

RICHARD P. CULLEN

IBLA 75-46

Decided February 10, 1975

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, requiring consent to stipulations for oil and gas leases W-45287 through W-45291.

Affirmed as modified.

1. Environmental Quality -- Oil and Gas Leases: Applications: Generally  
-- Oil and Gas Leases: Stipulations

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

APPEARANCES: Richard P. Cullen, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Richard P. Cullen has appealed from separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), which require his consent to special stipulations as a condition precedent to issuance of noncompetitive oil and gas leases on public lands in Carbon County, Wyoming. The leases, which include lands in close proximity to each other, were to be issued subject to a stipulation for the protection of a winter wildlife habitat and/or subject to a stipulation to minimize watershed damage. The stipulations on each lease varied with respect to the amount of time permitted each year for exploration, drilling and other activities. In one of his arguments on appeal, Mr. Cullen urged that, given the varied types and durations of limitations on similarly situated land, the stipulations were arbitrary, unreasonable and capricious. The case record before the Board did not disclose the basis for the BLM's determination that the stipulations were required for the lands in dispute. Accordingly, by letter to the Wyoming State Office, dated November 21, 1974, the Board requested a complete explanation for the reasons for the stipulations as to

each lease, including the rationale for the varying durations of the limitations. 1/ Our letter directed the BLM to serve appellant with a copy of all material sent to the Board and appellant was given 30 days from receipt thereof to file a reply with the Board.

On December 19, 1974, the Board received a reply from the State Office. 2/ Upon review of the stipulations at issue, the State Office revised its earlier proposals and recommended instead the imposition of one uniform stipulation to be applicable to all five of appellant's lease offers. The proposed stipulation reads as follows:

In order to minimize watershed damage and protect important winter wildlife habitat, exploration, drilling, and other development activity will be limited to the period from March 15 to November 30. Exceptions to this limitation in any year may be specifically authorized in writing by the District Manager, Bureau of Land Management. In addition, during wet or heavy snow periods the District Manager, Bureau of Land Management, may prohibit exploration, drilling or other development. These limitations do not apply to maintenance and operation of producing wells.

The following reasons were given as the basis for the recommended stipulation:

All of the subject oil and gas lease applications are located within a crucial and widely recognized antelope winter range. In addition, the major portion of the subject area has been designated for restrictive use in order to protect fragile watersheds and to maintain present vegetative cover critical to the wildlife habitat.

Mining activity in the period from 12/1 to 3/14 requires complete control in order to minimize disturbance to the nationally known Red Desert Antelope herd and to manage the stabilization of this active sand dune area. Although now stabilizing, this area is still the second largest active sand dune area in Wyoming.

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1/ A copy of the Board's letter was sent to appellant. See 43 CFR 4.27(b).

2/ Appellant received a copy of the BLM letter on December 18, 1974. No replay was filed with the Board.

Based upon the terms of the Red Desert Study MFP and URA inventories, protection and management of wildlife and watershed values require that activities be limited to the dates proposed. Based upon current situations and the lessee's proposed operations, exceptions will be authorized (as provided for in the lease) whenever possible under the resource criteria involved.

\* \* \* In view of the critical resource values involved, we recommend that the use period be specified as detailed in this memorandum.

[1] We find that the newly proposed stipulation does not suffer from any of the deficiencies which may have existed with respect to the varied stipulations initially imposed. Furthermore, the proposed stipulation is supported by valid reasons with due regard to the public interest. It is well established that the Department has authority to impose reasonable stipulations for the protection of the environment. Duncan Miller, 18 IBLA 71, 72 (1974); A. Helander, 15 IBLA 107, 109 (1974). We find the proposed stipulation to be reasonable, not inconsistent with the purposes for which the leases are to be issued, and, thus, not unreasonably burdensome upon the lessee's rights of enjoyment. Duncan Miller, *supra* at 73; Bill J. Maddox, 17 IBLA 234 (1974).

Appellant additionally objects to the imposition of any stipulation on the grounds that a stipulation would constitute an unauthorized change in the terms of the lease, and that even if such change was permissible, it could only be made pursuant to properly promulgated rules and regulations of the Department which, appellant alleges, do not exist. Appellant's arguments are without merit. See John Snyder, 15 IBLA 253, 255 (1974); 43 CFR 3109.2-1.

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 modified by the newly proposed stipulation.

Martin Ritvo  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joan B. Thompson  
Administrative Judge

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