

JAMES M. CHUDNOW

IBLA 79-45

Decided October 31, 1979

Appeals from separate decisions of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulations in noncompetitive oil and gas leases U-40127 and U-40909.

Affirmed in part; vacated and remanded in part.

1. Environmental Quality: Generally -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any lease, on appeal such special stipulations must be supported by valid reasons which will be weighed by the Department with due regard for the public interest, and where the stipulation and reason therefore does not appear in the record, the record must be augmented on remand.

2. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to

It is within the discretion of the Bureau of Land Management to impose the requirement of a no surface occupancy stipulation upon an oil and gas lease, where there has been a determination that it is in the public interest to do so because the lands applied for have important archaeological values, are within the Interstate 70 scenic corridor, and are under consideration for inclusion in a primitive area.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

James M. Chudnow appeals from separate decisions dated September 18 and September 27, 1978, of the Utah State Office, Bureau of Land Management (BLM), requiring that certain stipulations be included in any noncompetitive oil and gas leases issued pursuant to appellant's offers U-40127 and U-40909.

U-40127

[1] The record does not contain sufficient information on which to adjudicate the appeal from U-40127. In that decision BLM required execution of stipulation 3100-11 (Roadless Areas #4-001 and #4-751) prior to issuance of the proposed lease. Appellant has signed the Surface Occupancy Stipulation, but he appeals from the Roadless Areas stipulation. That stipulation is not in the file, nor is there other specific information. The Forest Service recommendation states it is based on environmental analysis reports for the Wasatch National Forest, but the reports are not in the record.

Although the Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands, on appeal the record must be augmented so that special stipulations are supported by reasons which will be weighed by the Department with due regard for the public interest.

It appears the BLM decision is based on the Forest Service's recommendation. BLM should make an independent determination as to whether the imposition of protective stipulations are necessary, appropriate, and reasonable to achieve the desired result. The decision in U-40127 should therefore be set aside and the case remanded for completion of the record. Esdras K. Hartley, 23 IBLA 102 (1975).

U-40909

[2] In its decision concerning U-40909, BLM held that unless a no surface occupancy stipulation were included it would not be in the public interest to issue a lease because the lands applied for are within the Mexican Mountain proposed primitive area and the Interstate 70 scenic corridor. It pointed out that an oil and gas environmental analysis had been prepared for the lands. The decision then stated:

The environmental analysis states that the Mexican Mountain area has potential for designation as a primitive area. It is bordered on the north by the San Rafael River which has been recommended for study, and possible inclusion on the list of wild and scenic rivers. Where the

San Rafael River approaches the San Rafael Reef, it forms narrow, steep canyons. Vertical 600 foot cliffs on the north and east of this proposed primitive area and rugged pinyon juniper to the south provide varied color, topography and vegetation.

The Interstate 70 visual corridor through the San Rafael Swell has been identified as having scenic and archaeological values such as pictographs and petroglyphs. The corridor has been recommended for withdrawal from all forms of entry, including mineral leasing. The natural, unintruded appearance of the area is an outstanding feature. Recreation-use figures and estimates indicate nearly 540,000 visits occur yearly for sightseeing from the seven overlooks in the corridor. The open-space quality of this area is highly significant; "wilderness" lies just off the roadside.

Placing of development structures in close proximity to geological features of interest will distract from their scenic and interpretive value.

Some types of geological materials such as fossils may be collected and removed even though it may be illegal. Increased accessibility as a result of oil and gas roads and trails would contribute to removal or vandalism of the values. Road construction, seismic activity, drilling, development or production would be a serious impact and would result in the loss of primitive values at Mexican Mountain.

The important resource in the I-70 corridor is the scenic value which can be enjoyed by the casual traveler as he passes through relatively untouched areas. If any of the phases of oil and gas development were to take place in this corridor, the scars of the activity would be visible for many years. If it were necessary to build an oil well access road in the corridor it might lead to the opening of new trails and paths by careless individuals. These paths could be susceptible to erosion and deep lasting scars could result.

Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 225 (1970), vests the Secretary of the Interior "* * *" with the discretion to refuse to issue any lease at all of a given tract." Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 939 (1965).

It has been determined that the public interest would best be served by invoking the discretionary authority of the Secretary of the Interior and holding the subject offer to lease for rejection.

* * * * *

The only alternative to rejection, is issuance of a lease with no surface occupancy stipulation.

The supplement to Price District Oil and Gas Environmental Record UT-060-6-1, October 20, 1976, indicates that both the Mexican Mountain Proposed Primitive Area (Area 32) and the I-70 Scenic Corridor (Area 38) can be reached by directional drilling.

Appellant argues that BLM, having already issued leases in the area, is now estopped from refusing to accept his lease offer; that the Forest Service map, on which he relied, did not indicate that the area in question was in the Mexican Mountain proposed primitive area; and BLM should not designate areas with high energy potential, such as the one in question, as a proposed primitive area.

The Secretary of the Interior has the discretionary authority to issue oil and gas leases under such rules and regulations as he deems necessary. 30 U.S.C. § 189 (1976). As BLM discussed, the Secretary also has the discretion to refuse to issue any lease at all on a given tract. If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons with due regard for the public interest. George A. Breene, 13 IBLA 53 (1974). Under the facts set forth, it is within the discretion of BLM to require the no surface occupancy stipulation.

Appellant argues that BLM has granted leases in the area surrounding the lands in question, but those leases have been issued with protective stipulations. As to appellant's argument that Forest Service maps did not reveal that the land was included in a proposed primitive area, such a fact, even if correct, would be irrelevant. The BLM decision as to U-40909 should be affirmed. Questa Petroleum, 33 IBLA 116 (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 in part and vacated and remanded in part to the Utah State Office for consideration consistent with the views expressed herein.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

