

WESTERN INTERSTATE ENERGY, INC.

IBLA 82-650

February 15, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M-49743.

Set aside and remanded.

1. Oil and Gas Leases: Lands Subject to -- Public Lands: Leases and Permits -- Withdrawals and Reservations: Effect of

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

2. Oil and Gas Leases: Consent of Agency -- Oil and Gas Leases: Discretion to Lease -- Public Lands: Leases and Permits

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

3. 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.

4. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

APPEARANCES: Chester L. Pringle, President, Western Interstate Energy, Inc.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Western Interstate Energy, Inc. (Western), appeals from the March 1, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting its noncompetitive over-the-counter oil and gas lease offer M 49743.

The decision reads in part:

Oil and gas lease offer M 49743 was filed on January 15, 1981, subject to the terms of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. It included lots in a narrow strip of land along the United States Canadian border which has been reserved to aid in the better enforcement of customs and immigration laws by Presidential Proclamation of May 3, 1912 (37 Stat. 1741).

This application is hereby rejected because leasing would be incompatible with the purpose for which the reservation was created and because the land is not well adapted to exploitation on a sound basis. The Department affirmed the rejection of several similar applications for lands within the boundary reservation in Earl J. Boehme et al., 62 I.D. 9 (1955).

We have followed and are continuing to follow the policy set out in the above decision except in a few isolated instances where the offeror has been able to submit concrete evidence that it was in the public interest to lease the lands.

On appeal, Western contends that leasing the land in issue would serve the public interest, and advised that it would not object to accepting a lease with a no occupancy stipulation.

The Presidential Proclamation, *supra*, reads in part:

WHEREAS, the customs and immigration laws of the United States can be better enforced and the public welfare thereby advanced by the retention in the Federal Government of complete control of the use and occupation of lands abutting on international boundary lines;

* * * [T]here are hereby reserved from entry, settlement, or other form of appropriation and disposition under the public-land laws, and set apart as a public reservation, all public lands lying within sixty feet of the boundary line between the United States and the Dominion of Canada.

[1] Unless a withdrawal or reservation of public domain land specifically provides otherwise, the land withdrawn or reserved is presumed to be available for oil and gas leasing under sections 1 and 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181, 226 (1976). Esdras K. Hartley, 54 IBLA 38 (1981); Chevron U.S.A., Inc., 52 IBLA 278 (1981). While the issuance of an oil and gas lease is discretionary with the Secretary of the Interior, no lease will be issued where such action would be inconsistent with or materially interfere with the purposes for which the land was withdrawn. Joseph C. Manga, 9 IBLA 319 (1973).

[2] Where public domain land is withdrawn for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values. See Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Esdras K. Hartley, 23 IBLA 102 (1975). 1/

[3] 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. 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 is not submitted. See James O. Breene, Jr. (On Reconsideration), 42 IBLA 395, 399 (1979).

In this case, BLM did not follow proper procedures and request the surface management agencies to submit recommendations regarding lease issuance

1/ This should be distinguished from leasing of minerals in acquired lands of the United States under section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), which requires the consent of the agency having jurisdiction over the lands containing such minerals. See Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

and any required stipulation. The BLM decision to reject the lease offer was based solely on its policy to follow the decision in Earl J. Boehme, supra. In that case, the surface management agencies indicated that lease issuance with certain stipulations would not interfere with the use of the land, but the Department determined that leasing lands in the boundary reservation was not in the public interest based on other considerations. This decision does not relieve BLM of the responsibility of compiling a current record to support rejection of this particular lease offer.

[4] Western stated that it would have no objections to accepting the lease with a no occupancy provision, and BLM has the authority to require execution of special stipulations to protect environmental and other land use values when deciding to issue a lease. Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record where leasing has been refused should ordinarily reflect that BLM has considered whether leasing subject to clear and reasonable stipulations would be sufficient to protect the public interest concerns raised by the surface management agency. Robert P. Kunkel, supra at 79; see Howard L. Ross, 49 IBLA 87 (1980); James O. Breene, Jr. (On Reconsideration), supra.

The record before us does not support the BLM decision. The case file contains no recommendation regarding lease issuance from the surface management agencies, and does not show that BLM considered whether reasonable stipulations could be imposed as a condition of lease issuance. Accordingly, the case will be remanded to BLM to make a determination supported by the record regarding whether lease issuance is incompatible with the purpose of the reservation, and whether protective stipulations may be appropriate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is set aside and the case remanded for further consideration consistent with this decision.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

