



ROY G. BARTON

188 IBLA 331

Decided September 23, 2016



United States Department of the Interior  
Office of Hearings and Appeals

Interior Board of Land Appeals  
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ROY G. BARTON

IBLA 2014-122

Decided September 26, 2016

Appeal from a decision of the Deputy State Director, Nevada State Office, Bureau of Land Management, which rejected Appellant's lease offer for Federal oil and gas lease parcels NV-13-12-007 and NV-13-12-022. DOI-BLM-NV-L000-2013-0004-EA.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease;  
Oil and Gas Leases: Offers to Lease

Under the Mineral Leasing Act, the Secretary of the Interior, acting through BLM, has discretion to issue, or not to issue, a lease for any given parcel of Federal land available for oil and gas leasing. Thus, up until BLM accepts a high bidder's offer and executes a lease, the bureau has discretion to withdraw a parcel from leasing.

2. Oil and Gas Leases: Competitive Leases;  
Oil and Gas Leases: Discretion to Lease;  
Oil and Gas Leases: Offers to Lease

BLM's exercise of discretion in deciding not to lease lands described in an oil and gas lease sale must be supported by a rational basis. A rational basis may include deciding not to lease lands when the public interest favors other resource considerations, such as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values.

3. Oil and Gas Leases: Competitive Leases;  
Oil and Gas Leases: Discretion to Lease;  
Oil and Gas Leases: Offers to Lease

An appellant challenging a BLM decision not to lease lands described in an oil and gas lease sale has the burden to demonstrate, by a preponderance of evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made. This burden is not met by expressions of disagreement with BLM's analysis and conclusions.

APPEARANCES: Roy G. Barton, Hobbs, New Mexico, *pro se*; Erica Niebauer, Esq., Assistant Regional Solicitor, Pacific Southwest Region, Department of the Interior, Sacramento, California, and Wendy Dorman, Esq., Office of the Solicitor, Department of the Interior, Washington D.C., for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE SOSIN

Roy G. Barton has appealed from a February 7, 2014, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his lease offer for two Federal parcels located in Garden Valley, Nevada, sold at BLM's competitive oil and gas lease sale on December 10, 2013. In its decision, BLM rejected Barton's lease offer in order to protect against impacts to a large-scale sculpture by artist Michael Heizer, known as *City*, located on private lands in Garden Valley, and better enable BLM to meet the visual resources management objectives set forth in the governing land use plan.<sup>1</sup>

The Mineral Leasing Act (MLA) provides the Secretary of the Interior, acting through BLM, with discretion to lease “[a]ll lands subject to disposition under this chapter which are known or believed to contain oil and gas deposits . . . .”<sup>2</sup> The BLM's discretion includes choosing not to lease lands for oil and gas purposes, if “considerations such as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values” favor other uses.<sup>3</sup> Here, Barton alleges BLM was

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<sup>1</sup> Decision at 4.

<sup>2</sup> 30 U.S.C. § 226(a) (2012).

<sup>3</sup> *George G. Witter*, 129 IBLA 359, 363 (1994).

prohibited from rejecting his lease offer because in doing so, the bureau (1) improperly relied upon objection letters submitted after the close of the protest period for the lease sale, and after the lease sale, and (2) acted contrary to the Notice of Competitive Oil and Gas Lease Sale, which, according to Barton, bound the BLM to accept Barton's lease offer after Barton was the successful high bidder. Barton, however, provides no legal support for his arguments; nor does he demonstrate that BLM's decision to reject his lease offer was contrary to the discretion afforded the bureau by the MLA. Because we conclude BLM's decision not to lease the parcels has a rational basis and is supported by the record, and Barton does not meet his burden to show BLM's decision was in error, we affirm.

