

INTERIOR BOARD OF LAND APPEALS

Continental Land Resources

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CONTINENTAL LAND RESOURCES

IBLA 2002-466

Decided June 16, 2004

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting successful oil and gas bids. WYW 156575 and 156577.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Offers to Lease

An Information Notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information Notices do not provide a basis for denying lease operations. 43 CFR 3101.1-3.

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

The use of an Information Notice to announce the exercise of the authorized officer's discretion to suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale under 43 CFR 3120.1-3 does not demonstrate error in a BLM decision to reject competitive lease bids.

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

The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (2000), as amended, with discretionary authority to lease or not lease Federal public land which is otherwise available for oil and gas leasing. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Where lease parcels were erroneously included in a lease sale after BLM had determined that a protest should be sustained, and appellant's bids were rejected before they were accepted by the United States, they never matured beyond the hope or expectation that a lease might issue.

4. Oil and Gas Leases: Generally--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Offers to Lease

An exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. When BLM's decision to reject competitive lease bids is based on protests requesting further analysis of the impacts of leasing on a crucial big game winter range migration corridor and deferral of leasing until revision of the Pinedale Resource Management Plan is completed, and the Board's review of the record discloses adequate support for BLM's decision to defer leasing, the decision will be affirmed.

APPEARANCES: John L. Gallinger, Esq., and Kathy A. Ellsworth, Esq., Holland & Hart LLP, Jackson, Wyoming, for Continental Land Resources; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

Continental Land Resources, LLC (Continental) has appealed the August 12, 2002, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its successful bids for parcels WY-0208-086 and WY-0208-088 offered at

BLM's competitive oil and gas lease sale on August 6, 2002.<sup>1/</sup> Continental submitted the amounts required by 43 CFR 3120.5-2, and timely tendered the balance due. The standard lease offer forms were never transmitted to Continental for execution, and were not executed by the authorized officer on behalf of the United States.

BLM articulated the following rationale for its decision:

The above parcels contain lands that are located within the Trapper's Point Bottleneck, a crucial big game winter range migration corridor. On August 2, 2002, this office received a letter from the Wyoming Game and Fish Department [WGFD] requesting that we withdraw the above parcels from our August 6, 2002, competitive lease sale pending more in-depth consideration of the impacts of leasing in this area, and that we defer leasing in the Trapper's Point Bottleneck until the Pinedale Resource Management Plan Revision, and associated environmental documentation, are completed. We also received several other protests from interested parties on the inclusion of these parcels in our August 2002 oil and gas lease sale.

The Acting State Director decided to withdraw the parcels from the sale; however, our office inadvertently offered these parcels. The regulations at 43 CFR 3120.1-3 state: "The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale." Therefore, since the parcels should have been withdrawn prior to the sale, your bids are hereby rejected.

(Decision at 1-2.)

The August 2, 2002, WGFD letter to which BLM's decision refers is contained in the record. It explains that WGFD had inadvertently overlooked parcel 086 in reviewing the lease sale notice. The letter notes that "[t]he Trapper's Point Bottleneck is well[-]documented. Twice each year, several thousand deer and antelope migrate through this small corridor of sagebrush between the riparian areas of the Green River and the New Fork River." (WGFD letter at 1.) The special lease notice for parcel 086 acknowledged the existence of the Trapper's Point Bottleneck big game corridor, which is "ranked the highest conservation priority in Wyoming," and also imposed a seasonal restriction for the parcel. However, WGFD was concerned that "there are no assurances for protection of this corridor if the drilling results in full field production." (WGFD Letter at 2.) WGFD therefore requested the

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<sup>1/</sup> The parcels are in Sublette County and were assigned lease serial numbers WYW 156575 and 156577, respectively.

deletion of sections 28 and 29 from WY-0208-086 or that those sections be designated No Surface Occupancy, and further requested that leasing be deferred pending completion of the revision of the Pinedale Resource Management Plan. WGFD did not make a similar request with respect to parcel 088, stating that parcel 086 contained the lands of “greatest concern.” (WGFD Letter at 1.)<sup>2/</sup>

Continental filed its statement of reasons (SOR) on November 15, 2002. By motion filed on November 15, 2002, counsel for BLM requested an extension of time in which to file an answer. Ultimately, BLM determined not to file an answer.<sup>3/</sup> On December 17, 2002, this Board granted Continental’s request for a stay.

As reasons for its appeal, Continental argues that BLM’s decision to reject its bids is arbitrary and capricious, and constitutes an abuse of discretion. To support this assertion, Continental notes that BLM had issued four Information Notices before the lease sale was held. One Information Notice withdrew four parcels from the sale, but did not include the two parcels here at issue. The other three Information Notices were issued the day before the sale and described the protests that had been received by BLM and stated BLM’s determination to proceed with the sale, notwithstanding those protests. (SOR at 2 and Exs. C-F.) The last of these Information Notices specifically included the two parcels with which we are concerned. Continental challenges BLM’s decision to reject its bids and defer leasing in response to WGFD’s protest when it had declined to do so in response to other protests. (SOR at 5.) In particular, Continental notes that the bid notices for the two parcels include “comprehensive stipulations to protect a ‘crucial big game winter range migration corridor.’” (SOR at 1.) In addition, Continental faults the decision for its failure to identify the other protests received, and notes that no reason for the different response to WGFD’s protest was stated in the decision. (SOR at 5.) Continental thus concludes that “the bid rejection decision departed from the State Office’s contemporaneous prior decisions on the identical issue without providing any reasons for such departure. Accordingly, it is arbitrary and capricious, an abuse of discretion and is unsupported by the administrative record.” (SOR at 5.)

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<sup>2/</sup> A special lease notice was issued for 088: “This parcel contains portions of a crucial big game winter range migration corridor. Post-lease development activities, including construction, drilling, and well completion operations, may be restricted or prohibited during the spring and fall migration periods to protect animals using the corridor.” However, no specific timing limitation was specified.

<sup>3/</sup> On Jan. 21, 2003, Continental filed its motion to disregard any responsive pleading that BLM might file. BLM has filed nothing further, and accordingly, the motion is denied as moot.

Continental further argues that BLM's exercise of discretion is "not supported by a rational and defensible basis that is set forth in its decision and the record." (SOR at 5.) This contention is based on the assertion that BLM failed to produce or provide evidence of the other protests, despite the fact that Continental filed a request for documents pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000), dated September 13, 2002. Continental therefore concludes that "such evidence does not exist, and as such, the decision is unsupported by substantial evidence in the administrative record in violation of [the Administrative Procedure Act (APA),] 5 U.S.C. § 706 [(2000)]." (SOR at 5.) In the alternative, Continental argues that "even if the other protests on which the State Office has allegedly based its rejection decision do exist in [the] record, the record provides no rational or defensible basis for the State Office's change in position regarding the status of the parcels in question." (SOR at 5-6.) Lastly, Continental argues that it will be harmed by the publication of bid results if the parcels are again offered for sale at some future time. (SOR at 6.)

[1, 2] We begin with Continental's contention that the Information Notices established a "standing agency policy or procedure without sufficient explanation" or "[a]gency action which departs from prior precedent," see SOR at 4, within the meaning of the APA's prohibition against arbitrary and capricious decision-making. The applicable regulation provides:

An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

43 CFR 3101.1-3. In this case, Information Notices were utilized to announce the way in which the discretion conferred by 43 CFR 3120.1-3 was to be exercised. That regulation, 43 CFR 3120.1-3, provides that an appeal of a decision to hold a lease sale will not suspend any action pursuant to 43 CFR Subpart 3120 -- Competitive Leases, and further provides that the authorized officer "may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale." The issuance of the Information Notices therefore established no binding policy or practice which could serve as the predicate for Continental's APA arguments.

Continental nonetheless argues that, after failing to identify the two parcels in the Information Notice by which leasing of other unrelated parcels was deferred, BLM could not thereafter reject its bids. However, this argument is merely another way of

asserting that a legal consequence results from issuance of such notices. In the alternative, to the extent an estoppel argument is implied or suggested, such an argument must fail as well. There has been no affirmative misconduct by BLM in this case. See Schweiker v. Hansen, 450 U.S. 785, 788-89 (1981); United States v. River Coal Co., 748 F.2d 1103, 1108 (6th Cir. 1984); McNabb Coal Co. v. OSM, 105 IBLA 29, 37 (1988). As we have repeatedly held, to invoke estoppel, a party must show detrimental reliance on a written decision issued by an authorized officer, Jesse Hutchings, 147 IBLA 357, 360 (1999); Steve E. Cate, 97 IBLA 27, 32 (1987), or a crucial misrepresentation and/or concealment of material facts, United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); Salmon Creek Association, 151 IBLA 369, 373 (2000); D.F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982).

