

JOHN SNYDER  
DAVID A. PROVINSE

IBLA 73-346

Decided April 17, 1974

Appeal from a decision of the Montana State Office, Bureau of Land Management, requiring that special stipulations be executed as conditions precedent to the issuance of four oil and gas leases M 23287, M 23288, M 23289 and M 23290, covering certain lands under the administration of the Forest Service, Department of Agriculture.

Affirmed in part, reversed in part.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
Consent of Agency

An applicant must give written acceptance of reasonable special stipulations requested by the Department of Agriculture relating to protection of the land and surface resources as a condition precedent to issuance of a noncompetitive oil and gas lease for public domain land within a national forest.

APPEARANCES: John Snyder and David A. Provinse, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John Snyder and David A. Provinse have appealed from a decision of the Montana State Office, Bureau of Land Management, dated February 26, 1973, requiring them to execute special stipulations requested by the Forest Service as conditions precedent to the issuance of noncompetitive oil and gas leases M 23287, M 23288, M 23289 and M 23290 covering certain lands under the administration of the Forest Service, United States Department of Agriculture. All of the lands included in the leases are located in the Gallatin National Forest. Certain general stipulations apply to each lease but other stipulations apply to portions only of one or the other of two of

the four lease applications. 1/ The first, applying only to M 23289, provides:

There will no occupancy within 600 feet of the Battleridge Campground or the Battleridge Guard Station, or within 300 feet of the centerline of Montana Secondary Highway No. 293. 2/ Directional drilling will be allowed from outside the restricted areas:

T. 2 N., R. 7 E., P.M.M.

Sec. 32: W 1/2 W 1/2 NE 1/4--Battleridge Campground

Sec. 32: W 1/2 SW 1/4--Battleridge Guard Station

The second special stipulation applies only to M 23290. It states that:

No roads will be constructed, no machinery will be allowed, no structures will be built, or other development on the lands described below.

T. 2 N., R. 6 E., P.M.M.

Sec. 3: SW 1/4 NW 1/4, SW 1/4, SW 1/4 SE 1/4

Sec. 10: NE 1/4

Sec. 11: SW 1/4 NW 1/4, SW 1/4, SW 1/4 SE 1/4

Sec. 14: NE 1/4, NE 1/4 NW 1/4, NE 1/4 SE 1/4

Drilling would be directional and from outside these areas.

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1/ Appellants have expressed the fear that inasmuch as "all four applications \* \* \* were lumped in one appeal, the signing of all stipulations concerning them could be construed to be a single act which could bind all the applications." We hold that the stipulations are only effective as to the specific leases they encompass regardless of any consolidation of cases for administrative convenience which may occur.

2/ We would point out that as originally proposed, this stipulation read "[t]here will be no occupancy within the Battleridge Campground or the Battleridge Guard Station, or within two sight distances of these areas, or within the seen adjacent to Montana Secondary Highway No. 293." (Emphasis added.) In response to an inquiry of the Board as to the meaning of the underlined words, the Forest Supervisor, by letter of November 30, 1973, suggested the changes we have incorporated in the text. These changes resolve the uncertainties which the original wording engendered.

Appellants maintain that "the effect of the stipulations would be to withhold any rights a lessee would hold under the lease." This statement reveals that appellants are under a misapprehension as to the nature of any agreement reached between themselves as lessees and the United States as lessor. Under leases granted pursuant to the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970), a lessee acquires only such rights as are provided for by statute and by regulations promulgated by the Secretary of the Interior as well as by the lease itself. These rights do not vest until the lease agreement has been signed by the lessee and the appropriate representative of the Department. 3/

Furthermore, the regulations explicitly provide for the establishment of certain stipulations which must be accepted by the lessee as conditions precedent to the issuance of any lease on public domain lands. For example:

The Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease. 43 CFR 3109.2-1.

With respect to lands under the jurisdiction of the Department of Agriculture, which includes national forest lands, the regulations provide:

Offerors for noncompetitive oil and gas leases and applicants for permits, leases and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director [of the Bureau of Land Management.] \* \* \* Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.  
43 CFR 3109.4-2.

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3/ The Secretary of the Interior has been designated by statute as the official responsible for leasing public lands for the exploration and development of mineral resources pursuant to rules and regulations to be prescribed by him. 30 U.S.C. § 189 (1970). See Duncan Miller, 6 IBLA 216, 224, 79 I.D. 416 (1972). The Secretary has delegated his authority in this area to the Bureau of Land Management. Quantex Corporation, 78 I.D. 317, 318 (1971).

