

BILL J. MADDOX

IBLA 75-360

Decided September 22, 1975

Appeal from decisions of Idaho State Office, Bureau of Land Management, requiring execution of special stipulations as a condition precedent to issuance of oil and gas leases.

Affirmed in part; reversed in part.

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

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bill J. Maddox appeals from the January 28, 1975, decisions of the Idaho State Office, Bureau of Land Management (BLM), which required that appellant execute certain special stipulations as a condition precedent to the issuance of oil and gas leases for land located within national forests in Idaho. 1/ Appellant objects to one stipulation and a portion of another.

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1/ The lease offers involved in this appeal are: I-7530, I-7538-7546, I-7554-7560, I-7562, I-7564, I-7566-7568, I-7571, I-7574, I-7575, I-7578-7581.

The first stipulation objected to by appellant provides:

1. 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 archaeological 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 (1970) and the Historical Sites Act of August 21, 1935, 49 Stat. 666, as amended, 16 U.S.C. §§ 461-467 (1970).

Appellant argues that there is no evidence of anything in the area which has historical or archeological value. He further asserts that the lease may be rendered nugatory if the surface management agency, the Forest Service in this case, doesn't undertake an inventory of the area.

[1] It is well settled that the Secretary of the Interior may require that lessees accept reasonable stipulations for the protection of the environment as a condition precedent to the issuance of oil and gas leases. Richard P. Cullen, 18 IBLA 414 (1975); A. A. McGregor, 18 IBLA 74 (1974); W. T. Stalls, 18 IBLA 34 (1974); Bill J. Maddox, 17 IBLA 234 (1974); Duncan Miller, 16 IBLA 349 (1974); 43 CFR 3109.2-1; 43 CFR 3109.4. While the Department of the Interior will give careful consideration to the recommendations of the Forest Service, the Forest Service does not have absolute veto power over the leasing of public land. W. T. Stalls, 17 IBLA 175, 177 (1974); George A. Breene, 13 IBLA 53 (1973). This Board has set forth two standards to be applied in each case to determine the reasonableness of proposed stipulations. First, the need for the stipulation should be clear. Second, the means to accomplish the intended purpose should be reasonable.

In determining the need for protection, the BLM must weigh possible harm to the particular value to be protected against the value of the alternative oil and gas activity. Bill J. Maddox, *supra*. In this case, however, there is no evidence that there is anything of historical or archeological value. Therefore, the need for protection is conjectural. In the event that something of historical or archeological value is discovered, protection would appear to be already incorporated into the lease in section 2(q)(2) which provides that the lessee agrees that:

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.

Even if there were some object of historical or archeological value to be protected in this area, the stipulation complained of would almost certainly be unacceptable, as the means to accomplish that protection are unnecessarily broad. First, the amount of land involved is nearly 100 square miles -- an area 50 percent larger than the entire District of Columbia. 2/ In the absence of an extremely important archeological discovery, it is unlikely that nearly 100 square miles of public land should be effectively withdrawn from the operation of the mineral laws. Second, the stipulation might well deprive the lessee of any rights of enjoyment. The lessee may enter the area only after an archeological inventory has been conducted by the Forest Service. There is nothing in the record to indicate that the Forest Service has any plan to conduct such an inventory. Since the lessee might be deprived of any right of enjoyment of the lease if the Forest Service chooses not to conduct an inventory or fails to conduct it within a reasonably short period after the lease term begins to run, the stipulation is unreasonable. A. Helander, 15 IBLA 107 (1974); Earl R. Wilson, 21 IBLA 392 (1975).

Appellant also objects to a portion of the following stipulations:

It is mutually understood that some of the lands embraced in this lease have been inventoried as roadless areas and must be evaluated for their wilderness potential. Depending on the results of the evaluation, the areas in question may be determined as suitable for further wilderness study, or not suitable for wilderness. Those areas determined as suitable for wilderness may ultimately be classified as wilderness.

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2/ The area covered by the lease applications is 62,531.44 acres, according to BLM figures, which are slightly different from appellant's own figures. The three major variations are: I-7554, 6.29 acres; I-7562, 157.48 acres; I-7580, 11.29 acres. None of the lease applications are deficient by 10 percent or more in the first year's rental, and consequently need not be rejected by the Idaho State Office, BLM. 43 CFR 3111.1-1(e).

In the inventoried roadless areas, the following restrictions shall apply:

A. Existing roads, if any, may be used for temporary access in a non-destructive manner, but may not be reconstructed, improved or graded.

