

ALLAN R. HALLOCK

IBLA 73-212, 73-312

Decided August 30, 1973

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, requiring acceptance of special stipulations as conditions precedent to issuance of noncompetitive oil and gas leases, W 37014 through W 37021, inclusive.

Affirmed.

Oil and Gas Leases: Generally! ! Secretary of the Interior

The Secretary of the Interior, in the exercise of his discretionary authority respecting issuance of oil and gas leases, may require acceptance of special stipulations as a condition precedent to issuance of such a lease.

National Environmental Policy Act of 1969! ! Oil and Gas Leases:
Generally

It is proper to require one making an oil and gas lease offer to consent to stipulations deemed necessary to protect the land and surface resources from undue damage by exploratory operations, as a condition precedent to issuance of the lease, pursuant to the mandate of Congress expressed in the National Environmental Policy Act of 1969, and in consonance with Secretary's Order No. 2948 of October 6, 1972.

Oil and Gas Leases: Generally

An applicant for a noncompetitive oil and gas lease on lands included within the oil shale areas of Colorado, Utah and Wyoming, as defined in the Secretary's Order of June 1, 1971, is properly required to

accept, in writing, the special stipulations required by that order or face rejection of his offer.

APPEARANCES: Richard P. Cullen, Esq., Denver, Colorado, for the appellant.

OPINION BY MR. HENRIQUES

Allan R. Hallock appeals from separate decisions, W 37014 through W 37021, inclusive, of the Wyoming State Office, Bureau of Land Management, dated November 14, 1972, or March 2, 1973, each of which required him to accept special stipulations as conditions precedent to issuance of a noncompetitive oil and gas lease. With each lease offer he was required to accept the "open end" surface resources stipulations [now Form 3109-5], designed to effect environmental protection. As to several of the offers, he was required to accept the standard oil shale stipulation and other stipulations variously relating to time of lease operations, prohibition against use of the surface of some of the leased lands, waste disposal, road use and maintenance, and notification to the District Manager prior to any activity which might disturb the surface of the leased lands.

Appellant contends that some of the stipulations are arbitrary, capricious and unreasonable, while others are redundant and in conflict with each other, or are unwarranted under the facts or are incorrect as to form or are unauthorized by law.

The Secretary of the Interior is vested with plenary authority over administration of the public lands, including institution of measures designed to protect these lands and their resources. 43 U.S.C. § 1457 (1970). Moreover, he is obligated to support and implement the policy expressed by Congress in the National Environmental Policy Act of 1969. 42 U.S.C. § 4331 (1970). He has discretionary authority to issue oil and gas leases pursuant to the Mineral Leasing Act of 1920, as amended, under such rules and regulations as he deems necessary. 30 U.S.C. § 189 (1970). He exercises these "general powers over the public lands as guardian of the people." United States v. Wilbur, 283 U.S. 414, 419 (1931).

In furtherance of the Department's mineral management objectives, the Secretary issued his Order No. 2948 of October 6, 1972, establishing the division of responsibility between the Bureau of Land Management [BLM] and the Geological Survey [Survey] for administration of the Mineral Leasing Laws ! Onshore. Among the objectives defined in the Order is protection of the environment, which

includes the Department's responsibilities to:

- (1) assure that mineral exploration and production be conducted with the maximum protection of the environment;
- (2) assure the rehabilitation of disturbed land;
- (3) assure that precautions are taken to protect public health and safety; and
- (4) assure full compliance with the spirit and objectives of the National Environmental Policy Act of 1969, other Federal environmental legislation, and supporting Executive Orders and regulations.

To accomplish its goals, the Order sets out the responsibilities of the Bureau of Land Management and of the Geological Survey. BLM exercises, at the bureau level, the Secretary's discretionary authority to determine whether or not leases are to be issued, and then is responsible for issuing such leases. BLM is the office of record in oil and gas leasing matters. The Geological Survey is responsible for all geologic, engineering and economic value determinations for the Department's mineral management program. Survey exercises the Secretary's delegated authority regarding operations conducted within the area of operations by the lessees and determines the actions to be taken by them from the standpoint of the development, conservation and management of mineral resources under the jurisdiction of this Department.

