

MAX B. LEWIS

IBLA 81-146

Decided July 28, 1981

Appeal from a decision of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulations as a condition to issuance of noncompetitive oil and gas lease U-45261.

Set aside and remanded.

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

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of the lands embraced in any oil and gas lease, such special stipulations must be supported by valid reasons weighed by the Department with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be set aside and the case remanded where there is no data in the record to support the decision and no indication that less stringent stipulations were considered.

APPEARANCES: Max B. Lewis, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Max B. Lewis appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 10, 1980, requiring that he execute two stipulations prior to the issuance of noncompetitive oil and gas lease U-45261.

In his statement of reasons for appeal, appellant contends that insufficient evidence of record exists to support the decision that the issuance of an oil and gas lease should be conditioned upon the stipulations submitted for his execution. Additionally, he asserts, the threatened rejection of his oil and gas lease offer and the demand for execution of the subject stipulations is arbitrary, capricious, illegal, and an abuse of discretionary authority.

The first stipulation provides that there will be no surface occupancy or other activity on that portion of appellant's offer described as lots 1, 2, 7 through 9, SW 1/4 NE 1/4 sec. 5 and lots 2 through 4, SE 1/4 SW 1/4 sec. 19, T. 41 S., R. 16 W., Salt Lake meridian, Utah. The other stipulation states: "Offeror acknowledges that the environmental analysis recommends rejection of: T. 41 S., R. 16 W., SLM, Utah [,] Sec. 5, lots 3-6, 10, 11, S 1/2 NW 1/4, SW 1/4, W 1/2 SE 1/4; Secs. 8, and 17, all; Sec. 19, lot 1 NE 1/4, E 1/2 NW 1/4, NE 1/4 SW 1/4. However, as an alternative to rejection, it is hereby requested that a lease be issued for blocking purposes. It is understood that such issuance would prohibit occupancy and might never afford any beneficial use."

[1] The record does not contain sufficient information on which to adjudicate the appeal. There is no copy of the cited environmental analysis in the file. Although it is well settled that the BLM may require the execution of such stipulations as are necessary for protection of the public lands, the facts of record must establish that the stipulations are supported by valid reasons weighed by the Department with due regard for the public interest. James M. Chudnow, 43 IBLA 375 (1979); Neva H. Henderson, 31 IBLA 217 (1977). No weight is attached to conclusory declarations of what is required in the public interest where supporting data is not in the record. James O. Breene, Jr. (On Reconsideration), 42 IBLA 395, 399 (1979). Stipulations should be necessary, appropriate, and reasonably related to oil and gas activities and a decision imposing a stipulation precluding occupancy of the surface of the lease will be set aside where the record fails to provide supporting data and fails to show consideration of less stringent stipulations. Neva H. Henderson, *supra*; 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.

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 set aside and the case is remanded to the Utah State Office for further consideration and preparation of a proper record.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

