

Editor's note: Modified and distinguished -- See Cecil A. Walker, 26 IBLA 71 (July 9, 1976)

EARL R. WILSON

IBLA 75-378

Decided August 27, 1975

Appeals from decisions of Wyoming State Office, Bureau of Land Management, requiring execution of special stipulations as a condition precedent to issuing oil and gas leases W-46227, W-46324, and W-46325.

Reversed and remanded.

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

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

APPEARANCES: Arthur E. Meinhart, Esq., Silver Spring, Maryland, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Earl R. Wilson has appealed from separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), which required appellant to execute special stipulations as a condition precedent to issuance of oil and gas leases on offers W-46227, W-46324, and W-46325 for lands in Caribou National Forest, Wyoming.

The Forest Service officials involved informed BLM they had no objection to issuance of the three leases provided that five stipulations were made part of each lease. Appellant objects to two of these stipulations. The first stipulation at issue provides:

The lands included in this lease may contain significant prehistoric and/or historic artifacts, therefore, the lessee agrees not to enter the lease area until an inventory of archeological and/or historical sites is made by the surface management agency or its designated representative, and conditions of use are prepared to protect the sites in accordance with the Antiquities Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431) and the Historical Sites Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467).

Appellant argues that such a stipulation is "an absolute bar to any oil or gas exploration" since the ten-year lease period could run without the Forest Service completing the land inventory.

The second stipulation to which appellant objects provides:

All travel for geophysical activities must be confined to existing roads and be approved by the Forest Service in advance of the activity.

Appellant argues that this stipulation is also an effective bar to exploration due to the "paucity of existing roads."

[1] The Secretary of the Interior may require an oil and gas lessee to accept stipulations reasonably designed to protect environmental and other land values as a condition precedent to issuance of a lease. Richard P. Cullen, 18 IBLA 414 (1975); W. T. Stalls, 18 IBLA 34 (1974); Duncan Miller, 16 IBLA 349 (1974). 43 CFR 3109.2-1; 43 CFR 3109.4. In the leasing of national forest lands, this Department will give careful consideration to the recommendations of the Forest Service, but the latter does not have final authority over leasing public land. W. T. Stalls, 17 IBLA 175, 177 (1974); George A. Breene, 13 IBLA 53 (1973). Forest Service Manual § 2824.21. This Board will review proposed stipulations to determine whether there is a need for the stipulation, and whether the stipulation is a reasonable means to the intended purpose.

The stipulation prohibiting entry until the historical and archeological site inventory is made stands in a record devoid of any indication that there are any such sites on the land, or that the Forest Service is conducting or planning to conduct any

inventory of these lands. Acceptance of this stipulation would, until the Forest Service makes its inventory, effectively withdraw the land involved, and preclude the lessee from enjoying any benefits or exercising any rights under the lease. It is not beyond the realm of possibility that a lessee, bound by the stipulation, would have to wait 9 1/2 years of the 10-year term to enter the land, or perhaps never be so authorized to enter. In addition, the Forest Service environmental report indicates that the known historical sites in the area -- old mining camp sites -- are visited by many people each summer, which contradicts the need for a no-entry protective provision.

We think the stipulation is overly broad. The need to protect historical and archeological sites on the public lands is already met by section 2(q)(4) of the standard lease form, in which the lessee agrees, in relevant part:

When American antiquities or other objects of historic or scientific interest including but not limited to historic or prehistoric ruins, fossils or artifacts are discovered in the performances of this lease, the item(s) or condition(s) will be left intact and immediately brought to the attention of the contracting officer or his authorized representative.

Whatever additional protection might be necessary or desired by the Forest Service, we hold that this stipulation, conceivably prohibiting any enjoyment of the lease, is unreasonable and cannot stand as proposed. A. Helander, 15 IBLA 107 (1974); Allan R. Hallock, 13 IBLA 13, 16 (1973). See Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

Regarding the second objectionable clause, appellant argues that the lack of roads in the area will preclude any meaningful exploration of the tract. Appellant indicates he would accept a stipulation of the type applied to a lease in an inventoried roadless area by the Forest Service in Rainbow Resources, Inc., 17 IBLA 142, 144 (1974):

Where temporary access is needed to an area not served by an existing road, methods of access not resulting in erosion, scars or environmental damage shall be used.

While the quoted stipulation is specially necessary in inventoried roadless areas, to avoid total exclusion of the lessee, we agree with appellant that it might be appropriate in an area with few roads as well. Even though some roads exist, they may be inadequate for thorough exploration. As long as exploration plans are approved in

advance to minimize environmental damage, 1/ there is less justification for a no off-road exploration stipulation in an area that already has roads and has less value as a primitive area to protect. Further, we are not aware why temporary off-road access cannot be granted if the more permanent and damaging drill sites might be located off-road and require access. 2/

We do not rule on the propriety of the no off-road access stipulation on the existing record. We remand the case for the BLM to determine whether or not the no off-road exploration stipulation, because of the lack of existing roads, is an unreasonable interference with appellant's enjoyment of the lease, and if so, whether the Forest Service is agreeable to stipulations of the type it recommended in Rainbow Resources, Inc., supra. The Forest Service's recommendation will be given all due consideration, and if existing roads would allow reasonable enjoyment of the leasehold for exploration, the stipulation may stand. If the lack of existing roads demonstrates that this stipulation unreasonably interferes with lessee's enjoyment of the lease, it cannot stand as proposed. George A. Breene, supra; see W. T. Stalls, 17 IBLA 175 (1974); Rainbow Resources, Inc., supra; A. Helander, supra; Allan R. Hallock, supra.

The case is therefore remanded to BLM with instructions to strike the proposed archeological and historical site stipulation, and to evaluate the no off-road exploration stipulation to determine whether it unreasonably precludes lessee from enjoying any benefits of the lease. The Forest Service should be given an opportunity to suggest less onerous stipulations on both counts that would serve the same purposes without the severe diminution of the rights of enjoyment envisaged by the law.

1/ The stipulation accompanying the stipulation quoted above from Rainbow Resources, Inc., supra, provided:

"Where long term access or development is desired, or where the method to be used will possibly cause environmental damage, an application for such access or development shall be filed with the Supervisor of the National Forest involved. * * *"

See Forest Service Manual § 2824.21-3. Bureau of Land Management regulations expressly provide for such prior application for operations on public land. 43 CFR 3045.1; 43 CFR 23.7, 23.4.

2/ Stipulation No. 2 to these leases, which was not contested by appellant, prohibits occupancy within 500 feet of the centerline of any road or highway and 200 feet of any designated trail.

Accordingly, 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 reversed and the case remanded for further proceedings consistent with this opinion.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