In fostering environmental protection, BLM, in cooperation with Survey, formulates the general requirements to be incorporated in oil and gas leases for the protection of the surface and non! mineral resources and for reclamation of the land. Survey, before approving exploration plans, drilling permits, oil and gas field development plans or plans for the abandonment of wells or other operations, consults with BLM on the adequacy of the surface use, environmental protection, and reclamation aspects of the plans and will not grant approval if inconsistent with BLM's recommendations. BLM is responsible for compliance examinations of environmental protection requirements outside of the operating area. With respect to approval of access roads outside the operating area, BLM has the primary responsibility but obtains the recommendations of Survey before taking final action. The area of operation, for the purpose of Order No. 2948, is defined as that area of the present and planned oil and gas field exploratory, development and production operations, as presented in an approved exploration

plan, drilling permit, oil and gas field development plan, or plan for abandonment of wells.

Within these parameters and consistent with 43 CFR 3109.2-1, the "open end" surface disturbance stipulation [Form 3109-5] has been formulated, and acceptance of this stipulation by every lessee is required prior to issuance of an upland oil and gas lease on federal lands. The stipulation is not an abuse of the Secretary's authority, but rather a practical method of keeping at a minimum the environmental degradation which might be caused by oil and gas operations. It comports with the mandate of Congress in the National Environmental Policy Act of 1969. 42 U.S.C. §§ 4321 et seq. (1970). The stipulation will not be an impediment which will cause serious delay in drilling or other exploratory activities of the lessee. The management agencies, BLM and Survey, are under strict admonition from the Secretary in Order No. 2948 to foster, promote, and encourage the orderly and timely exploration and production of oil and gas from the leased lands. The Secretary of the Interior, in the exercise of his discretionary authority respecting the issuance of oil and gas leases, may require acceptance of special stipulations as a condition precedent to issuance of such a lease, where such stipulations are designed to protect the soil and surface resources and do not unreasonably interfere with the lessee's rights of enjoyment. Quantex Corporation, 78 I.D. 317 (1971). Appellant is properly required to consent to the stipulation set forth in Form 3109-5 as a condition precedent to issuance of each oil and gas lease requested on public lands, or face rejection of his lease offer.

The requirement that notice be given by the lessee to the District Manager prior to commencement of any activity on the leasehold which might disturb the surface of the land or the non! mineral resources similarly is not unreasonable, and may be satisfied by a copy of the report required by the stipulation on Form 3109-5. See Quantex Corporation, supra.

The stipulations relating to "oil shale lands" is required pursuant to Secretary's Order of June 1, 1971, set forth in 615 Departmental Manual 2.1. This stipulation is mandatory and must be accepted as a condition precedent to issuance of any oil and gas lease in the "oil shale lands of Colorado, Utah and Wyoming," as they are defined in Executive Order No. 5327 of April 15, 1930. Quantex Corporation, supra. Where it has been called for, the appellant must accept the required stipulation relating to oil shale lands or face rejection of his lease offer.

The special stipulations relating to waste disposal and road

construction, maintenance and use are superseded by the requirements set forth in the "open end" surface resources stipulation, Form 3109-5. Similarly, the restriction on time of use of the leased lands imposed on W 37015 may be resolved through the procedures called for by Form 3109-5, so appellant need not accept the stipulation relating to operations to be conducted only during certain months.

The State Director has informed this Board that the stipulations interdicting use of the surface of some of the lands in W 37017 was requested in error. To the extent that appellant was called upon to accept the stipulation that the surface of the leased land not be occupied, the decision below is vacated.

None of the arguments presented by appellant in support of his objections to the stipulations required for protection of the environment or of the oil shale lands has any substance, nor has he adduced any cogent arguments that these stipulations will, in fact, prevent the orderly development of the oil and gas resources in the lands involved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed, as above modified. Appellant is allowed 30 days from date of this decision within which to submit executed copies of the required stipulations to the Wyoming State Office, Bureau of Land Management, failing in which his offers to lease, W 37014 through W 37021 inclusive, will be rejected without further notice.

Douglas E. Henriques
Member

We concur:

Newton Frishberg

Member

Joan B. Thompson
Member

