

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer in part and requiring no-surface occupancy stipulation. U 47659.

Set aside and remanded.

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upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws.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.

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

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on BLM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

APPEARANCES: Oliver W. Gushee, Jr., Esq., and Thomas W. Bachtell, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ida Lee Anderson has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated December 8, 1981, (1) requiring

a no-surface occupancy stipulation for oil and gas lease U-47659 in N 1/2, N 1/2 SW 1/4, SE 1/4 SW 1/4, SE 1/4 sec. 8, T. 32 S., R. 19 E., Salt Lake meridian, Utah; (2) rejecting the lease offer as to all of secs. 3-7, 9, and 10 in the same township; and (3) requiring a special stipulation for the protection of deer winter range in the SW 1/4 SW 1/4 sec. 8.

In so concluding, BLM stated:

The National Environmental Policy Act of 1969 declared a national policy to encourage productive and enjoyable harmony between man and his environment and required all agencies of the Federal Government to include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official. Therefore, an oil and gas environmental analysis has been prepared for lands within the area administered by the Moab District Office, Bureau of Land Management.

The environmental analysis identifies the following lands applied for under the subject oil and gas offer as having outstanding resource values incompatible with surface disturbance. The resource values could be irreparably damaged or destroyed if any surface disturbance is allowed.

T. 32 S., R. 19 E., SLM, Utah
Sec. 8, N 1/2, N 1/2 SW 1/4, SE 1/4 SW 1/4, SE 1/4.

The resource values in the following lands are incompatible with oil and gas leasing:

T. 32 S., R. 19 E., SLM, Utah
Secs. 3-7, 9, 10, all.

Beef Basin is a potential outstanding natural area which comprises approximately 69,000 acres. It is a relatively isolated area located in the northwest corner of Canyon Resource Area. It borders Canyonlands National Park on the north and the Manti-LaSal National Forest on the south. The north portion of Glen Canyon National Recreation Area is to the west.

Beef Basin displays a wide range of topography, much of which is high in scenic values. Mesa areas, buttes, and unusual rock formations are common. There are relatively wide varieties in plant communities and wildlife. Beef Basin is also a critical deer winter range and is currently managed as such. This area supports the highest concentration of deer from the north end of the San Juan-Elk Ridge Herd Unit. The deer depend on sagebrush as the mainstay of the winter diet and pinyon-juniper for cover.

Archaeological resources in Beef Basin are a significant contribution to the scenic-recreation use and social values there.

Ruin Park, Ruin Canyon, and Middle Park are areas of ruin concentration although the entire area has representative ruin sites.

Most of Beef Basin is presently in a rugged and relatively remote condition. Various uses of natural resources have occurred there, but Beef Basin retains much of its natural state due to remoteness and primitive type of terrain.

Existing roads and trails to and within the Beef Basin Area are limited, and therefore, public use of the areas year around is slight with the heaviest use during deer hunting season.

The east portion of Beef Basin is most similar to the rugged scenic terrain of Canyonlands National Park with many columns, pinnacles, and varied sculptured rock. This area has been recommended to be studied as a possible primitive area, and the remaining areas of Beef Basin have been proposed as semi-primitive.

Oil and gas activities could irreparably damage or destroy these lands if surface disturbance is allowed. Access into the area would require extensive road building and numerous large cuts and fills and the natural values associated with these areas would be lost.

Often the access required into the area is more impacting than the actual drill site itself. Access routes would create a tremendous aesthetic impact, especially in areas that receive larger amounts of public use. In addition to the extensive aesthetic impacts that would occur if petroleum development were allowed, these impacts would be long-term and would not appreciably decrease with time.

The loss of a natural pristine area could not be recovered. Again, it should be noted that natural, undisturbed areas are becoming rare due to the demands of an expanding society.

Appellant contends that BLM's decision relies on an environmental analysis (EA) of Beef Basin, an area said by appellant to contain 166,844.64 acres. The lease offer at issue seeks approximately 5,100 acres located therein. Appellant charges that neither the EA nor BLM's decision focuses upon the lands sought in the offer, and consequently, BLM's analysis is too general to support rejection of the offer. BLM has leased nearby lands, appellant claims, having the same general resource values as the subject lands. This inconsistency demonstrates the arbitrary and capricious nature of BLM's decision in appellant's view. Appellant further charges that BLM rejected the possibility of leasing most lands described in her offer without considering whether reasonable stipulations would satisfy BLM's environmental concerns.

On the basis of the record before us, we find merit in appellant's statements. BLM's description of the Beef Basin area in its decision is

taken largely from the EA. This document described Beef Basin as an area of approximately 69,000 acres and, alternatively, as an area of approximately 153,000 acres. ^{1/} There is no clear statement in the decision by BLM that the 5,100 acres sought by appellant are accurately described by BLM's discussion of the overall area. We do not suggest that the information contained in an EA may not be applied to a parcel within the area described by the EA. Yet BLM should have specifically stated in its decision that its analysis of the environmental impacts of Beef Basin as a whole are applicable to the smaller parcel sought by the applicant. We note that in Fortune Oil Co., 70 IBLA 286 (1983), the Board held that a programmatic environmental assessment describing a large area of land was insufficient by itself to support a BLM decision to reject leasing of a small parcel thereof or to condition leasing with a no-surface occupancy stipulation.

