

BILL J. MADDOX

IBLA 74-253

Decided September 19, 1974

Appeal from the several decisions of the Bureau of Land Management's Utah State Office requiring appellant to execute "no surface occupancy" stipulation as a prerequisite to the issuance of eleven oil and gas leases (Utah 25046, 25058, 25060, 25079, 25108, 25114, 25117, 25118, 25121, 25122, 25127).

Set aside and remanded.

1. Environmental Quality--Oil and Gas Leases: Generally--Secretary of the Interior

Pursuant to its exercise of the delegated authority of the Secretary, the Bureau of Land Management may require the acceptance of special stipulations as a condition precedent to the issuance of oil and gas leases of public lands where such stipulations are designed for the protection of other resources and environmental attributes and do not unreasonably interfere with the lessee's rights of enjoyment. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, but stipulations which would forbid the lessee to occupy the surface must be justified by adequate reasons in order to be sustained on appeal.

APPEARANCES: C. M. Peterson, Denver, Colorado, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bill J. Maddox has appealed from separate decisions of the Utah State Office which required Maddox to execute and return special stipulations in connection with each of eleven oil and gas lease offers made by Maddox, failing in which the offers would be rejected.

Each of the decisions in question states, "You must sign and return to this office the enclosed Oil and Gas Lease - Surface Disturbance Stipulations prior to execution of a lease."

However, appellant asserts that no "surface disturbance stipulations" <sup>1/</sup> were attached to the decisions. Instead, attached to the decisions were stipulations which, according to appellant, provided as follows:

No occupancy of the surface of . . . is authorized by this lease. The lessee, however, is authorized to employ directional drilling to the oil and gas provided that such drilling will not disturb the surface.

No copy of this stipulation was supplied by the appellant and no copy was included in the case records forwarded by the Utah State Office. In response to a telephone request, the Utah State Office sent this Board several copies of form USO 3100-6 (11/73), which does not incorporate the stipulation to which appellant objects.

Appellant relates that upon his receipt of the decisions his representatives went to the Utah State Office in an attempt to learn why the stipulation was imposed, since no reasons were given in any of the decisions. Allegedly, they found that the Oil and Gas Use Plats do designate areas which have been categorized as "no surface occupancy" or "restricted leasing area," but which do not reflect any basis or reason for imposing such categories. Appellant's representatives were supplied with a machine reproduction of what appears to be a draft of an environmental analysis report. This document was submitted by appellant as Exhibit A to his statement of reasons for appeal. It is undated and unsigned. It does not designate the specific land to be placed in the "no surface occupancy" category.

The official case records of each lease offer contain nothing whatever to indicate the reason for the stipulation. Moreover, as previously mentioned, these records do not even contain the stipulation.

[1] With neither the stipulation nor any reason or basis for its imposition before us, we have nothing to review except the allegations advanced by the appellant and the exhibits which he has supplied. We certainly cannot affirm the decisions appealed from on the strength of such a record, nor can we conclude that all of the lands involved should be leased to appellant without the protection afforded by a "no surface occupancy" stipulation if the environmental values of the lands concerned merit such protection and if surface oil and gas exploration and development constitute so much of a threat to such values that it must be totally excluded.

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<sup>1/</sup> "Surface Disturbance Stipulations" presumably are those contained in Form USO 3100-6 (11/73).

It should be recognized that a prohibition against surface occupancy is probably the most stringent stipulation which can be imposed. It is a stipulation of last resort, to be employed only where no other possible protective measures will strike the proper balance between the respective values.

The tenor of the draft environmental analysis report, supplied as appellant's Exhibit A, suggests that its contributors regard the environmental attributes of the land as positive values, inherently desirable, but treat oil and gas operations as a negative value, inherently undesirable. This is not a sustainable concept. Oil and gas exploration and development not only have tangible economic values, but also broad affirmative connotations with respect to the public interest.

Appellant acknowledges that it is well established that 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); that he is vested with plenary authority over administration of the public lands, including institution of measures designed to protect those lands and their resources, 43 U.S.C. § 1457 (1970); that he exercises such general powers over the public lands as guardian of the people, United States v. Wilbur, 283 U.S. 414, 419 (1931); that he is obligated to support and implement the policy expressed by the Congress in the National Environmental Policy Act of 1969, 42 U.S.C. § 4331 (1970); that the responsibility of the Secretary for the management of the public resources with direction to develop a program to provide for protection of the resources and for a quality environment has been delegated to the Bureau of Land Management, Quantex Corporation, et al., 4 IBLA 31, (1971); and that the imposition of special surface protection stipulations in federal oil and gas leases is authorized pursuant to 43 CFR 3109.2-1 and 3109.4 (1973). However, appellant notes, it is equally well established that as to stipulations concerning public lands, such stipulations must not be unreasonable and must not preclude the lessee's enjoyment of the benefits bestowed by the lease. John Oakason, 3 IBLA 148 (1971); Quantex Corporation, 4 IBLA 31 (1971); John Oakason, 4 IBLA 79 (1971); Benjamin T. Franklin, 4 IBLA 130 (1971); Ida Lee Anderson, 4 IBLA 147 (1971); G. W. Anderson, 4 IBLA 150 (1971); Geocon, Inc., and Cameo Minerals, Inc., 5 IBLA 91 (1972); Bob Owen White, 5 IBLA 229 (1972); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972); John Oakason, 6 IBLA 275 (1972); Ida Lee Anderson, 6 IBLA 314 (1972).

In A. Helander, 15 IBLA 107, 110 (1974), this Board found that the "no surface occupancy" stipulation was unreasonable as to a large area in the lease offer, so that "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." See Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972). In George A. Breene, 13 IBLA 53 (1974), the Board stated, "proposed special lease

stipulations must be supported by valid reasons which will be weighed by this Department with due regard to the public interest." Further, the Board has recognized that a "no surface occupancy" stipulation may be a proper and necessary requirement in appropriate circumstances. Nuclear Corporation of New Mexico, 14 IBLA 341 (1974). Execution of a stipulation will not be required where the stipulation serves no useful purpose because it is superfluous or redundant. John Snyder, 15 IBLA 253 (1974).

Accordingly, stipulations which would forbid the lessee to occupy the surface of his leasehold, or a large portion thereof, must be justified by adequate reasons in order to be sustained on appeal. 2/ Such reasons should demonstrate that the other resources or amenities of the land to be protected are of sufficient value to warrant the imposition of such a severe restraint, and that less stringent alternatives would not adequately accomplish the intended purpose by containing the adverse effects of oil and gas operations within acceptable limits.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, each of the decisions appealed from is set aside and the cases are remanded to the Utah State Office for further action consistent herewith.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Joseph W. Goss  
Administrative Judge

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2/ Judge Goss suggests that to avoid future delays caused by appeals and remands, the Department consider amendment of the applicable regulations to provide any objection to a provision in a proposed lease first be made to the State Office. The State Office would retain jurisdiction to modify the provision or to justify the provision in its decision. Only appeals from the justified decision would be heard by the Board.

