

PALMER OIL AND GAS CO.

IBLA 79-166

Decided September 24, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management subjecting competitive oil and gas leases U-41371, U-41372, U-41374, U-41378 and U-41379, to Wilderness Protection Stipulations.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Oil and Gas Leases: Stipulations

Departmental regulations 43 CFR subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Stipulations

Where the notice of a competitive oil and gas lease sale clearly provided that the lease would be subject to stipulations, by making a bid, the offeror was bound to accept the stipulations.

APPEARANCES: David A Veeder, Esq., Davidson, Veeder, Baugh & Broeder, P.C., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Palmer Oil and Gas Company appeals from the December 19, 1979, letter-decision of the Utah State Office, Bureau of Land Management (BLM), informing it that competitive oil and gas leases U-41371, U-41372, U-41374, U-41378, and U-41379 were subject to the Wilderness Protection Stipulation (WPS), Form No. UT 3100-16. Appellant was the high bidder on parcels 8, 9, 12, 16, and 17 in the September 26, 1978,

competitive lease offering in Utah, for which these leases were awarded.

Each of the parcels involved in this appeal was listed in Exhibit A of the notice of sale followed by the sentence: "A lease for the above parcel will be subject to Wilderness Protection Stipulation (Form UT 3100-16)." The notice also provided: "Any lease issued will include Form 3109-5, Surface Disturbance Stipulations and any other special stipulations shown on attached Exhibit A." The Department reserved the right to reject any and all bids.

On November 3, 1978, BLM sent appellant the lease forms, and several other forms to execute and return with the balance of the bonus bid, the first year's rental, and its proportionate share of the total cost of publication of the notice of the lease sale. Appellant was allowed 15 days from receipt of the forms to comply. Neither the WPS nor the Surface Disturbance Stipulations (SDS) were attached to the leases when BLM first sent them to appellant.

Appellant signed the leases, completed the forms and paid the required amounts within the time allowed, and returned them to BLM. BLM then attached the stipulations, executed the leases, and returned copies of them to appellant. On December 7, 1978, appellant wrote BLM that the WPS was not attached to the leases when appellant executed them and that they were executed and the monies paid based upon the leases being in the form originally submitted to them. Appellant stated that it assumed there was some clerical error. The stipulations were detached from the leases and returned to BLM.

BLM responded with the letter-decision appealed from. The decision points out that the notice of the sale clearly indicated that the WPS would be part of each of these leases and this was explained to appellant's representatives prior to the date of the lease sale. According to BLM, all leases in Utah have the WPS and SDS attached without specific acceptance by the prospective lessee because notice of such stipulations was given on the notice of sale. BLM stated this was the reason why the stipulations were not attached when the lease forms were first forwarded to appellant for acceptance. In the notice of appeal and statement of reasons appellant makes two objections. First, it argues that the WPS "was not contractually agreed to during the lease awarding and bidding process nor was it indicated to be a requirement for the issuance of the lease." Therefore, appellant feels it cannot be made part of the leases. Second, appellant claims that

no organic law of the United States . . . authorizes either by statute or by interpretive regulation the requirement that Form No. UT-3100-16, Wilderness Protection Stipulation, be attached to any Federal leases which are in a similar circumstance to those referred to in the

Appeal. It is therefore in our opinion unlawful to require this stipulation as part of any of the above named leases.

[1] Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1781 (1976), requires the Secretary of the Interior to review certain roadless areas of the public lands for possible designation as wilderness under the Wilderness Act of 1964, 16 U.S.C. §§ 1131-36 (1976). During the review period such lands are to be managed so as not to impair their wilderness potential. The regulations at 43 CFR Subpart 3109 authorize BLM to require lessees to agree to "such special stipulations as are necessary for the protection of the lands" 43 CFR 3109.2-1. 43 CFR 3120.2-3 requires the notice of sale of competitive oil and gas leases to state the terms and conditions of the sale. These regulations and section 603 of FLPMA provide ample authority for BLM's decision to require the WPS on these leases. The WPS here involved has recently been approved by this Board in Reserve Oil, Inc., 42 IBLA 190 (1979). See also Solicitor's Opinion, 86 I.D. 89 (1976). Thus, we find appellant's second argument on appeal without merit.

[2] Appellant's first point on appeal, that it is not contractually bound to the WPS because it was not included with the lease as originally signed by it, must also be rejected. The notice of sale clearly provided that the lease would be subject to the stipulation. By making its bid, appellant was bound to accept the stipulations stated in the notice of sale as part of the lease terms. Duncan Miller, 39 IBLA 312 (1979). Further-more, if we were to rule that appellant was not bound to accept the WPS, there would be no leases in effect for these parcels as the Government executed the leases with the stipulations attached. While it would have been better for BLM to attach the WPS to the lease form as originally forwarded to appellant, this failure could not bind the Government to a lease without the stipulations. See 43 CFR 1810.3.

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 affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

My emphatic opposition to the employment of the "Wilderness Protective Stipulation" was expressed in my dissent in Reserve Oil, Inc., 42 IBLA 190 (1979). However, recognizing that the precedent set by the majority opinion in that case is controlling unless and until overturned, I am bound to concur in this disposition of the instant case.

Further, I wish to note that I am not as distressed by appellant's plight in this case as I was in Reserve Oil, Inc., *supra*. Here, despite appellant's protestation that "this Wilderness Protection Stipulation was not contractually agreed to during the lease awarding and bidding process," the record clearly shows that appellant had full and fair notice in advance of the sale that these leases would be burdened by the stipulation at issue. Knowing this, it chose to enter the bidding, and can not now be heard to assert that it expects the leases to be issued on more lenient terms than those under which they were offered to the general public. The fact that these leases would carry the subject stipulation was published in the notice of sale and verbally explained prior to the offering doubtless influenced the number and amount of the bids. Therefore, even were it in my power to void the stipulation, I would not order the leases to be issued to appellant, but would cancel the sale so that all might compete on equal terms in any future sale.

Edward W. Stuebing
Administrative Judge