

CHEVRON OIL COMPANY

IBLA 76-424

Decided March 15, 1976

Appeal from decision of the Montana State Office, Bureau of Land Management, suspending action on oil and gas lease offers M-27575 et al.

Reversed and remanded.

1. Mineral Leasing Act: Generally -- Mineral Leasing Act: Consent of Agency -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Consent of Agency

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

2. Mineral Leasing Act: Environment -- National Environmental Policy Act of 1969: Generally -- Oil and Gas Leases: Applications: Generally

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

APPEARANCES: W. M. Balkovatz, Esq., Senior Staff Attorney, Chevron Oil Company, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Chevron Oil Company has appealed from a decision, dated December 9, 1975, rendered by the Montana State Office, Bureau of Land Management (BLM), suspending action on its oil and gas lease offers 1/ until the State Office is furnished "with a positive recommendation" by the U.S. Forest Service, which is not expected to occur prior to 1979. The decision specifically dismissed appellant's protest against BLM's letter of November 18, 1975, informing appellant as follows:

In light of the statements contained in the communication from Gallatin National Forest dated November 11, 1975, we can take no action on the above applications until they have completed the environmental statement process. As stated in their letter this will not be accomplished prior to 1979. At this writing we have no information to indicate whether the action taken in connection with the application at that time will result in the issuance of leases or rejection of applications.

The protest, filed December 8, 1975, stated in applicable portion that "we feel the 1979 date for any type of answer on these lease applications is totally unreasonable. If this date is adhered to from the date of filing, January 1974, there would be a total of six years in which Chevron would be unable to move forward with their exploration activities within this area."

The lands covered by the offers lie in the Crazy Mountains within the Gallatin National Forest. The letter of November 18, 1975, mentioned above, was triggered by a communication, dated November 11, 1975, to BLM from the Forest Supervisor of the Gallatin National Forest reciting in part as follows:

1/ The oil and gas offers are listed below:

M 27575 M 27586 M 27597
M 27576 M 27587 M 27598
M 27577 M 27590 M 27600
M 27579 M 27592 M 27601
M 27582 M 27593 M 27602
M 27583 M 27595
M 27584 M 27596

In an effort to be more responsive to the applications, we worked with environmental groups and the State Fish and Game, prepared an environmental analysis report and proposed leasing with the stipulations that no new surface occupancy take place during exploration. The proposed stipulation provided if production of oil and gas in paying quantities were established from adjacent sites or through direction drilling, the Forest Service would complete a multiple use plan and accompanying environmental statement to determine if surface occupancy and development should be permitted in the Roadless area.

This proposal was not acceptable to environmental groups and the State Fish and Game. We must therefore, recommend the offers continue to be held in suspense until we are able to evaluate the social, economic and environmental impacts through the environmental statement process. We plan to begin the inventory and public involvement process for the Crazy Mountains in 1977 and hope to complete our analysis and environmental statement in 1979.

Most of the lands in issue lie within the Gallatin National Forest, and some four sections are within the Lewis and Clark National Forest. The offers embrace some 65,000 acres, largely intermingled with 135,000 acres of State and fee lands, on which appellant holds oil and gas leases.

An Environmental Analysis Report, approved on August 12, 1974, by Lewis E. Hawker, Forest Supervisor of Gallatin National Forest, points out that the area is being studied in Roadless Area Review and Evaluation #132, so that the multiple-use planning process has not been completed. The surface area is roughly half in private ownership with a checkerboard pattern. The report recommends that "the leases be granted with proper stipulations to protect the integrity of the land in order to obtain as much information as possible about the mineral resources on private as well as public domain lands and determine what management options are open and possible."

The Environmental Analysis Report discussed the possible alternatives to interposing no objection to the issuance of leases for the offers as follows:

VI. Alternatives to Proposed Action

1. Recommend no lease.
This is not a viable alternative as the multiple-use plan has not been completed
and

resource data inventoried that would support such a decision. This type of decision could not be supported and stand the scrutiny of Department of the Interior Land Appeals Board. The viable alternatives that would support this type of decision are alternative numbers two and three.

2. Lease the roaded lands with protective stipulations and hold the lands that are unroaded in abeyance until the multiple-use planning process is completed -- with an estimated completion date of mid 1979.

The alternative is acceptable and was the original recommendation made by the Forest. Several things have happened to change our thinking since the recommendation was made:

(a) The company applying for the lease asked if we would consider granting the leases with no surface occupancy allowed until such time as a discovery can be made and a multiple-use plan completed.

(b) The company indicated they would be reluctant to go ahead with the exploration program as they would not have adequate protection for their large investment. This then could deny the U.S. public a much-needed commodity for a period of time when development and self-sufficiency is the goal of the Administration.

(c) The multiple-use planning process would be completed in total darkness as to the oil and/or gas resources of the area. The danger exists that we would over react to the lease applications and the potential for petroleum products and not adequately protect other resources or that we would take what is now known as fact and not recognize the potential of the area. It is felt that the multiple-use planning process could be best completed with factual data available to plug into it to reach management decisions.

