 1/4 NW 1/4, W 1/2 SW 1/4;
 Sec 14 -- S 1/2 S 1/2 SW 1/4;
 Sec 15 -- NW 1/4 NW 1/4, S 1/2 NW 1/4, SW 1/4, S 1/2 SE 1/4;
 Sec 22 -- NE 1/4, N 1/2 NW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4;
 Sec 23 -- W 1/2, S 1/2 SW 1/4 SE 1/4;
 Sec 26 -- NE 1/4, NW 1/2 NW 1/4, SE 1/4 NW 1/4, SE 1/4 SW 1/4,
 N 1/2 SE 1/4, SE 1/4 SE 1/4, N 1/2 SW 1/4 NW 1/4,
 E 1/2 SW 1/4 SE 1/4, E 1/2 NE 1/4 SW 1/4;
 Sec 27 -- NE 1/4 NE 1/4, N 1/2 SE 1/4 NE 1/4

The legend further describes the lands designated as The Gulch outstanding natural area:

Sec 11 -- E 1/2 NE 1/4, NE 1/4 SE 1/4, N 1/2 NW 1/4 NE 1/4,
 SE 1/4 NW 1/4 NE 1/4, E 1/2 SE 1/4, E 1/2 SE 1/4
 E 1/4;
 Sec 13 -- E 1/2 SE 1/4, N 1/2 NW 1/4, SE 1/4 NW 1/4, E 1/2
 SW 1/4, SE 1/4, E 1/2 SW 1/4 NW 1/4

The text of the decision suggests that all the lands applied for are within the outstanding areas. The legend on BLM's plat, however, makes no mention of certain of the lands applied for in the offer and specifically rejected in the decision. Thus, the plat does not refer at all to secs. 3, 4, 34, and 35. Section 13, which was applied for, and portions of which are stated to be in The Gulch natural area, was not adjudicated at all in the decision. As to secs. 10, 14, and 15, which were applied for and rejected in their entirety, the map indicates that the portions of these sections within the natural area vary from 1/32 section to just over 1/2 section. On the other hand, only 40 acres of E 1/2 of sec. 22 are indicated as not being within the natural area. In sec. 23, the offer sought the W 1/2, the SE 1/4, and the NE 1/4 NE 1/4. Only the W 1/2 and the S 1/2 SW 1/4 SE 1/4 are indicated as being within the natural area. In sec. 26 only small fractions of the acreages sought are not designated as natural areas; in sec. 27 none of the acreages sought are so designated. In sec. 11 a large proportion of the lands applied for and rejected are not described as being within natural areas on the map.

[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 (1979).

The North Escalante Outstanding Natural Area was previously before the Board in connection with oil and gas leasing in James M. Chudnow, 62 IBLA 16 (1982). The text of BLM's decision in Chudnow concerning the resource values of the area is identical to the text of its decision in the case now before us. After quoting from that text, the Board observed in Chudnow, supra at 18:

BLM, as manager of the public lands, must consider all available information when it weighs the various uses of the land. It has not shown that it did so here. The oil and gas environmental analysis is not a part of the record. Appellant's plotting of the land covered by his filing to avoid the North Escalante Canyon Outstanding Natural Area constitutes a showing that BLM did not adequately consider all the factors involved.

The file in the case before us contains excerpts from an unidentified document which discusses environmental resource values. The "San Juan, Grand Gulch, and Dark Canyon" resource areas are mentioned, but there is no reference by name to the North Escalante Outstanding Natural Area. The document

generally recommends against leasing in potential outstanding natural areas, however, no land descriptions are linked to tract names. The decision states that according to the environmental analysis certain of the lands cannot be subjected to surface disturbance while others cannot be leased at all. It then describes the lands. Having reviewed the decision in light of the excerpts from the environmental analysis, we are unable to determine how the specifics in the decision, e.g., the land descriptions and the conclusions with respect thereto, are related to the general data of the environmental analysis. Moreover, as appellant contends, the oil and gas plat indicates that approximately half the lands applied for are not within the outstanding areas referred to in the decision. Therefore, we conclude that the decision erred in rejecting the application as to lands which appear to be situated outside those areas. It may be that leasing such lands subject to protective stipulations would not be incompatible with the public interest of preserving the environmental, archeological, recreational, and scenic values.

Because of the discrepancies apparent on review, the conclusory declarations of what is required for the public interest and the uncertainty as to the status of the lands in question, we have no alternative but to set the decision aside in part and remand the case for a clarification of the status of the lands and, where appropriate, a reconsideration of their suitability for leasing. See *Rachalk Production, Inc.*, 65 IBLA 271 (1982).

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 from is affirmed in part, set aside in part and remanded to the Utah State Office for consideration consistent with the views expressed herein.

Gail M. Frazier
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

