

VERN K. JONES ET AL.
ESDRAS K. HARTLEY

IBLA 77-264, 77-310

Decided December 6, 1977

Appeals from separate decisions of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offers U-30801 through U-30806 and U-30808 through U-30810, and requiring additional rental (IBLA 77-264), and rejecting U-35527 in its entirety, rejecting in part U-35528 and requiring additional rental (IBLA 77-310).

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations

The Secretary of the Interior may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where part of the lands applied for are in the Bonneville Salt Flats, and the Bureau of Land Management determines that oil and gas leasing activities are not compatible with the primary management objective to prevent irreparable damage to a significant resource, rejection of the lease offers or the requirement of execution of surface occupancy stipulations will be affirmed.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and

gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

APPEARANCES: John W. Coughlin, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Vern K. Jones, Esdras K. Hartley and Impel Energy Corporation 1/ have appealed from the March 11, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offers U-30801 through U-30806 and U-30808 through U-30810 and requiring additional rental.

The same lease offers were the subject of a prior appeal which was decided by the Board on August 4, 1976, Vern K. Jones, et al., 26 IBLA 165. Such decision set aside an April 19, 1976, BLM decision requiring execution of "no surface occupancy" stipulations as a condition precedent to issuance of oil and gas leases insofar as they would include certain lands within the Bonneville Salt Flats. The Board remanded the cases stating at 168:

The only remaining stated reason for imposition of the stipulation is the need to protect the aesthetic values of the area, but the record does not indicate that the State Office considered whether less onerous stipulations would be adequate to protect scenic and other values. In addition, we recognize that the State Office seemingly endeavored to utilize a balancing process which weighed the benefits to be derived from oil and gas activities against the threat such activities pose to the racing grounds and to scenic values. But because the State Office did not indicate whether either factor alone would be sufficient to sustain its decision to impose "no surface occupancy" stipulations, and because the record as presently constituted does not support the view that the auto racing grounds would be affected by oil and gas activities on the land in appellant's offers, the case must be remanded to the State Office to reconsider the need for the stipulations with respect to the land

1/ By decision dated February 1, 1977, the Utah State Office recognized the change in name of the Impel Corporation to the Impel Energy Corporation.

involved in this appeal and to endeavor to formulate less stringent stipulations which would adequately protect the public interest. In order to have an adequate record for possible future consideration by the Board, the State Office should reflect in the file its detailed consideration of stipulations of a less stringent nature.

Esdras K. Hartley has also appealed a BLM decision dated March 18, 1977, rejecting in its entirety oil and gas lease offer U-35527, and rejecting in part oil and gas lease offer U-35528. BLM indicated that "the only alternative to rejection is issuance of a lease with a no surface occupancy stipulation." BLM also stated that any lease issuance would require additional rental payment.

Because the two appeals involve leases in the same area and identical issues, they are being consolidated for the purposes of decision.

By memorandum dated December 1, 1976, from the Salt Lake District Manager, BLM, to the Utah State Director, BLM, the District Manager discussed alternative ways of handling lease applications U-30801 through U-30806 and U-30808 through U-30810. The District Manager concluded that "issuing another decision rejecting all the lease applications is the proper course of action." In support of his decision he attached a staff report of the same date.

In addition, a memorandum to the files from David L. Mari, Geologist, Utah State Office, discussed with particularity various problems which would be presented by leasing in this area. He stated:

1. Appellants asserted that no interference with operation of the speedway necessarily follows from oil and gas operations; burial of pipelines, proper siting of roads and drill pads, and seasonal restrictions are cited as specific examples of mitigating measures that could be adopted as an alternative to rejection or issuance with a "no surface occupancy" stipulation. As the staff report demonstrates, this assertion is unfounded, as it ignores the geological and climatic processes operating to maintain the salt crust. The hydrologic regime of the Salt Flats is not well understood, but is the subject of a long-term investigation by the Geological Survey. There is a strong possibility that like the potash ditches and Interstate 80, trenching and laying pipelines, construction of drill pads and roads, digging

of sump pits, and other activities associated with oil and gas development could result in barriers (both surface and subsurface) to the natural flow of the salt-laden waters which are essential to maintenance of the salt crust. All surface barriers could also be a fatal safety hazard if located within one half mile of the path of a vehicle speeding out of control at 600 miles per hour.

