NEVA H. HENDERSON

IBLA 77-93 Decided July 6, 1977

Appeal from a decision of the Utah State Office, Bureau of Land Management, regarding oil and gas lease offer U-34756, requiring a no surface occupancy stipulation.

Set aside and remanded.

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

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. It is the Bureau's responsibility to impose stipulations which are necessary, appropriate and reasonably related to oil and gas activities, and a stipulation which would forbid the lessee to occupy the surface must be set aside on appeal where BLM fails to provide adequate justification for its imposition and fails to show that it has considered less stringent stipulations.

APPEARANCES: Allen N. Henderson, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Neva H. Henderson has appealed from the November 30, 1976, decision of the Utah State Office, Bureau of Land Management (BLM), holding for rejection in part noncompetitive oil and gas lease offer U-34756 and authorizing a lease to issue as to the other lands in

the offer if the offeror would execute a no surface occupancy stipulation as to such lands. BLM stated, as to the lands being held for rejection, that the offeror was being allowed 30 days in which to inform BLM of her willingness to accept a lease for such lands, subject to a no surface occupancy stipulation. 1/

In its decision BLM states that part of the land included in the oil and gas lease offer (Secs. 30 and 31, T. 38 S., R. 5 E. S.L.M.) is within the Fifty Mile Mountain proposed primitive area. The area is extremely rugged and roadless, and there are plans to close it to all forms of motorized vehicle use. According to the BLM decision the Fifty Mile Mountain area "has considerable value for wilderness." Also the area has important untouched archaeological value, as over 300 archaeological sites have been identified with the potential existing for three or four times that number of sites. BLM expresses concern about the damage to archaeological sites, and the serious surface disturbances that would be caused by access construction if oil and gas operations were commenced.

BLM concludes that:

> Accordingly, it has been determined that a lease should not be issued for lots 1-4, E 1/2 W 1/2 Sec. 30, lots 1-4, E 1/2 W 1/2 Sec. 31, T. 38 S., R. 5 E., and the SW 1/4 Sec. 5, W 1/2, SE 1/4 Sec. 8, T. 39 E., R. 5 E. SLM Utah authorizing disturbance of the surface. A lease may be issued, however, upon acceptance of the enclosed stipulation.

Such a conclusion is reached with no discussion concerning Secs. 5 and 8, T. 39 E., R. 5 E. S.L.M. The BLM decision refers only to Secs. 30 and 31, T. 38 E., R. 5 E. S.L.M., as being within the Fifty Mile Mountain proposed primitive area.

1/ The lands which BLM indicated would be leased upon execution of an enclosed no surface occupancy stipulation are:

T. 38 S., R. 5 E., S.L.M.
Sec. 30: Lots 1-4, E 1/2 W 1/2
Sec. 31: Lots 1-4, E 1/2 W 1/2
T. 39 S., R. 5 E., S.L.M.
Sec. 5: SW 1/4
Sec. 8: W 1/2, SE 1/4

The lands being held for rejection are:

T. 38 S., R. 5 E., S.L.M.
Sec. 30: E 1/2
Sec. 31: E 1/2
T. 39 S., R. 5 E., S.L.M.
Sec. 5: Lots 1-4, S 1/2 N 1/2, SE 1/4
Sec. 8: NE 1/4

BLM also stated that the remainder of the lands in the offer would be held for rejection and the offeror was given 30 days within which to indicate whether she would be willing to accept a lease subject to a no surface occupancy stipulation. Such lands included portions of Secs. 30 and 31, T. 38 E., R. 5 E. and portions of Secs. 5 and 8, T. 39 E., R. 5 E. Again the only discussion in the decision concerns Secs. 30 and 31, as being within the proposed primitive area. While the decision is hardly a model of clarity, it appears that it is intended to convey the message that none of the lands in the offer will be leased without the execution of a no surface occupancy stipulation.

[1] The Secretary of the Interior has the discretionary authority to issue oil and gas leases under such rules and regulations as he deems necessary, 30 U.S.C. § 189 (1970). The Secretary also has the discretion to refuse to issue any lease at all on a given tract. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest. A. A. McGregor, 18 IBLA 74 (1974); George A. Breene, 13 IBLA 53 (1974).

As we stated in Bill J. Maddox, 17 IBLA 234 (1974), at 237:

> [S]tipulations 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. [Footnote omitted.] 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. [Emphasis supplied.]

Appellant asserts that the BLM decision is too broad and vague, and that the Environmental Analysis Record makes nebulous proposals and dogmatic statements heavily weighted in favor of recreation and solitude. Appellant also contends that the BLM decision is ambiguous because appellant perceives that BLM has offered a choice of "taking part of the land with a 'no surface occupancy' stipulation or all of the land applied for with a 'no surface occupancy' stipulation." Appellant's perception is incorrect, although the BLM decision is less than crystal clear. BLM offered to allow leasing of part of the lands, if appellant would execute a no surface occupancy stipulation provided by BLM. BLM also informed appellant

that if she desired to lease the other portion of the lands in the offer she would have to request a lease with a no surface occupancy stipulation.

Appellant recognizes that BLM may require special stipulations for the protection of the land, but contends that the stipulations must be supported by valid reasons.

The BLM decision is not supported by the record. The facts discussed in the decision relate only to Secs. 30 and 31, T. 38 S., R. 5 E. No mention is made of the other lands applied for, except to conclude that they could not be leased without a no surface occupancy stipulation. Even the facts set forth by BLM do not necessarily dictate the most restrictive of stipulations. BLM's concern for the protection of archaeological values might be satisfied by the imposition of archaeological stipulations. See Cecil A. Walker, 26 IBLA 71 (1976).

BLM's decision apparently was predicated upon an Environmental Analysis Record embracing a substantial portion of the Kanab District. That document addresses itself to several townships and does not establish that the lands in issue have potential archaeological values. If in fact the lands do possess such values, they can be safeguarded by appropriate stipulations to that end. Moreover, contrary to the statements in BLM's decision, appellant asserts that motorized access is available to the lands over roads. Upon remand BLM is to evaluate all of appellant's contentions.

The case will be remanded to BLM for further consideration in order to provide justification for requiring the no surface occupancy stipulation, if such be deemed necessary upon further consideration, and also to allow BLM to investigate other, less stringent stipulations that would preserve the environmental and other land use values, yet allow appellant the meaningful benefits of a lease.

Therefore, 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 set aside and the case remanded for further consideration and appropriate action consistent with the views expressed herein.

Frederick Fishman
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge