

ROBERT L. HEALY

IBLA 77-329

Decided May 12, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offers U-35847 and U-35848, and allowing leases to issue if a no surface occupancy stipulation is agreed to.

Affirmed.

1. National Environmental Policy Act of 1969: Generally -- Oil and Gas Leases: Stipulations -- Wild and Scenic Rivers Act

The Bureau of Land Management may require the execution of special stipulations, including a no surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no surface occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

APPEARANCES: Robert L. Healy, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

This is an appeal from the April 5 and April 11, 1977, decisions of the Utah State Office, Bureau of Land Management (BLM), rejecting issuance of oil and gas leases unless appellant would be willing to accept a no surface occupancy stipulation for part of the lands involved in both leases. 1/

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1/ The BLM would issue a lease for the following lands only with a no surface occupancy stipulation.

In its decision the BLM stated the Parowan Front area has "outstanding resource values incompatible with surface disturbance." They described the geologic formations and vegetation, as well as the fact the area is inaccessible by conventional motor vehicles because of the lack of roads. They concluded the natural beauty, solitude, and remoteness of the area would be destroyed by the clearing of the land, noise, and the presence of people and equipment needed for oil and gas exploration and development.

The decisions denying surface occupancy of the lands applied for, are based on the Cedar City Oil and Gas Environmental Analysis Report (EAR). The EAR mentions areas of high aesthetic value along the Parowan Front. Appellant asserts in his Statement of Reasons the lands applied for are not within the Parowan Front area discussed in the EAR but are north and east of the lands sought to be protected. He has submitted a report from a Professional Engineer describing the vegetative cover in the areas where he desires to lease land, and how the area he desires to lease is different from the areas of high aesthetic value.

According to the EAR, no surface occupancy stipulations should be used in those areas where the impacts could not be mitigated by other stipulations and the area is small enough to permit directional drilling. Appellant agrees with the EAR and its assessment of appropriate instances for imposition of no surface occupancy stipulations. However, he asserts the BLM is not following its own recommendations when attaching no surface occupancy stipulations. He believes the impact on the area could be mitigated by stipulations used in every BLM lease, and that the area covered by the no surface occupancy stipulations is not small enough to permit directional drilling.

The BLM has submitted a detailed response to Healy's appeal. 2/ It first points out that while there may be some confusion in the use of the term "Parowan Front," the subject area was within the area

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fn. 1 (continued)

Oil and gas lease U-35847 includes:

T. 33 S., R. 8 W., SLM, Utah

Sec. 1, lot 1, S 1/2 NE 1/4, SE 1/4; sec. 11, SE 1/4 SE 1/4;  
sec. 12, lots 1-8, W 1/2 NE 1/4, E 1/2 NW 1/4, SW 1/4 NW 1/4, N 1/2 SW 1/4; sec. 13, lots 3, 4, S 1/2  
NW 1/4; sec. 14, E 1/2 NE 1/4, SW 1/4 SW 1/4, E 1/2 SW 1/4, SE 1/4.

Oil and gas lease U-35848 includes:

T. 33 S., R. 8 W., SLM, Utah

Sec. 13 SW 1/4; sec. 22, SE 1/4 NE 1/4, SE 1/4; sec. 23, lots  
5, 6, NW 1/4, N 1/2 SW 1/4; sec. 27, lots 1-6, W 1/2 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4, SW 1/4 SW  
1/4; sec. 34, lots 1-11, NW 1/4, NW 1/4 SW 1/4.

2/ A copy of BLM's response was served on appellant, as was proper.

designated for a no surface occupancy. It also discusses Healy's other objections:

The exact legal description of all areas in the District requiring protection as identified in the EAR are on plats which the District has submitted to the State Office for their use in the processing of oil and gas lease applications. The area in question is shown on the plat for R. 33 S., R. 8 W. as requiring a NSO stipulation and the area is correctly described in the decisions requiring no surface occupancy on portions of lease applications U-35847 and U35848.

We regret the confusion caused by the EAR; the appropriate portions will be revised to clarify the location of the Parowan Front.