As indicated in the District Manager's memorandum of December 1, 1976, on this subject, alternatives, including use of standard stipulations (Form 3109-5) or the special stipulation (USO Form 3110-3) would be inadequate to protect surface resources. Pending completion of the Geological Survey's hydrologic study (one objective of which is to provide guidance on the best location of the speedway), it is entirely conceivable that the Bureau presently is not protecting a large enough area or even the best area to insure integrity of the salt crust for racing. If leases were to be issued now adjacent to the existing speedway, oil and gas operations commenced, and subsequently the study results indicated the best location for the speedway was on the leased land, barriers might already have been effected [sic]. This could irreversibly preclude management decisions to promote the use of the Salt Flats for racing.

2. Appellants asserted that the Bureau gave all weight to aesthetics and none to the tangible, economic benefits of oil and gas operations. This assertion also is in error as both the environmental analysis on which the original decision was based and the attached staff report indicate that the oil and gas potential of the area was balanced with the value of surface resources. The entire Great Basin (Nevada, western Utah, and parts of Oregon, Idaho, etc.) has only two small producing areas, both about 200 miles southwest of the Salt Flats in Nevada. The wells drilled in the immediate vicinity of the Salt Flats had no shows of oil. The publication, Future Petroleum Provinces of the United States, published by the American Association of Petroleum Geologists, concluded, "It is doubtful that the Great Basin will contribute a significant part of the future petroleum resources of the United States." Most authorities generally consider the petroleum potential of the area as low. Under Utah BLM's land use planning, almost every acre of BLM land in the Great Basin valleys is open to leasing with

standard stipulations. The Salt Flats are one of the few exceptions. This refutes any assertion that oil and gas potential is given inadequate weight in land use decisions.

Furthermore, aesthetics were only one consideration in the original decision; it was never asserted that this alone was sufficient reason to "deny" appellants their rights under the lease.

The August 4, 1976, finding of the Interior Board of Land Appeals also raised certain points which should be further addressed and emphasized.

1. IBLA questioned the necessity of restricting leasing outside of the existing withdrawal by Public Land Order 852, 17 FR 6100 (1952). This is addressed thoroughly in the staff report. The withdrawal was for the oval on which racing was conducted in earlier years. Over the last two decades, however, land speed records have been set on a straight-away outside the withdrawal. Thus more than the withdrawal needs protection. In addition, because of the geologic origin of the salt, restrictions on activities only in the immediate vicinity of the speedway also may be inadequate to assure integrity of the salt crust.

2. IBLA indicated the State Office failed to indicate whether either factor alone (racing or aesthetics) would be sufficient to sustain the "no surface occupancy" stipulation. The implication of this question is not apparent to me, but it would be my judgment that the impact on racing alone would justify the original decision, even ignoring aesthetic considerations. The aesthetic aspects serve primarily to reinforce my convictions that the proper management decision was made.

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The District Office is going to amend its staff report. The original report failed to discuss the fact that the Salt Flats are in the National Register of Historic Places. If the case is appealed a second time and remanded again by IBLA for issuance, we could not act until following the established procedures of legislation and executive orders regarding cultural resources. Specific procedures must be taken to coordinate with the state historic preservation officer and the National Council on Historic Preservation.

[1] The records in these cases reveal the unique problems which might be presented by oil and gas leasing activities in the Bonneville Salt Flats area. The discretionary authority of the Secretary of the Interior to issue oil and gas leases is beyond question. Udall v. Tallman, 380 U.S. 1, 4 (1965). Appellants argue that oil and gas leasing in this area may be regulated by stipulations so as to allow leasing without disrupting the environment. Appellants contend that no surface occupancy stipulations are too restrictive.

However, the March 11, 1977, BLM decision relating to lease offers U-30801 through U-30806 and U-30808 through U-30810 rejected part of each lease. BLM did not offer the opportunity to lease with "no surface occupancy" stipulations. The "no surface occupancy" stipulation was only offered in the March 18, 1977, BLM decision for U-35527 and that part of U-35528 held for rejection. Regardless, the records in these cases support the actions taken by BLM with respect to these lease offers.

[2] Appellants also argue that they should not have to pay any additional rental fees. Appellants argument is based on the fact that their offers were filed prior to the amendment to 43 CFR 3103.3-2, 43 FR 1032 (January 5, 1977), increasing the rental rate of noncompetitive oil and gas leases from 50 cents per acre to \$ 1 per acre.

Such an argument has been considered numerous times by the Board and rejected. Rental for oil and gas leases issued after February 1, 1977, must be paid according to the increased rate, regardless of when the offer is submitted to BLM. William S. Schicktanz, 32 IBLA 20 (1977); Altex Oil Corporation, 32 IBLA 18 (1977).

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 affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