*The Lease Sale and BLM's Decision to Reject Barton's Lease Offer*

On December 10, 2013, BLM held a competitive oil and gas lease sale; 54 parcels of land received bids, including 40 parcels located within or near Garden Valley, in Lincoln and Nye Counties, Nevada.<sup>4</sup> Barton was the high bidder for two of the Garden Valley parcels, and on December 26, 2013, BLM approved the lease sale.<sup>5</sup>

Shortly after approving the lease sale, BLM received a letter from Mary Heizer, on behalf of the Triple Aught Foundation, and a letter from Michael Govan, CEO and Wallis Annenberg, Director, of the Los Angeles County Museum of Art.<sup>6</sup> Both letters opposed all energy or mineral development in the Garden Valley area based on potential impacts to the sculpture by Michael Heizer known as *City*.<sup>7</sup> The Heizer letter stated that mineral development within the Garden Valley area "will have a disastrous effect" on *City*, which she described as "composed of abstract sculptural, architecturally sized forms made of compacted earth and concrete that are reminiscent in shape, scale, and ambition of ancient ceremonial cities."<sup>8</sup> Similarly, in his letter, Mr. Govan urged preservation of this "critically important piece of art" and stated that oil and gas development in the area would "jeopardize[] the isolation and natural surroundings" of the sculpture.<sup>9</sup>

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<sup>4</sup> Decision at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; Administrative Record (AR) Doc. 24 (Heizer letter, dated Jan. 30, 2013); AR Doc. 25 (Govan letter, dated Jan. 30, 2014).

<sup>7</sup> Decision at 3-4.

<sup>8</sup> AR Doc. 24 (Heizer letter, dated Jan. 30, 2014) at unpaginated (unp.) 1; Decision at 3.

<sup>9</sup> AR Doc. 25 (Govan letter, dated Jan. 30, 2014) at unp. 1; Decision at 3.

After considering these letters, on February 7, 2014, BLM issued its decision modifying its lease sale to exclude the 40 Garden Valley parcels from leasing, including the two parcels for which Barton was the high bidder.<sup>10</sup> BLM stated that deferring leasing in Garden Valley “will minimize the risk of detrimentally affecting the internationally renowned artwork and its attendant economic benefits.”<sup>11</sup> BLM added that its decision will help BLM meet the “Class II” visual resources management objectives in the governing land use plan (the Ely Resource Management Plan), which call for managing the Garden Valley area “to retain the existing character of the landscape.”<sup>12</sup> BLM therefore rejected Barton’s lease offer,<sup>13</sup> and this appeal followed.

*BLM’s Decision to Reject Barton’s Lease Offer Was a Proper Exercise of Agency Discretion*

[1] Under the MLA, BLM has discretion to issue, or not to issue, a lease for any given parcel of Federal land available for oil and gas leasing.<sup>14</sup> Thus, up until BLM accepts a high bidder’s offer and executes a lease, the bureau has discretion to withdraw a parcel from leasing.<sup>15</sup>

[2] BLM’s decision to reject a high bidder’s offer, however, must be supported by a rational basis, and “the record [must] support[] the conclusion that the public interest would be served by rejection.”<sup>16</sup> For example, BLM may exercise its discretion to forgo or defer leasing lands for oil and gas purposes in favor of “considerations such as wildlife, endangered species preservation, recreational use, and aesthetic or scenic values.”<sup>17</sup> As we have explained: “When the record describes a dedication of land to

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<sup>10</sup> Decision at 5.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* (quoting final environmental assessment supporting the leasing decision); see also AR Doc. 73 (Environmental Assessment, DOI-BLM-NV-L000-2013-0004-EA, Dec. 2013) at 47.

<sup>13</sup> BLM Deputy State Director Letter to Barton, dated Feb. 7, 2014 (attaching Decision) (“[W]e are rejecting your lease offer and will refund your money . . . for the bonus bids, first year rentals, and administrative fees.”).

<sup>14</sup> 30 U.S.C. § 226(a) (2012); see also *George G. Witter*, 129 IBLA at 363; *David A. Provinse*, 76 IBLA 340, 342 (1983) (“Simply because lands are available for leasing does not mandate leasing . . .”).

<sup>15</sup> See *Stanley Energy, Inc.*, 179 IBLA 8, 12 (2010).