What remains is the contention that no one protested the decision to hold the lease sale because BLM did not produce copies of any protests in response to Continental's FOIA request, and if any do exist in the record, there is no basis for sustaining WGFD's protest while rejecting other protests. Contrary to Continental's claim, the record confirms that the protest described above was filed by WGFD on August 2, 2002. Protests also were filed by Donald M. Kendall,<sup>4/</sup> Lisa Joynes, Ralph Faler, Jr.,<sup>5/</sup> and by the Wyoming Outdoor Council jointly with a number of other environmental organizations.<sup>6/</sup> All of the individual protests raised the question of adverse impacts on the crucial big game winter range corridor, and all specifically identified the two parcels at issue here.<sup>7/</sup> Given that nearly all the

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<sup>4/</sup> Kendall's protest was dated Aug. 2, 2002.

<sup>5/</sup> The Aug. 9, 2002, fax cover sheet transmitting Joynes' and Faler's protests bears the handwritten notation "Filed too late." However, the transmittal sheet also contains the following typewritten explanation: "Please accept via facsimile these two protest letters, which were emailed to you last Friday, August 2, 2002, with the understanding that email protests would be accepted. This was a misunderstanding following a telephone conversation with your secretary Marilyn Ham, who instructed us to send the protests via email. We will follow up with you next week about this." Joynes' protest letter was dated Aug. 5, 2002, and Faler's was dated Aug. 2, 2002.

<sup>6/</sup> In so noting, we make no comment regarding BLM's handling of the FOIA request, which is beyond the scope of this appeal.

<sup>7/</sup> WOC's protest, dated Aug. 5, 2002, incorporated its protests of other sales by reference thereto, without summarizing what those protests argued, and without providing BLM protest decision dates, IBLA docket numbers, if any, or any other information that would readily facilitate our retrieval of those pleadings for review in this case. WOC did, however, identify 31 parcels to which its protest related, and

(continued . . .)

protests raised the same issue at about the same time, it makes little practical difference whether BLM was persuaded to suspend the offering of the two parcels by WGFD's protest, someone else's protest, or the cumulative force of all the protests. Consequently, no error is demonstrated by the fact that BLM did not issue an Information Notice announcing that it had determined to suspend the lease sale as to the two parcels. Moreover, BLM has averred that the two parcels were inadvertently included in the sale, which explains why another Information Notice was not issued. This brings us to the essence of Continental's appeal, the question of whether the record supports BLM's decision.

[3] As Continental recognizes, the Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.* (2000), with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. 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); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, 380 U.S. 1 (1965); McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, 419 F.2d at 666; D. R. Gaither, 32 IBLA 106 (1977) *aff'd sub nom. Rowell v. Andrus*, No. 77-0106 (D. Utah Apr. 3, 1978), *aff'd* in part and *rev'd* in part on other grounds, 631 F.2d 699 (10th Cir. 1980); Richard D. Sawyer, 160 IBLA 158, 164 (2003); Kathleen M. Blake, 96 IBLA 61, 67 (1987). As noted, Continental's bids were rejected before they were accepted by the United States, and thus they never matured beyond the hope or expectation that a lease might issue.

[4] Continental correctly observes that an exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. Martin S. and Joann Chattman, 154 IBLA 64, 69 (2001); Echo Bay Resort, 151 IBLA 277 (1999); Daniel T. Cooper, 150 IBLA 286, 291 (1999); Coalition for the High Rock/Black Rock Emigrant Trail, 147 IBLA 92, 95 (1998); Terry Kayser, 136 IBLA 148, 150 (1996); Four Corners Expeditions, 104 IBLA 122, 125-26 (1988). We have quoted the decision rationale above. It shows that BLM was persuaded to defer leasing the parcels "pending more in-depth consideration of the impacts of leasing in this area" (Decision at 1), the affected area being the portions of parcels WY-0208-086 and 088 containing "lands that are located within the Trapper's Point Bottleneck, a crucial big game winter range migration corridor" (Decision at 1). The Acting State Director implicitly agreed that in-depth consideration would occur in connection with revising the Pinedale RMP. (Decision at 2.) Our review of the Environmental Assessment (EA) in which BLM looked at environmental impacts of the lease sale convinces us that BLM could