This regulation has been interpreted to mean that while the Secretary of the Interior or his delegate has exclusive jurisdiction over oil and gas leasing of national forest lands, he may consider the recommendations of the Secretary of Agriculture prior to the issuance of any such oil and gas leases. Quantex Corporation, 78 I.D. 317, 319 (1971). This Department may review the special stipulations proposed by the Forest Service and may make its own decision as to their reasonableness and validity. Id; Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

Thus it is not incumbent upon the Bureau of Land Management to adopt the Forest Service's stipulations, although in this case it has chosen to do so. Nor is this Board required to adopt the Bureau of Land Management's decision without further inquiry. It is the Board's responsibility to review the stipulations to determine whether they are supported by valid reasons, Quantex Corporation, *supra*; Duncan Miller, *supra*; Ida Lee Anderson, 6 IBLA 314 (1972), or whether they may interfere unduly with the orderly development of the oil and gas resources and lands involved. Bob Owen White, 5 IBLA 229 (1972); Geocon, Inc. and Cameo Mineral, Inc., 5 IBLA 91 (1972). If the stipulations are such as would preclude development of the oil and gas resources, and environmental considerations necessitate such restrictions, no oil and gas lease should issue. A. Helander, 15 IBLA 107 (1974).

The record in this case shows that portion of M 23290 in which development is prohibited to be subject to a Multiple Use Plan adopted by the Forest Service. The plan was arrived at through public meetings, interest group involvement and input from various conservation organizations. The area in question is roadless and undeveloped, and the Forest Service has recommended that it remain so for the benefit of hikers, backpackers and others seeking to explore a "wilderness" environment.

The special stipulation pertaining to M 23289 prohibits occupancy within or near two areas already developed for recreational or other purposes. More than two-thirds of the land originally requested in the lease application remain available for development. Furthermore, directional drilling from outside the restricted area is specifically provided for.

It does not appear from the record that these stipulations are unreasonable or unduly restrictive. The stipulations affect less than half of the land covered by each of the leases involved and directional drilling is permitted in both cases. Given the obligation of the Forest Service and of the Interior Department to protect public lands and their resources, we can not say that these stipulations are not in the public interest.

As to the general stipulations required on all the leases herein, we have examined them to see if they comport with Departmental policies. We are of the opinion that one of the stipulations requested need not be signed. "Department of Interior Stipulations," Form MSO 3100-24 (9/72), requires the prior approval of the Geological Survey's Area Oil and Gas Supervisor for any operations on the leased lands "that will disturb the surface thereof or otherwise affect the environment \* \* \*." Before any entry on the land, the lessee is required to provide to the Area Oil and Gas Supervisor two copies of the map and an explanation of the nature of the anticipated activities. The lessee must also send a copy of the map and explanation to the Forest Supervisor, Gallatin National Forest. The Survey is then charged with preparing an environmental analysis "in consultation with the appropriate surface management agency." After completion of the analysis the Area Oil and Gas Supervisor notifies the lessee of any conditions to which the proposed surface disturbance will be subject, including location of drilling or other exploratory or development operations, the type of vehicles which may be used and the location of any needed improvements. Form MSO 3100-24 (9/72) is identical in its language to BLM form 3109-5, which this Board held to be acceptable in Allan R. Hallock, 13 IBLA 13 (1973).

In light of this, however, we feel that Form MSO 3100-10 (February 1972), serves no useful purpose and need not be assented to. That Form, entitled "Stipulation for Lands Under the Jurisdiction of Department of Agriculture," provides:

The lands embraced in this lease being under the jurisdiction of the Secretary of Agriculture, the lessee hereby agrees:

1. The local District Ranger shall be informed and the plans provided a minimum of 30 days prior to the date of any field operations, such as seismic work, drilling, road construction, that involve these lands. Construction period will be determined by soil, moisture, and ground conditions. All plans must be approved by the District Ranger in advance of any field operations. Guidelines for oil field exploration and production activity are available in the office of the responsible District Ranger.
2. Drilling for seismic shotholes will not be done within one-eighth (1/8) mile of any spring or water well existing prior to the drilling operation without any advance approval of the District Ranger.

Inasmuch as Form MSO 3100-24 (9/72) adequately protects all concerns covered by this second stipulation, and the Area Oil and Gas Supervisor is required to consult with the Forest Service pursuant to Form MSO 3100-24 (9/72), we see no useful purpose that the stipulation printed on Form MSO 3100-10 serves, save to engender needless complications. See Duncan Miller, 11 IBLA 107 (1973). Therefore, agreement to the stipulation as printed on Form MSO 3100-10 will not be required so long as the lessee signs Form MSO 3100-24. However, where an acceptable additional stipulation restricting surface use has been inserted in the Form MSO 3100-10, as has been done in connection with lease offers M 23289 and M 23290, the appellants must accept the inserted stipulation over their signatures.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part. Appellants are allowed 30 days from the date of this decision to submit executed copies of the required stipulations to the Montana State Office, Bureau of Land Management. If they fail to do so, their offers will be rejected without further notice.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

