

IDA LEE ANDERSON

IBLA 82-508

Decided January 26, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer in part. U 47682.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land as a "primitive area," under 43 CFR Subpart 8352.

2. Oil and Gas Leases: Discretion to Lease

Where a state office has established various categories relating to the availability of land for leasing, including a category "Suspended or No Lease," it is error to reject an offer to lease lands included in such a category without providing an opportunity to accept the lands under a "no surface occupancy" stipulation and other such stipulations where such an opportunity is expressly provided for under the "Suspended or No Lease" category.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Oil and Gas Leases: Applications: Generally

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in either a wilderness study area or an instant study area

action on such an offer must be suspended, to the extent that the lands are within a wilderness study area or instant study area, until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Description of Land

Nothing in the applicable statutes or regulations prohibits the issuance of oil and gas leases for less than a full protracted section of Federal land.

APPEARANCES: Ida Lee Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ida Lee Anderson has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 3, 1982, rejecting her noncompetitive oil and gas lease application, U 47682.

On November 25, 1980, appellant filed a noncompetitive oil and gas lease application for 5,120 acres of land situated in secs. 22 through 27, 34, and 35, T. 34 S., R. 16 E., Salt Lake meridian, San Juan County, Utah, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). In its February 1982 decision, BLM rejected appellant's lease offer as to secs. 22 through 26, T. 34 S., R. 16 E., Salt Lake meridian, San Juan County, Utah, because portions of the those sections are within the Dark Canyon Primitive Area.

In rejecting the offer, BLM relied on a 1975 Environmental Assessment Record (EAR), which concluded that oil and gas exploration and development would be inconsistent with the land's character as a "primitive area," as defined in 43 CFR Subpart 6221 (1975). In its decision, BLM stated that the land "would lose its primitive quality (since primitive areas by definition, must be roadless and show no evidence of recent man's activities)," due to the presence of roads, drill sites, and associated human activity. In addition, roads would provide access for others, thereby posing a threat to wildlife (especially, desert bighorn sheep) and archaeological resources. Also, BLM argued, there exists the potential for pollution "through leaks, spills, dam breaches, etc." Finally, BLM concluded: "The Dark Canyon Primitive Area falls partially within the aforementioned sections; however, the entire section must be rejected inasmuch as a lease cannot be issued for less than full protracted sections (43 CFR 3101.1-4(d))."

In her statement of reasons for appeal, appellant contends that BLM did not give adequate consideration to alternatives to no leasing, including

either a no-surface-occupancy stipulation or a wilderness protection stipulation. Appellant also argues that the EAR is out-of-date and that the EAR did not present a balanced consideration of environmental qualities and oil and gas potential, especially in light of current administrative policy favoring exploration and development. Finally, appellant states that BLM may lease portions of protracted sections and that of the 3,200 acres rejected, 1,980 acres are not included in the Dark Canyon Primitive Area.

[1] It is well established that the Secretary of the Interior has the discretion to refuse to issue an oil and gas lease. Udall v. Tallman, 380 U.S. 1 (1963). A BLM decision rejecting an oil and gas lease offer will be affirmed where it is supported by facts of record that leasing would not be in the public interest, and an appellant does not establish compelling reasons for modification or reversal. Thomas Connelly, 66 IBLA 265 (1982), and cases cited therein.

The primary aim of BLM's rejection of appellant's oil and gas lease offer is to protect the land's character as a "primitive area." A "primitive area" is currently defined in part as "an area that is * * * located where the natural environment can be preserved by * * * exclusion of additional roads and commercial development." 43 CFR 8352.0-5(b). With certain limited exceptions, travel by mechanized means is prohibited. 43 CFR 8352.4(a). A person may conduct authorized nonrecreational activities, but only "under conditions specified by the authorized officer to preserve the primitive characteristics of the area." 43 CFR 8352.4(c). The applicable regulation, 43 CFR 8352.0-2(b), provides that "[t]he objective is to manage for the maximum amount of recreation use possible on primitive areas with a minimum of interference with natural ecological processes and to preserve recreational values of solitude, inspiration and mental and physical challenge." We do not find BLM's rejection of appellant's oil and gas lease offer inconsistent with that objective.

Oil and gas exploration and development would inevitably affect the primitive character of the land, which BLM describes in the EAR, at page 320, as "pristine." In addition, in the EAR, at page 320, BLM states that "any road building would of necessity be extensive, with blasting numerous cuts and fills being required," due to the "isolated and rugged nature" of the area. Drill sites would also have to be constructed. In a draft Environmental Assessment Supplement (EAS), prepared in 1981, BLM states, at page 47, that "oil and gas activity could not occur within the area without causing damage impossible to rehabilitate in the canyon because of its extreme topography." Also, in the draft EAS, at page 47, BLM states that oil and gas exploration "will have a depressing effect on the bighorn sheep population and increase archaeological vandalism." Archaeological values are heavily concentrated in the area (EAR at 320). Appellant has not presented any evidence that oil and gas exploration and development on the lands will not adversely affect the primitive character of the area.

Rather, appellant argues that BLM did not give adequate consideration to the protection of the public interest in other resource values through the imposition of special stipulations. We have long held that where leasing has been refused, the record should reflect that BLM has considered

whether leasing subject to reasonable stipulations would be sufficient to protect the public interest. Mary A. Pettigrew, 64 IBLA 336 (1982), and cases cited therein. As noted above, in 1981, BLM prepared a draft EAS, in order to update the 1975 EAR. In particular, the draft EAS included a thorough review of the categorical designation of the Dark Canyon Primitive Area, originally designated category 4 (no lease). The draft EAS states, at page 47, category 4 was reselected "only after exhaustive consideration of lesser categories with special stipulations." 1/ These stipulations are set forth in the Utah State Office, BLM, Instruction Memorandum (IM) UT 81-169, dated March 12, 1981.

[2] The problem with the decision of the State Office, however, is that while category 4 is entitled "Suspended or No Lease" it clearly contemplates issuance of leases in certain circumstances. 2/ Thus, the IM provides:

4. Category 4 - Suspended or No Lease

No stipulations are needed except if a applicant is willing to accept a no surface occupancy lease with the clear understanding that he will not be able to exploit the resources. An additional provision is attached to these leases if issued under a category 4 designation (see enclosure 5).

Enclosure 5, referenced above, is entitled "Request for Lease Issuance" in which the offeror acknowledges that the EAR recommends rejection of the offer, but requests issuance of the lease, nevertheless, for blocking purposes. It expressly provides that "it is understood that such issuance would prohibit occupancy and might never afford any beneficial use."

It is clear from the above that issuance of a lease for category 4 land is not automatically precluded. thus, consistent with the IM, where an applicant has applied for land under category 4, the applicant should be requested to sign a "Request for Lease Issuance" as well as a no-surface-occupancy stipulation for the land desired. Normally, since this opportunity was not afforded the appellant, we would set aside the decision rejecting her offer, with the instructions to offer her the lease with the stipulations set forth above. 3/ However, for reasons which we shall set forth, it will be necessary to hold her offer in suspense as to these lands.

1/ The four categories are: (1) Open to leasing; (2) leasing with special stipulations; (3) no-surface-occupancy; and (4) suspended or no leasing.

2/ We note that the discussion which follows in the text might be viewed as at odds with certain prior decisions of this Board, wherein we have affirmed rejection of offers in similar circumstances. See, e.g., Ted C. Findeiss, 69 IBLA 34 (1982); James M. Chudnow, 67 IBLA 360 (1982); Great White, Inc., 65 IBLA 310 (1982); Great White, Inc., 65 IBLA 207 (1982). In those cases, however, we did not have the text of the IM before us, so that it is possible that we misinterpreted the scope of a category 4 designation.

3/ We wish to make it clear to appellant, however, that under no circumstances would she be allowed to occupy or conduct any activity, including exploration, on the lands within the Dark Canyon Primitive Area.

[3] The Dark Canyon Primitive Area was established in 1969. Thus, under the provisions of section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976), the Dark Canyon Primitive Area became an instant study area (ISA). The study mandated by section 603(a), however, has not been completed since adjacent areas have wilderness characteristics and the ISA and these areas are to be studied together. See 47 FR 29810-29811 (July 8, 1982).

On December 30, 1982, the Secretary of the Interior announced that the Department would issue no leases in either designated wilderness areas or in WSA's. Pursuant thereto, the Director, BLM, has issued Instruction Memorandum No. 83-237 (Jan. 7, 1983). In relevant part this provides that "leases currently in process should not be issued. * * * All such applications are to be maintained as pending until further notice." Accordingly, while we are setting aside the decision of the Utah State Office to the extent it was premised on a category 4 determination, the State Office is directed to suspend further action on the lease offer, to the extent that it embraces lands in the ISA, "until Congressional action is taken on the President's recommendation."

[4] Appellant, however, is correct in her contention that BLM may lease those portions of protracted sections which are not in the ISA. The regulation cited by BLM, 43 CFR 3101.1-4(d)(1), applies only to land descriptions in "offers to lease lands." See Hrubetz Oil Co., 67 IBLA 109 (1982). There is no limitation, whatsoever, on the issuance of leases for less than full protracted sections. Indeed, 43 CFR 3101.1-4(d)(2) expressly provides for the filing of offers for less than an entire protracted section where not all of the land within the section is available. Accordingly, to the extent that land included in appellant's lease offer is not within in the Dark Canyon Primitive Area ISA, it was error to reject it. Rachalk Production, Inc., 68 IBLA 75 (1982).

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 set aside and the case remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