B. 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.

C. 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. Such application shall include the nature of the proposed access or development, any measures proposed to minimize the environmental impact, including proposed restoration measures, and a map of the location and the access or development. The Supervisor will coordinate the proposal with the local office of the United States Geological Survey, and based upon such coordination and agreement reached with the United States Geological Survey, will either approve the proposal, conditioned upon necessary protective measures, or will disapprove the proposal.

D. This clause shall become inoperative in the event the area is determined as not suitable for wilderness.

E. If the area, or part of it, is determined as suitable for wilderness study, this clause shall remain in full force and effect until the area is either classified for wilderness or is formally rejected for such classification. If the area is classified as wilderness, this lease shall become subject to the provisions of the Act of September 3, 1964, 78 Stat. 893, and the Forest Service regulations and policies pertaining thereto.

Appellant objects to part E of that stipulation for two reasons. First, he argues that pursuant to the Wilderness Act, 16 U.S.C. §§ 1131-1136 (1970), only Congress may classify lands as wilderness. Second, he states that due to changed world and economic conditions,

Congress may wish to enact wilderness legislation which may be more favorable to appellant than the current Wilderness Act.

With respect to the first argument, we do not understand that the Forest Service intends to classify the lands as wilderness on its own, but rather, merely intends to study the area to enable it to present an informed judgment to the Congress on the merits of such classification.

Appellant's second argument is that the land should not be subject to the restrictions of the present Wilderness Act, as the Congress did not include this land in a designated Wilderness Area, and Congress may provide more favorable terms to lessees in future wilderness areas. That argument is based in large part on speculation as to what the Congress may eventually do. Furthermore, even if the Congress does enact legislation more "favorable" to lessees, the Congress may equally well relax present restrictions on operations in wilderness areas.

Finally, in Rainbow Resources, Inc., 17 IBLA 142, 145 (1974), we stated that the identical stipulation appeared to be reasonable, even though we expressly withheld final judgment. Appellant's arguments have not changed that opinion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the judgment is affirmed in part and reversed in part. The Idaho State Office, BLM, will delete stipulation 1 of the Forest Service supplement to 3109.3 and afford the Forest Service an opportunity to substantiate the need for special archeological stipulations for these lands and to draft any such proposed stipulation in conformity with this opinion.

Edward W. Stuebing  
Administrative Judge

I concur:

Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS CONCURRING:

The Forest Service has jurisdiction over objects of historic and scientific interest in National Forests, which objects are recognized as important national resources. E.g., 16 U.S.C. §§ 431, 433, 461-67 (1970); Executive Order 11593, 36 F.R. 8921 (1971); 43 CFR 3.1. The Bureau of Land Management has determined, as a policy matter, that Section 2q, Lease Form 3120-3, does not always afford adequate advance protection for archeological artifacts. 1/ A stipulation set forth in BLM Manual 3509.71A provides that a lessee furnish in advance an approved archeological inspection. That stipulation is to be used "if the District Manager determines that the value of any archeological sites which may exist \* \* \* will be impaired as a result of mining operations." It would be most helpful if a standard approach were used by the State Offices. While a court might rule that the requirement imposed herein is not legally unreasonable and that the Forest Service by implication is deemed to be required to perform the inventory and set conditions of use within a reasonable time, such legal questions as mutuality of obligation 2/ and such factual questions as determining reasonable time could be avoided by a reconsideration of the stipulation appealed from.

With the statement of reasons, appellant has suggested an alternative stipulation "which our prior discussion with [the Forest Service] indicate might be acceptable \* \* \*." Appellant states:

The applicant would be willing to accept Surface Occupancy No. 1 if it could be modified to require completion of the inventory within a reasonable period of time after request by lessee, and if the areas to be inventoried are limited to those lands or areas which his proposed plan of operation will affect.

There is no indication this information was submitted to the State Office.

The Acting Regional Forester's letter of January 7, 1975, to the State Director refers to the environmental analysis report filed with the State Director with applications I-4779 through I-4786, which report is the "basis" for the Forest Service recommendations. The report was not included in the record transmitted to the Board, hence there is an additional reason for remand.

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1/ Colorado, Idaho and Wyoming, for example, have found it desirable to impose additional conditions in leases.

2/ It could be construed that in effect appellant's lease would be an option to exercise his rights if the Forest Service performs the inspection.

An amendment similar to that suggested by appellant, or a requirement that lessee furnish the archeological inspection, would avoid many of the problems set forth above. I would, therefore, remand for augmentation of the record and for initial consideration by the State Office of the matters submitted on appeal.

Joseph W. Goss  
Administrative Judge