Mr. Healy states that the NSO area included in his lease applications is too large to permit directional drilling. We take issue with this conclusion. Before the EAR was completed and the NSO areas delineated, the BLM Utah State Office researched the question of how wide such areas should be. This research included contacts with industry and other experts in oil and gas drilling and a seminar held in Denver on April 8, 1975 conducted by Exxon and Eastman Whipstock Corporations. As a result, the State Office recommended to the District Offices that NSO areas should be no wider than one mile if accessible from both sides and one-half mile if accessible from only one side. Although the subject of a NSO stipulation has been one of much debate and many people feel that such a restriction should not exist at all, especially in a wildcat area where the extra expense may make directional drilling prohibitive, the one mile and one-half mile guideline adopted by BLM is generally accepted by industry as being narrow enough to permit directional drilling under normal circumstances. The area in question is within this guideline; all points within the NSO area are within one-half mile of the boundary line.

It should also be noted that neither lease application is totally restricted. Both applications include areas which can be entered and tested for oil and gas with a conventional, vertically drilled hole. Lease application U-35847 contains approximately 2420 acres, of which 955 acres are open to surface occupancy. Application U-35848 contains approximately 2193 acres, of which 403 acres are open to surface occupancy.

Mr. Ahearn, in his letter dated May 31, 1977 to Mr. Healy, states in the penultimate paragraph on page 2: "It is our opinion that scenic values are minimal in relation to the area involved in the subject leases." Mr. Ahearn is certainly entitled to his opinion; however, a BLM multiple resource team, as part of the EAR process, concluded that the area has scenic as well as other values requiring protection. This and other "esthetic areas" were identified by a BLM recreation specialist utilizing his best professional judgement. Since these areas were identified, BLM has developed a quantifiable system to delineate visually sensitive areas (see enclosed BLM Manual 6310). As a result of the subject appeal, personnel from this office have evaluated the hills northeast of Paragonah under the new system. The result reinforces the previous delineation of the area as a scenic area requiring protection.

The Visual Resource Management (VRM) system is based on evaluation of three factors: scenic quality, visual sensitivity and visual zones. These factors are used in combination to determine a Visual Resource Management Class. These classes contain criteria for management of lands to consider and protect visual values. Management class criteria as taken from the manual are as follows:

Class I. This class provides primarily for natural ecological changes only. It is applied to primitive areas, some natural areas, and other similar situations where management activities are to be restricted.

Class II. Changes in any of the basic elements (form, line, color or texture) caused by a management activity should not be evident in the characteristic landscape.

Class III. Changes in the basic elements (form, line, color, texture) caused by a management activity may be evident in the characteristic landscape. However, the changes should remain subordinate to the visual strength of the existing character.

Class IV. Changes may subordinate the original composition and character but must reflect what could be a natural occurrence within the characteristic landscape.

Class V. Change is needed. This class applies to areas where the naturalistic character has been disturbed to a point where rehabilitation is needed to bring it back into character with the surrounding countryside. This class would apply to areas identified in the scenery evaluation where the quality class has been reduced because of unacceptable intrusions. It should be considered an interim short-term classification until one of the other objectives can be reached through rehabilitation or enhancement. The desired visual quality objective should be identified.

The VRM process was followed and management classes determined in the subject area by an inter-disciplinary team of District personnel utilizing the manual procedures.

The results of the process were: The area was determined to be B Quality Scenery. Visual sensitivity was determined to be High, basically because of the heavy volume of vehicle traffic on nearby Interstate 15. The area was determined to be in the Foreground Visual Zone because it lies within 5 miles of Interstate 15. These factors were combined as shown in BLM Manual 6310.18, illustration 11. The Visual Management Class arrived at was Class II.

Based on this evaluation, it was determined that the No Surface Occupancy stipulation is appropriate for the cliffs northeast of Paragonah, since it would not be possible to conduct oil and gas operations along the steep faces and canyon walls of the area and still comply with VRM Class II criteria.

