

MELVIN A. BROWN

IBLA 79-388

Decided February 27, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, in part requiring execution of special stipulations prior to issuance of noncompetitive oil and gas lease. M 33708.

Affirmed in part, set aside in part, and remanded.

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

The Bureau of Land Management may require execution of a no surface occupancy stipulation prior to issuance of a noncompetitive oil and gas lease only where there is evidence that less stringent alternatives would not adequately accomplish the intended purpose of avoiding erosion and protecting the recreational and scenic value of an area.

APPEARANCES: Melvin A. Brown, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Melvin A. Brown has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 6, 1979, in part requiring execution of special stipulations prior to issuance of noncompetitive oil and gas lease M 33708. The subject land is situated in lots 1-4, S 1/2 N 1/2 and S 1/2 sec. 22; sec. 26; NE 1/4, N 1/2 SE 1/4, and NE 1/4 SW 1/4 sec. 28; lots 5 and 7, sec. 32; and the NW 1/4 NW 1/4, E 1/2 SE 1/4, SW 1/4 SE 1/4 and SW 1/4 sec. 34, T. 15 N., R. 3 W., Montana Principal Meridian, Lewis and Clark County, Montana. 1/

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1/ All these lands are patented lands with mineral reservations. Thus, management of surface resources is not within BLM's jurisdiction.

Appellant questions two of the stipulations. The first provides that there be no surface occupancy or other activity with respect to portions of secs. 22 and 28. The other limits exploration, drilling, and other development activity, except maintenance and operation of producing wells, to the period from April 30 to December 1 with respect to the S 1/2 sec. 22, sec. 26, and the NE 1/4 SE 1/4 and S 1/2 SE 1/4 sec. 34.

In his statement of reasons for appeal, appellant contends that the stipulations are "unclear" as to the status of the S 1/2 sec. 22 in that it is covered under both stipulations. Appellant also argues that under the required stipulations, "oil exploration is being discouraged and almost prohibited on these forest lands." Appellant states that if the S 1/2 sec. 22 were eliminated from the first stipulation, he could "live with" the other stipulation.

[1] Regarding the propriety of imposition of the two stipulations, it is well settled that BLM may require the execution of special stipulations prior to issuance of an oil and gas lease in order to protect land use values. 43 CFR 3109.2-1; Vern K. Jones, 26 IBLA 165 (1976). However, such stipulations will be upheld on appeal only if the record shows them to be a reasonable means to accomplish proper Departmental purposes, with due regard for the public interest. Diane B. Katz, 47 IBLA 177 (1980); H. E. Shillander, 44 IBLA 216 (1979).

The limitation on development stipulation was imposed to minimize disturbance to wintering mule deer and elk. There is adequate justification for the imposition of this stipulation. Furthermore, it is not unduly burdensome on the lessee, curtailing exploration and development activity only during the winter months. Maintenance and operation of producing wells is preserved year long. In addition, this stipulation is less restrictive than the no surface occupancy stipulation. The stated rationale of the no surface occupancy stipulation is that there is a severe erosion hazard presented by the shallow gravelly loam soils and many rock outcrops in the area. Furthermore, this area is near the Missouri River which is, "important for its variety of recreation opportunities," including "fishing, hunting, water sports, sight-seeing, collecting, specialized activities and primitive use," and its scenic quality, which would be disturbed by development and operation of oil and gas wells.

The Board has held that a no surface occupancy stipulation should only be imposed when there is evidence that "less stringent alternatives would not adequately accomplish the intended purpose by containing the adverse effects of oil and gas operations within acceptable limits." Bill J. Maddox, 17 IBLA 234, 237 (1974). There is no evidence in the record that less restrictive stipulations were considered. It is not

clear that a no surface occupancy stipulation is the only method available to protect the lands in question from erosion and to protect the recreational and scenic values of the area.

Therefore, we affirm the decision as it relates to the imposition of the limitation on development activities stipulation, but set aside the decision as to the no surface occupancy stipulation and remand to BLM to consider whether the imposition of less restrictive stipulations with protective conditions might be imposed which would accomplish BLM's stated purposes. See Neva H. Henderson, 31 IBLA 217 (1977).

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 in part, set aside in part, and the case remanded for further action not inconsistent with this opinion.

Bruce R. Harris  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