<sup>16</sup> *George G. Witter*, 129 IBLA at 363; see also *David A. Provinse*, 76 IBLA at 342 (“This Board will uphold the refusal to issue a lease provided BLM has set forth its 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.”).

<sup>17</sup> *George G. Witter*, 129 IBLA at 363.

a public purpose worthy of preservation, and supports a finding that oil and gas development would be incompatible with this public purpose and that the public interest favors preserving the status quo, BLM's rejection of the lease offer will be affirmed."<sup>18</sup>

[3] In challenging such a decision, an appellant has the burden to demonstrate, by a preponderance of evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.<sup>19</sup> This burden is not met by mere expressions of disagreement with BLM's analysis and conclusions.<sup>20</sup>

On appeal, Barton does not argue that leasing would not impact *City* or *Garden Valley's* visual resources. Rather, Barton makes two arguments supporting his position that BLM was prohibited from rejecting his lease offer. Barton first states that BLM received the Heizer and Govan letters after the leasing protest period had ended, and after the lease sale: "The objection letters (dated January 30, 2014) were received after the 30 day protest period which ended October 11, 2013 and more than seven weeks after the December 2013 Lease Sale (December 10, 2013)."<sup>21</sup> Although he does not specifically say so, we construe Barton's statement to be an argument that because the letters were received outside of the lease protest period, BLM was barred from considering them in deciding to reject Barton's lease offer. Barton's second argument is that BLM's Lease Sale Notice bound the bureau to accept the high bidder's lease offer and execute the lease.<sup>22</sup> We address each argument below.

1. *BLM Was Not Precluded From Considering Information in Late-Filed Protest Letters*

Barton's first argument is without merit. While BLM may properly dismiss a protest to an oil and gas lease sale that is not filed within the time period provided in the Notice of Lease Sale,<sup>23</sup> this does not mean that BLM is required to dismiss a late-filed protest. Nor does it mean that BLM is precluded from considering information included in what would otherwise be an untimely protest and, based on that information, determine to withdraw certain parcels from its lease sale. There is

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<sup>18</sup> *Id.*

<sup>19</sup> *Stanley Energy, Inc.*, 179 IBLA at 13.

<sup>20</sup> *Id.*

<sup>21</sup> SOR.

<sup>22</sup> *Id.*

<sup>23</sup> *See John E. Davis, Jr. & Marybeth Pritschet Davis*, 187 IBLA 103, 111 (2016).

nothing in the MLA or BLM's regulations that prohibits the bureau from exercising its discretion, up until the time BLM accepts a high bidder's offer and executes a lease, to withdraw parcels from a lease sale.<sup>24</sup> We have long held that "[u]ntil such time as a lease actually issues, BLM always reserves the right not to lease at all."<sup>25</sup>

Barton offers no legal or factual support for his contention that BLM was somehow prohibited from considering the Heizer and Govan letters. His argument that BLM improperly considered the letters constitutes a disagreement with BLM's decision, but such disagreement cannot establish the basis for error in BLM's decision.<sup>26</sup> As we have stated: "[A] mere disagreement with BLM's analysis or conclusions, or a preference for an alternative course of action does not suffice to establish that BLM violated any law or otherwise erred in its decision."<sup>27</sup>

Moreover, BLM's decision to reject Barton's lease offer has a rational basis and is supported by the record. In its decision, BLM explained that its determination not to sign leases for the parcels in the Garden Valley area was based on its review of Heizer's and Govan's letters, "and other documentation of the Heizers' and Mr. Govan's efforts to prevent harm to *City* and its artistic value . . . ."<sup>28</sup> BLM stated that "[d]eferring leasing within this area will minimize the risk of detrimentally affecting the internationally renowned artwork and its attendant economic benefits."<sup>29</sup> BLM further explained that its decision not to lease lands in the area "also enhances BLM's ability to meet the [visual resources management] objectives established in the [governing land use plan] . . . to 'retain the existing character of the landscape.'"<sup>30</sup>

BLM thus explained its reasons for rejecting Barton's lease offer, and the record supports BLM's conclusion that preventing impacts to *City* and visual resources from oil and gas development in the area serves the public interest.<sup>31</sup> BLM's decision is also consistent with the bureau's responsibilities under the Federal Land Policy and

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<sup>24</sup> See *Stanley Energy, Inc.*, 179 IBLA at 12.

