

A. HELANDER

IBLA 74-77

Decided March 15, 1974

Appeal from the August 13, 1973, decision of the Montana State Office, Bureau of Land Management, requiring that special stipulations be executed as a condition precedent to the issuance of oil and gas leases M 24722 and M 24723.

Vacated and remanded.

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

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values. While such stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

APPEARANCES: A. Helander, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

A. Helander has appealed from a decision of the Montana State Office, issued August 13, 1973, requiring him to accept special stipulations as a condition precedent to the issuance of two non-competitive oil and gas leases pursuant to section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970).

The land contained in the disputed leases is located in Montana immediately east of the Lewis and Clark National Forest. The Bureau of Land Management (BLM) has determined that preservation of the recreation, wildlife and watershed value of the lands requires

that alternative uses, such as oil and gas operations, should be strictly controlled. For these reasons, the Bureau made issuance of appellant's leases subject to "Supplemental Stipulations for Land Within Sensitive Areas under the Jurisdiction of the Bureau of Land Management," Form MSO 3100-28 (3-73) and "Oil and Gas Lease Stipulation," Form MSO 3100-31 (7-73).

The stipulation contained in MSO 3100-28 requires that the lessee formulate a "Surface Management Plan" to be approved by the Bureau's District Manager. Such a plan is intended to embody reasonable requirements to prevent soil erosion, air and water pollution, unnecessary damages to surface vegetation and other resources of the United States and to provide for the restoration of the land surface and vegetation. Provisions for protecting wildlife and scenic areas are two of the items which must be incorporated into the plan. The stipulation contained in MSO 3100-31 (7-73) prohibits direct drilling in the surface area, but the lessee is permitted to use directional drilling to develop the oil and gas under these areas provided that such activity will not disturb the surface area or otherwise interfere with their use by the Bureau.

In his reasons for appeal, Helander states that he has 12,022.42 acres of land under Federal oil and gas leases. These leases were issued with less stringent stipulations which still maintain protection of the environment. Appellant feels that the leases in issue should conform to the other Federal leases which were previously issued in the area. Regarding the stipulations in question, appellant asserts:

The stipulations contained in these leases were such that it would not even allow entry on much of this acreage and directional drilling could in no way be conducted here--hence; making them untenable and unworkable, and of course, cutting into the block of leases very seriously. In addition, in the interim before the leases were issued, we applied for State acreage directly adjacent to these leases as shown on the enclosed plat. The stipulations contained in the said leases make the State Leases untenable--the State Leases being in smaller parcels and not large enough for a gas well which requires 640 acres.

In a letter filed with the Board on October 9, 1973, William Helander, in behalf of appellant, commented on the Bureau's reasons for prohibiting entry. He explained that the wildlife consists of some deer and possibly "a few gophers or groundhogs." He does not believe that drilling or seismic activity would disturb the wildlife in the area, nor does he feel that the recreation of the area would suffer as a result of drilling activity since, he argues, the area

is not conducive to recreation. He describes the area as one having no lakes, a few small streams, few trees and inadequate access roads. As for water in the area, he states that less grazing would be the most helpful to conservation as the area is overgrazed. He reasons that since the terrain is hilly and rough with rocks, it cannot sustain vegetation. Therefore, a minimum amount of degradation of the environment would result from building roads to the drill site. He states that a minimum amount of land would be used for the drill site and if the well is unproductive the land would be restored to its original condition. William Helander emphasizes that these leases are intermingled with other Federal and State leases which are not subject to these stipulations, making an overall environmental protection plan of this type quite difficult.

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); John Oakason, 3 IBLA 148, 149 (1971). The Secretary of the Interior has discretionary authority to issue oil and gas leases under such rules and regulations as he deems necessary. 30 U.S.C. § 189 (1970). He may require acceptance of special stipulations as a condition precedent to the issuance of such a lease where such stipulations are designed for protection of the soil and surface resources and do not unreasonably interfere with the lessee's rights of enjoyment. Quantex Corporation, 4 IBLA 31, 78 I.D. 317 (1971); Allan R. Hallock, 13 IBLA 13 (1973). Furthermore, he is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969. 42 U.S.C. § 4331 (1970). Allan R. Hallock, supra at 14, John Oakason, supra.

43 CFR 3109.2-1 specifically provides that the Bureau of Land Management, which is the delegate of the Secretary of the Interior, may require such special stipulations as are necessary for the protection of land embraced by a lease. It is the Bureau's responsibility to determine whether special stipulations are necessary and to impose stipulations which are appropriate and reasonably related to oil and gas activities. John Oakason, 6 IBLA 275, 277 (1972).

The appellant's first complaint centers on the stipulation prohibiting direct drilling occupancy of some of the acreage because he claims that directional drilling is impossible. We note that in each lease offer provisions of both stipulation forms close some land to direct drilling operations. Form MSO 3100-28 provides that direct drilling is excluded:

1. Within 660 feet on either side of the right-of-way boundary of any and all improved roads and/or highways within the lease areas.
2. Within 100 feet on either side of the centerline of any and all trails within the lease area.
3. Within 300 feet of the normal high water line of any and all lakes, ponds, reservoirs and perennial streams located within the lease area.
4. Within 300 feet of any and all springs or water wells within the lease area.

The Bureau, by adding the following, provided that these may be changed:

The distances in subparagraphs 1, 2, 3, and 4, immediately above, may be changed when specifically agreed to in the "Surface Management Plan."

Even accepting appellant's assertion that directional drilling is impossible, we do not find that this stipulation is unreasonable in light of the fact that occupancy of the surface is not prohibited throughout the entire area, and the area excluded from occupancy may be changed.

The other principal complaint of the appellant does raise some justifiable objections. The stipulation contained in MSO Form 3100-31 (7-73) prohibits any surface operations of any kind on the lands described and permits directional drilling only if it does not have any effect on the surface. But the appellant has stated that directional drilling is impossible in this area. Examining this stipulation in relation to M 24722, we note that since the area subject to this restriction contains approximately 2,500 acres, there is apparently no way to develop any portion of the tract except the outer fringe of the area because of well-spacing and other conservation requirements. In effect, the lease would be rendered nugatory by the stipulation, in that the lessee would be prevented from exercising the basic rights afforded by the lease.

We have often stated that 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. Allan R. Hallock, 13 IBLA 13, 16 (1973), Quantex

Corporation, supra. Since the proposed stipulation contained in Form MSO 3100-31 (7-73) would, under these circumstances, severely impair or actually preclude any development, we hold that it is unreasonable and may not be imposed in this case. Cf. Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972) and George A. Breene, 13 IBLA 53 (1974). Accordingly, this case will be remanded to the Montana State Office for a determination as to the need for this stipulation. If it is found that the need for environmental protection is of paramount importance and that the environmental values could not withstand any oil and gas activity, then no lease should issue. If, however, some accommodation can be made that will enable the appellant to utilize the land, the lease should issue with appropriate stipulations. In no event, however, will the Montana State Office issue a lease with stipulations so restrictive that any right of enjoyment by the lessee is precluded.

In these circumstances we find the stipulation contained in MSO 3100-31 (7/73) unreasonable only as to the large area in lease offer M-24722, which is comprised of the available acreage in sections 28-32. The same stipulation for the small areas in sections 5 and 8, which are contained in lease offer M-24723, is not unreasonable since the stipulation should not materially hinder development of such a small area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part, reversed in part, and remanded to the Montana State Office for action consistent with the views expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge

