

DELL K. HATCH
AND
AMOCO PRODUCTION CO.

IBLA 77-442

Decided December 19, 1977

Appeal from that part of a decision of the Nevada State Office, Bureau of Land Management, requiring the execution of a no surface occupancy stipulation prior to the issuance of an oil and gas lease.

Set aside and remanded.

1. Environmental Quality: Generally -- Oil and Gas Leases: Generally --
Oil and Gas Leases: Stipulations

Where, rather than delay action on an oil and gas lease offer pending a wilderness review and management decision pursuant to sec. 603 of the Federal Land Policy and Management Act, the Bureau of Land Management proposes to issue the lease immediately subject to a "no surface occupancy" stipulation under the apparently mistaken impression that the Applicant had so requested, the decision will be set aside and action on the lease offer will be deferred until a final decision can be made.

APPEARANCES: Dell K. Hatch, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Dell K. Hatch 1/ appeals from that part of a June 6, 1977, decision of the Nevada State Office, Bureau of Land Management, requiring that he execute a "no surface occupancy" stipulation or suffer rejection of his noncompetitive oil and gas lease offer N-9169. The stipulation reads as follows:

1/ Amoco Production Company joins Hatch in this appeal by reason of its contract right to an assignment of the oil and gas lease if and when it is issued.

All of the lands within this lease are identified in the Virgin Valley Management Framework Plan (MFP) as having potential primitive values. Under provisions of Section 603 of the Federal Land Policy and Management Act of 1976 identified roadless tracts 5,000 acres or more with wilderness characteristics shall be reviewed for possible designation as wilderness areas. For the above reasons, the lessee agrees not to occupy or use the surface of the leased land until:

- 1) a wilderness review and a MFP decision is made on the area by the Bureau of Land Management and
- 2) the stipulation is modified, supplemented, eliminated, or it has been determined to retain it unchanged.

In his statement of reasons, appellant acknowledges that the Secretary of the Interior may require acceptance of special stipulations as a condition precedent to the issuance of an oil and gas lease where such stipulations are appropriate and reasonably related to oil and gas activities. Appellant insists, however, that stipulations which are unnecessary, unreasonable or so restrictive as to preclude the lessee's rights of enjoyment under his lease are inappropriate and may not be imposed.

Concerning the stipulation in issue appellant specifically states:

The Stipulation involved here requires the lessee to agree not to occupy or use the surface of the leased land until certain expressed conditions precedent are performed by the Bureau, and for the full term of the lease if the Bureau should determine that the Stipulation should remain unchanged. Since the condition precedent may never occur (at least not within the 10-year primary term of the lease), or if it should occur and a determination is made by the Bureau to retain the Stipulation unchanged, the result is the same as requiring an unconditional "no surface occupancy" stipulation.

This Board has repeatedly ruled that no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the exploration for or production of oil or gas is totally precluded. Bill J. Maddox, 24 IBLA 147 (1976); Cartridge Syndicate, 25 IBLA 57 (1976).

On the other hand, however, where the lease applicant has indicated a willingness to accept a lease conditioned by such a stipulation rather than face the rejection or suspension of the lease offer, this Board has perceived no objection. M. R. Paglee, 2 IBLA 431 (1971).

In this instance, the initial recommendation of the District Manager, as stated in his memorandum of April 4, 1977, to the Nevada State Director, was that no action be taken on this lease application pending clarification as to how the subject land might be affected by certain new wilderness guidelines. However, on May 31, 1977, the District Manager wrote a second memorandum to the State Director regarding this particular lease offer, saying:

The applicant [Dell K. Hatch] has identified himself as an independent professional landsman. Apparently he indicated to Ken Stowers, NSO, Land Law Examiner that he is willing to accept the conditions imposed by this stipulation rather than wait at least two years until we complete a wilderness review for this area and possibly modify our MFP decision as to how this area is to be managed.

* * * * *

Lease application N-9199 could be issued subject to the following special stipulation, Surface Occupancy Stipulation (attached).

In response to this proposal Hatch was sent the stipulations for execution, whereupon he filed this appeal.

It is clear from the record that BLM decided to issue the lease subject to the "no surface occupancy" stipulation only as an accommodation to Hatch, because it was thought that was what he wanted. If indeed he had declared his desire and willingness to accept the lease on these conditions, he would be in poor position to complain of unfair treatment. However, it may be that the Appellant was simply misunderstood, as the record reflects only what the District Manager believed Hatch had "apparently * * * indicated" to the Land Law Examiner.

Accordingly, we are of the opinion that the Nevada State Office decision of June 6, 1977, should be set aside, and that no action be taken on this lease offer until an appropriate final determination can be made on the basis of a proper identification of other resource values under section 603 of the Federal Land Policy and Management Act.

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 is remanded for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

