

ROBERT B. SCHICK

IBLA 77-444

Decided March 28, 1978

Appeal from a letter-decision requiring the execution of certain special stipulations prior to the issuance of 11 uranium prospecting permits. M 35482 (ND) through M 35485 (ND), M 35489 (ND), M 35490 (ND), and M 35492 through M 35496 (ND).

Vacated and remanded.

1. Mineral Lands: Prospecting Permits

Where a question arises on appeal as to the reasonableness of certain stipulations required prior to the issuance of uranium prospecting permits on lands administered by the Forest Service, the case will be remanded to allow the Forest Service and Bureau of Land Management to reexamine such stipulations.

APPEARANCES: John S. Kirkham, Esq., Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

By letter-decision dated June 9, 1977, the Montana State Office, Bureau of Land Management (BLM), notified Robert B. Schick that certain stipulations would have to be executed by him prior to the issuance of a prospecting permit for the lands included in uranium prospecting permit applications M 35482 (ND) through M 35485 (ND), M 35489 (ND), M 35490 (ND), and M 35492 (ND) through M 35496 (ND).

The 11 prospecting permit applications in question cover lands in North Dakota within the Little Missouri National Grasslands. Following receipt of the applications in October 1976, BLM solicited reports and recommendations on the applications from both Geological Survey and the Forest Service. Geological Survey recommended that prospecting be authorized subject to four stipulations. Pursuant to 43 CFR 3501.2-6(a), the Forest Service consented to the issuance of the permit, provided certain stipulations were made a part of the permit.

Mr. Schick has appealed the requirement that he execute the special stipulations. While he considers most of the stipulations to be reasonable, he has found several of them to be arbitrary and capricious and lacking in any reasonable requirement for the protection of the interest of the United States.

Initially, appellant questions two stipulations concerning areas in which the operator must restrict his activity. <sup>1/</sup> Appellant objects specifically to the generality of such stipulations. Appellant points out that consent to such requirements might completely foreclose any activities under the prospecting permit if the District Ranger in his sole discretion so prescribed. Appellant asserts that such requirements are arbitrary and capricious and an abuse of administrative discretion.

Appellant contends that the special stipulations should describe areas of influence of any critical wildlife habitat and any cultural resources presently known to the District Ranger and that appellant be informed of the requirements to be imposed on operations conducted in such areas.

[1] It is clear and not disputed by appellant that BLM may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease. Cf. 43 CFR 3109.2-1. However, in each case the need for stipulations should be clear, and the means to accomplish the intended purpose should be reasonable. Bill J. Maddox, 22 IBLA 97, 98 (1975).

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<sup>1/</sup> The two special stipulations in question read as follows:

"7. The operator will conduct his operations when within the area of influence of any critical \*1 wildlife habitat, such as raptor nests, grouse dancing grounds, bighorn sheep lambing area, etc., as prescribed by the District Ranger. The District Ranger will approve all locations and identify areas of influence. If the operator locates an unidentified area of critical habitat during his operations, he must stop the project and notify the District Ranger immediately for instruction on how to proceed. \*1 Those areas which are important for the survival of the species. The loss of this habitat would have a significant impact on the population.

"8. The operator will conduct his operations within the area of influence of any cultural resources, such as historical, archeological, and paleontological sites as prescribed by the District Ranger. The District Ranger will approve all locations and identify areas of influence. If the operator locates an unidentified cultural resource during his operation, he must stop the project and notify the District Ranger immediately for instruction on how to proceed."

Herein, the record indicates that an "Environmental Analysis Report" has been completed which covers these lands and also that planning unit management plans are in existence. Therefore, it would appear that appellant's request that known areas of influence within the lands applied for should be identified is not unreasonable.

Appellant also states that it is not unreasonable for the Department to require that certain prospecting work be undertaken prior to an extension of the permit or issuance of a preference right lease; however, appellant asserts that review of the requirements imposed upon him reveals that no reasonable standard was used to determine the amount of work required.

It is appellant's contention that no consideration was given to the areas of restricted surface disturbance resulting in unreasonable requirements being imposed upon him prior to the granting of an extension of the permit or a preference right lease pursuant to the permit. Appellant points out that in paragraph 14 of each set of special stipulations BLM included a statement that no surface disturbance for prospecting purposes would be allowed on from 0 to 40 percent of the land subject to the application. Appellant argues that while paragraphs 11 and 12 of each set of the stipulations set forth the number of drill holes to be completed prior to qualification for an extension of the permit or to qualify for a preference right lease respectively, such requirements did not in all cases reflect the reduced area available. Appellant states that the result is that there is no logical explanation for the determination of the number of drill holes required in each instance.

We do not pass directly on the substantive content of the stipulations objected to, rather we are remanding the case to BLM to allow it to reexamine such stipulations in light of the material presented by appellant on appeal. It might prove expeditious for BLM to consult further with appellant, the Forest Service and Geological Survey in an attempt to resolve the differences over the stipulations and to show the need of, and rationale supporting, such requirements as are formulated as a result of the remand. If any changes are proposed for stipulations sought by the Forest Service, it should be borne in mind that 43 CFR 3501.2-6 grants the Department of Agriculture a veto power over the issuance of the desired permits.

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 vacated and the case is remanded for further action consistent with this decision.

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Frederick Fishman  
Administrative Judge

We concur.

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