Concerning point number 4 of Mr. Ahearn's letter "Determination of linear dimension of fair-weather roads and trails usually passable by motor vehicle", Mr. Ahearn has measured 23.9 miles of roads and trails on the "property involved in the proposed oil and gas leases" (underline added). It is the presence of roads within the no surface occupancy area that is critical because the EAR cites the roadless or near roadless condition of these cliffs as one of the factors which contributes to their scenic and natural values requiring an NSO stipulation for protection.

A study of the USGS topographic maps of the area (enclosed) and a recent field reconnaissance in the area reveals that one graded, light-duty gravel road

crosses the area along Little Creek Canyon in section 27; total distance within the NSO area is 0.6 mile. Also, because the western boundary is drawn on 40-acre increments (which is generally the smallest practical boundary to use), several small, isolated segments of both gravel and unimproved dirt roads, totaling about 0.7 mile are included within the NSO area along the base of the cliffs. Total linear distance of roads that would normally be passable by motor vehicle within the NSO area, by our calculation, is 1.3 miles. In addition, there is a pack (foot) trail about one mile long in section 12 and a jeep trail (four-wheel drive, fair weather road) about 0.7 mile long in sections 1 and 12. Based on the topographic map and a recent field reconnaissance of the area, we know of no other roads or trails in the subject NSO area.

The enclosed photographs taken from various viewpoints in the area show that there are no roads or other intrusions visible on BLM lands along the cliffs. The topographic map and photographs show that the cliffs are quite steep and road building along the cliffs would require deep cuts and switchbacks in most areas and would be visible from most vantage points in the Paragonah area.

In summary, Mr. Healy's oil and gas lease applications include an area which has been identified by the BLM Cedar City District Office as having scenic and natural values requiring a "no surface occupancy" (NSO) stipulation for protection. Although the District Environmental Analysis Record (EAR) is confusing and partially in error as to the narrative description of the subject area the map in the EAR and, more importantly, the plat which the Utah State Office utilized in processing the oil and gas lease applications, correctly identifies this area.

Neither lease application is totally restricted; portions of both could be occupied and drilled. The entire NSO area could be directionally drilled from its periphery, if needed. Except for a foot trail and jeep trail totaling 1.7 miles and a graded, graveled road totaling 1.3 miles, the area is in a roadless and natural state. No roads or other visual intrusions are visible on BLM lands in the subject area from viewpoints near Paragonah. The terrain and scenery are shown by the enclosed photographs and maps. [Emphasis in original.]

[1] The decision to issue an oil and gas lease to the first qualified offeror for particular land is within the discretion of the Secretary of the Interior. 30 U.S.C. §§ 226(a), (c) (1970); Udall v. Tallman, 380 U.S. 1, 4 (1965); Burglin v. Morton, 527 F.2d 486, 488 (9th Cir. 1975).

BLM may require the execution of special stipulations to protect environmental and other land use values as a condition for issuing an oil and gas lease. 43 CFR 3109.2-1. In proper circumstances, a no surface occupancy stipulation is a valid exercise by BLM of its management authority regarding the oil and gas leasing of the public lands. *E.g.*, Questa Petroleum Co., 33 IBLA 118 (1977); Vern K. Jones, 33 IBLA 74 (1977); Bill J. Maddox, 17 IBLA 234 (1974); Quantex Corp., 4 IBLA 31 (1971).

BLM, as manager of the public lands, must consider all available information when it weighs the various uses of the land. It has done so here. When conflicting uses are at issue, the final decision may cause complaint. However, in the absence of a showing that BLM did not adequately consider all the factors involved, and where the appellant has not shown sufficient reason to change the result, the final decision will be upheld. *Cf.* Neva H. Henderson, 31 IBLA 217 (1977); Bill J. Maddox, 24 IBLA 147 (1976); Rosita Trujillo, 21 IBLA 289 (1975). The Utah State Office, in requiring the no surface occupancy stipulation, has shown that it considered all information available to it and has adequately weighed the factors involved.

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 affirmed.

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Martin Ritvo  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