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<sup>7</sup> (. . . continued)

these included WY-0208-086 and 088.

rationaly conclude that its analysis would be served by “more in-depth consideration” of the issue, particularly since BLM relies on WGFD data for its conclusions regarding mitigation of environmental impacts.<sup>8/</sup> More fundamentally, however, as the decision explains, BLM in fact had determined to suspend the offering of the two parcels for sale pending consideration of WGFD’s protest, as provided in 43 CFR 3120.1-3. The parcels were included in the sale by mistake and inadvertence. The decision therefore stated that “since the parcels should have been withdrawn prior to the sale, your bids are hereby rejected,” leaving no doubt about the reason for the action taken. (Decision at 2.)<sup>9/</sup> BLM’s decision to reject Continental’s bids therefore was neither arbitrary and capricious, nor an abuse of discretion.

Continental suggests that the seasonal timing limitation, coupled with the notice advising that post-lease development activities may be restricted or prohibited during the spring and fall migration periods to protect animals using the corridor, see Bid Notices for Parcels WY-0208-086 and 088 (Exs. A and B to SOR), constitutes “comprehensive stipulations to protect a ‘crucial big game winter range migration corridor’” (SOR at 1). However, WGFD’s specific concern was whether a full field production scenario and the “ancillary facilities” and “associated monitoring and maintenance of facilities,” and the additional disturbance in the corridor that they

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<sup>8/</sup> EA WY100-EA2002 and Finding of No Significant Impact were issued Apr. 22, 2002. The discussion directly relevant to big game consisted of two paragraphs: “Should the parcels be leased, post-lease development (pad/road/pipeline construction, and well drilling/completion/production operations) would likely cause temporary disruption of wildlife in the area. \* \* \* Construction, drilling and/or completion operations on the parcels during the crucial big game wintering period could cause unnecessary impacts to wintering mule deer and antelope, such as causing animals to move to less suitable winter habitat and conceivably fetal abortion by pregnant females. Construction, drilling and/or completion operations during the big game parturition period could cause unnecessary impacts to birthing elk, mule deer, and antelope, such as causing animals to abandon their newborn.

“Well-pad, road, and pipeline development into areas currently void of surface disturbance would result in habitat fragmentation, which, depending on the intensity of the development, vegetative cover, and terrain could affect a variety of typically ground[-]dwelling species, such as sage grouse, deer, elk, antelope, etc.” (EA at unnumbered page 12.)

<sup>9/</sup> Continental has cited no provision or authority that prevents BLM from correcting its error when it has not accepted the bid offer by issuing a lease, see 43 CFR 3120.2-2, nor are we aware of any such prohibition in these circumstances.

represent warranted further study. Our review of the EA supports a conclusion that the topic deserved more consideration. Continental's assertion reflects disagreement with BLM's determination to further consider protection of the migration corridor before leasing the two parcels, but does not demonstrate error in the decision or an abuse of BLM's discretion. See Great Basin Mine Watch, 160 IBLA 340, 366 (2004); Western Shoshone Defense Project, 160 IBLA 32, 53 (2003); Blue Mountains Biodiversity Project, 139 IBLA 258, 267 (1997).

One final point deserves a brief response. Continental has provided an unauthenticated fourth page of a 5-page tabulation of bid results from the August 6, 2002, lease sale. See Ex. G to SOR. Accepting Ex. G for what it appears to be, the identity of the winning bidders and the amounts of the high bids, among other information, was published for each parcel, and to that extent, all the high bidders are in the same position. Continental argues that, "[w]ith the publication of bid results, other potential members of the industry now know of Appellant's interest in these parcels and what amount it was willing to pay. Were these parcels to be rebid, Appellant would be placed in a competitive disadvantage." (SOR at 6.) Continental's concern was adequate reason to grant a stay to preserve the status quo until this Board could reach the merits of this dispute. However, absent an explanation of how knowledge of its bid amount will place it at a competitive disadvantage, we are unwilling to assume that, if these parcels are again offered for sale, they would be offered subject to the same terms and conditions as those of the August 6 lease sale. Thus, there is no basis for finding that Continental will be disadvantaged in a future lease sale.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion to disregard any further responsive pleading from BLM is denied as moot, and the decision appealed from is affirmed.

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T. Britt Price  
Administrative Judge

I concur:

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R.W. Mullen  
Administrative Judge