Exhibit 8 accompanying appellant's brief shows that BLM issued oil and gas lease U-38855 in March 1978 in Beef Basin and lease U-45666 in February 1981. Lease U-45666 is adjacent to those lands sought by appellant. The record does not provide any explanation for this apparent inconsistency. Similarly, the record is silent as to why part of the lands in appellant's offer were rejected outright as incompatible with oil and gas leasing and others were approved for leasing with a no-surface occupancy stipulation. In Fortune Oil Co., 68 IBLA 288 (1982), this Board set aside a BLM decision that failed to explain or support inconsistent treatment.

[1] Under the provisions of the Mineral 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 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (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., 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.

Although it is apparent that BLM considered leasing subject to stipulations in sec. 8, there is no mention in its decision that stipulations of any type were considered for those lands held to be incompatible with oil and gas leasing. Rejection of an oil and gas lease offer is a more serious measure than the most stringent stipulations, and the record where leasing has been refused should reflect that BLM has considered whether leasing subject to clear and reasonable stipulations would be sufficient to protect the public interest concerns voiced in the EA. Mary A. Pettigrew, 64 IBLA 336 (1982). Similarly, in the absence of any specific finding that the lands in sec. 8

^{1/} Pages 168 and 106 of the EA, respectively. A map in the case file showing the Beef Basin area is insufficiently clear to show the estimate of acreage.

are well described by BLM's narrative from the EA, the record does not reflect that BLM considered whether less stringent stipulations would adequately protect BLM's environmental concerns. Mary A. Pettigrew, supra at 337; James E. Sullivan, 54 IBLA 1 (1981).

[2] The above discussion provides ample support for our setting aside BLM's decision of December 8, 1981, and remanding the case for reconsideration consistent herewith. Appellant's statement of reasons provides information, however, that requires BLM to suspend any reconsideration of this matter pending future action. Appellant correctly points out that the lands described by offer U-47659 are within the Butler Wash wilderness study area (WSA) (UT-060-069). According to Instruction Memorandum (IM) 83-237 (Jan. 7, 1983), BLM is instructed to issue no leases or permits in BLM administered WSA's. Ida Lee Anderson, 70 IBLA 259 (1983). Subsequent changes to this IM provide that BLM may continue to lease portions of WSA's that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable." IM 83-237, Change 3 (June 24, 1983). BLM is directed to review current IM's, including those set forth above, before reconsideration of the instant application. If neither of the two exceptions is applicable, BLM must suspend any further consideration of the offer in conformity with the IM, unless BLM feels that regardless of ultimate WSA designation no lease should issue. See Lawrence M. Wert, 75 IBLA 186 n.3 (1983).

Appellant further charges that BLM's decision was contrary to its system of categories for oil and gas lands. Under this system, category 1 lands may be leased subject to standard stipulations providing for protection of resource values and environmental components associated with natural resource lands. Category 2 lands are open for leasing subject to special stipulations providing protection for watersheds, wildlife habitats, and historical and archaeological sites. Category 3 lands are open for leasing subject to a no-surface occupancy stipulation. As set forth in appellant's statement of reasons, oil and gas leasing in category 4 lands is suspended pending further planning or special studies. Areas in this category are too large in size to permit slant drilling or include values that cannot be adequately protected by other lease categories.

In Ida Lee Anderson, supra, the Board quoted from IM UT 81-169 (Mar. 12, 1981) 2/ regarding category 4 lands:

4. Category 4 -- Suspended or No Lease

No stipulations are needed except if an 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, we found, was a form entitled "Request for Lease Issuance" in which the offeror acknowledges that the Environmental Assessment Record

2/ This IM had an expiration date of Sept. 30, 1982.

recommends rejection of the offer, but requests issuance of the lease for blocking purposes. It expressly provides that "it is understood that such issuance would prohibit occupancy and might never afford any beneficial use."

Appellant charges that BLM was arbitrary in denying leasing on lands that were in category 3. Counsel cites sec. 7, T. 32 S, R. 19 E., Salt Lake meridian, inter alia, as an example of such an inconsistency. If counsel's exhibit 8 is accurate, BLM was inconsistent in denying leasing outright on sec. 7. Furthermore, in light of the information provided by IM UT-81-169 and enclosure 5, denial outright was an inappropriate response to appellant's offer describing lands in category 4.

Subsequent to BLM's decision, the Utah State Director, BLM, issued IM UT-83-70 (Dec. 27, 1982) entitled "Updating Oil and Gas Categories in Planning and Decision Implementation." IM UT 83-70 states at pages 3-4:

Category 4 - No Lease Areas

These are areas where oil and gas leasing is undesirable pending further planning or special studies and includes areas that are too large in size to permit slant drilling or include values that cannot be adequately protected by the other lease categories. Examples include some areas of potential wild and scenic areas where roads, pipelines, drilling activities, etc. are not compatible with management for these uses. As further information is obtained, and public needs are better understood, these areas may continue to be closed to leasing or made available.

No lease is issued; therefore, no stipulations required.

While category 4 under IM UT 81-169 contemplated issuance of a no-surface occupancy lease in certain circumstances, category 4 under IM UT 83-70 specifically provides that no lease will issue. On remand BLM should issue a decision to appellant that is in harmony with its current system of oil and gas categories and the case law cited above.

Appellant's challenge to BLM's category system as being a classification violative of the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1970), is unpersuasive. Section 8 of that Act, 43 U.S.C. § 1418 (1970), provides that the authorizations and requirements of the Act shall expire 6 months after the final report of the Public Land Law Review Commission (PLLRC) has been submitted to Congress. The PLLRC report was submitted to Congress in June 1970. Appellant has set forth no substantial reason why BLM's actions should be subject to the provisions of this expired statute.

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

Utah State Office is set aside and the case file is remanded for action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