<sup>25</sup> *Southern Utah Wilderness Alliance*, 144 IBLA 70, 90 (1998).

<sup>26</sup> See *New Mexico Wilderness Alliance*, 186 IBLA 183, 193 (2015); *Stanley Energy, Inc.*, 179 IBLA at 13.

<sup>27</sup> *New Mexico Wilderness Alliance*, 186 IBLA at 193.

<sup>28</sup> Decision at 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* (quoting final environmental assessment supporting the leasing decision); see also AR Doc. 73 (Environmental Assessment, DOI-BLM-NV-L000-2013-0004-EA, Dec. 2013) at 47.

<sup>31</sup> See *George G. Witter*, 129 IBLA at 363.

Management Act (FLPMA) to manage the public lands under the principles of multiple use and sustained yield, and make management decisions in accordance with the governing land use plan.<sup>32</sup> As we have stated in the past, FLPMA’s multiple-use mandate “requires a choice of the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place fully on any given area of the public lands at any one time.”<sup>33</sup> As such, just because a land use plan allows for certain activities to occur in an area – here, oil and gas leasing – it does not mean that such activities must always occur, or always take precedence over other resource uses and values of those lands.

We therefore find that BLM’s decision to reject Barton’s lease offer was a proper exercise of its discretion.

## 2. *BLM’s Notice of Lease Sale Does Not Obligate BLM to Accept a Lease Offer*

Barton’s second argument is that the Notice of Competitive Oil and Gas Lease Sale, which BLM published for the December 10, 2013, lease sale, bound BLM to accept Barton’s lease offer because the terms of the Notice created a binding contract between Barton and BLM once Barton successfully submitted a high bid.<sup>34</sup> This is incorrect.

The Notice language quoted by Barton in his appeal provides, in relevant part, that “[y]ou will . . . be asked to sign a statement to confirm that any bid you cast will represent a good-faith intention to acquire an oil and gas lease and that you understand that any winning bid will constitute a legally binding commitment to accept the lease and pay monies owed.”<sup>35</sup> The plain language of the Notice informs the winning bidder that his bid legally binds him to accept the lease and pay the required amount. The Notice, however, does not bind BLM. In its answer, BLM states, and the Board agrees, that until BLM accepts a winning bidder’s offer and issues a lease, there is no contract; the bureau maintains its discretion under the law until it takes final action to either accept a lease offer or reject the high bid.<sup>36</sup> Here, the final action was BLM’s decision to reject Barton’s lease offer. As a result, a contract was never formed and BLM was not obligated to issue a lease.

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<sup>32</sup> See 43 U.S.C. §§ 1701(a)(7), 1712(a), (e) (2012).

<sup>33</sup> *Oregon Natural Desert Association*, 176 IBLA 371, 381 n.9 (2009) ((quoting *Friends of the Bow*, 139 IBLA 141, 143 (1997)).

<sup>34</sup> See SOR.

<sup>35</sup> *Id.*

<sup>36</sup> Answer at 5-6; see also 30 U.S.C. § 226(a) (2012) (“All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits *may* be leased by the Secretary”) (emphasis added).

*Conclusion*

While Barton disagrees with BLM's decision to reject his lease offer, he has failed to establish that BLM's decision was in error. We conclude that BLM properly exercised its discretion under the MLA to reject the lease offer based on the agency's determination to favor protection of resources over oil and gas development in the Garden Valley area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>37</sup> we affirm BLM's decision.

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/s/  
Amy B. Sosin  
Administrative Judge

I concur:

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

<sup>37</sup> 43 C.F.R. § 4.1.