(d) The revenue potential is quite small under this alternative compared to the proposed action.

(e) Considering the land ownership pattern in the area and the land acquisition program in the area, it is felt that a better assessment of the resources is needed. The mineral rights to the private lands are held by third parties and are under lease obligation to the applicant. It is felt that regardless of the mineral resources, the private lands are desirable to have in Forest Service ownership. It is also felt that a cooperative program with the company would be the most expedient way to assess them of the surface resource values in the area and to develop ways of protecting these resources. Holding the leases in abeyance would not accomplish these goals.

3. Hold all lease applications in abeyance pending completion of multiple-use planning process.

All reasons expressed in alternative 2 apply here also.

Appellant states in its Statement of Reasons (p. 6) that it "has been and is now willing to accept a no surface occupancy stipulation -- agreeing not to enter upon any of the applied for lands, until advised that it may do so, and under what conditions including, if found necessary, directional drilling." See Earl R. Wilson, 21 IBLA 392 (1975); W. T. Stalls, 18 IBLA 34, 35 (1974).

[1] The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas. 30 U.S.C. § 226(a) (1970); Udall v. Tallman, 380 U.S. 1 (1965). This discretion to lease or not to lease is vested in this Department for oil and gas leasing of public lands in the national forests as well. 30 U.S.C. § 181 (1970). Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing. 2/ Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Esdras K. Hartley, 23 IBLA 102 (1975); Earl R. Wilson, *supra*; W. T. Stalls, *supra*; George A. Breene, 13 IBLA 53 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

2/ Public land leasing is to be distinguished in this regard from leasing acquired lands under the provisions of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970). See O. C. Welch, 11 IBLA 163 (1973); Susan D. Snyder, 9 IBLA 91 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

[2] As indicated earlier, the Forest Service wishes to withhold its substantive recommendations for action on the lease offers "until we are able to evaluate the social, economic and environmental impacts through the environmental statement process."

We held in W. T. Stalls, supra, at 35-36, as follows:

Inssofar as the decision below is predicated on the idea that the lands involved cannot be leased until the Forest Service environmental impact statement regarding wilderness classification is filed and acted upon, and until the Forest Service recommends leasing, it is in error. Furthermore, under the Guidelines for Federal Agencies under the National Environmental Policy Act, issued by the Council on Environmental Quality, the Bureau of Land Management, Department of the Interior, is the agency with "primary authority" for oil and gas leasing on these national forest lands. As such, it is the "lead agency" responsible for preparing the environmental impact statement if it is determined that oil and gas leasing in this roadless area is a federal action "significantly affecting the quality of the human environment" within the meaning of section 102 of NEPA, 42 U.S.C. § 4332(c) (1970). 40 CFR 1500.7(b), promulgated at 38 F.R. 20549 (1973).

The discretionary authority of this Department to lease or not to lease these public lands appears not to have been exercised in this case. The Forest Service was unprepared to make a recommendation for or against leasing in this case. The deference given to the Forest Service's eventual preparation of an environmental impact statement on wilderness classification manifests an erroneous conception of the BLM's duty under NEPA as the lead agency in mineral leasing on public lands. Accordingly, the decision below is set aside and the case is remanded to the BLM for it to consider whether a NEPA environmental impact statement is appropriate here. If it concludes such a statement is required, it will consult with and obtain the views of the Forest Service, as required by 42 U.S.C. § 4332(c) (1970), and the implementing regulations, 40 CFR 1500.7 (38 F.R. 20549 (1973)). The offers should then be reevaluated. If BLM concludes an environmental impact statement is unnecessary, it should proceed as customary to evaluate the offer under this Department's

discretionary authority to lease or not to lease, Udall v. Tallman, [380 U.S. 1 (1965)]; Duesing v. Udall, 350 F.2d 748, 751-52 (D.C. Cir. 1965), in light of the comments of the Forest Service, and, as to the lands in the wilderness area, in light of the regulations * * * of the Forest Service. See 43 CFR 3111.1-3(f). [Footnote omitted]

We adhere to the views expressed in Stalls, and the cases will be remanded for action in accordance therewith. As we have noted, appellant has manifested its consent to take leases subject to "no occupancy" stipulations until such time as a review of environmental considerations may indicate that the stipulations may be modified or eliminated. If appellant maintains this posture, it may be that leases could be promptly issued, if all else be regular. However, we wish to make crystal clear to appellant that the issuance of the leases pursuant to the offers in issue may never afford it any beneficial use of the lands covered thereby. However, such leases would largely interdict drainage by others who might subsequently obtain federal leases for these lands in issue. To reiterate, acceptance of leases may never afford appellant the right to drill on the lands in issue and may even preclude directional drilling. Obviously, whether or not the offers in issue culminate in leases cannot in any wise preclude appellant from drilling on State and fee lands as to which the mineral estate is in non-federal ownership.

These strictures are, of course, the most dire which could emanate from an environmental impact statement, should a decision be made by BLM that such a statement is required.

Accordingly, 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 reversed and the cases remanded for further appropriate consideration.

Frederick Fishman

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

