

**Editor's note: Reconsideration denied by order dated Oct. 7, 1974; Appealed – dismissed, Civ. No. 74-53 BLG (D.Mont. Oct. 31, 1974)**

DUNCAN MILLER

IBLA 74-169

Decided June 20, 1974

Appeal from decision of the Wyoming State Office, Bureau of Land Management, requiring consent to stipulations for oil and gas lease offer W 41311.

Affirmed.

Oil and Gas Leases: Generally – Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Stipulations – Rights-of-Way: Federal Highway Act

An applicant for an oil and gas lease must execute reasonable, special stipulations required by the Bureau of Land Management for the purpose of protecting a State's material site under the Federal Highway Act. The financial burden of complying with the protective stipulations is the sole responsibility of the lessee.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Duncan Miller has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 26, 1973, requiring him to execute a special stipulation as a condition precedent to the issuance of noncompetitive oil and gas lease W 41311.

Appellant's offer was filed on a drawing entry card for Parcel No. 179 in the July 1973 simultaneous filing procedure. Parcel No. 179 contains a total of 344.59 acres, of which the SE 1/4 NW 1/4 Sec. 6, T.49 N., R. 91 W., 6th P.M., containing 40 acres, is covered by Wyoming State Highway Department material site B 037070 granted under the Federal Highway Act, 23 U.S.C.

§ 317 (1970). The proposed stipulation was designed to protect the interest of the State in the 40-acre tract after clearance for leasing it had been obtained from the Wyoming State Highway Department pursuant to a request for a report by BLM. VI BLM MANUAL, MINERALS 2.1.22. The stipulation reads:

The above referenced oil and gas lease on these lands, is hereby made subject to the stipulation that the exploration or drilling activities will not interfere materially with the use of the area as a material site.

At the time operations on the above land are commenced, I will notify the Wyoming Highway Department, Box 1708, Cheyenne, WY 82001.

The BLM decision correctly held that failure to execute the stipulation would result in the rejection of the offer in its entirety and the closing of the case without further notice. F. S. Prince, A-30801 (October 25, 1967).

Miller's appeal overlooks the exact nature of the required stipulation, which is to protect the State's interest in its material site. Instead, he asserts that he does not want to be handicapped by the stipulation as the area has very little environmental value or beauty and, further, that there should be some allowance for any added cost imposed upon him because of the stipulation.

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. The regulations also require that:

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

43 CFR 3109.4-1.

The Department may require acceptance of special stipulations as a condition precedent to the issuance of an oil and gas lease,

where such stipulations are designed to protect the land for the purpose for which it was reserved or segregated and do not unreasonably interfere with the lessee's right of enjoyment. Cf. John Snyder, David A. Provinse, 15 IBLA 253 (1974); A. Helander, 15 IBLA 107 (1974); Duncan Miller, 14 IBLA 185 (1974). The State's interest in the material site is entitled to reasonable protection. The proposed stipulation is reasonable for this purpose and is not unduly restrictive. Furthermore, the stipulation affects less than nine percent of the land covered by the lease offer.

As for appellant's contention that some allowance should be made for any added cost imposed by the stipulation, this Board has repeatedly stated that the financial burden of complying with protective stipulations is the sole responsibility of the lessee. Duncan Miller, 15 IBLA 116 (1974); Duncan Miller, 12 IBLA 185 (1973); Duncan Miller, 12 IBLA 199 (1973); Duncan Miller, 11 IBLA 1 (1973).

The rejection of the offer in its entirety is proper because it was filed pursuant to the regulations in 43 CFR Subpart 3112, which govern simultaneous filings.

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. Miller is allowed 14 days from the date of this decision within which to submit to the Wyoming State Office, Bureau of Land Management, executed copies of the required stipulation, failing in which his offer, W 41311, will stand as rejected without further notice.

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Anne Poindexter Lewis  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Martin Ritvo  
Administrative Judge

