

TED C. FINDEISS

IBLA 82-10

Decided October 29, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring the execution of special stipulation prior to issuance of noncompetitive oil and gas lease. U 47618.

Affirmed.

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

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

APPEARANCES: Ted C. Findeiss, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated September 22, 1981, by the Utah State Office, Bureau of Land Management (BLM), requiring the execution of a no surface occupancy stipulation prior to issuance of noncompetitive oil and gas lease U-47618.

The land requested in the offer is all of secs. 4-8 and 17, T. 23 S., R. 9 E., Salt Lake meridian, Emery County, Utah. The stipulation required of appellant disallowed surface occupancy on secs. 4-8. The decision recites:

Offer to lease U-47618 includes land within the Interstate 70 visual corridor.

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.

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 and gas 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.

Appellant contends that under Rocky Mountain Oil and Gas Association v. Andrus, 500 F. Supp. 1338 (D. Wyo. 1981), appeal docketed, No. 81-1040 (10th Cir. Jan. 5, 1981), BLM is not authorized to require no surface occupancy stipulations as a prerequisite for the issuance of oil and gas leases. Appellant also questions BLM's evaluation of the scenic and archeological resources along the Interstate 70 corridor. Appellant contends further that BLM's environmental analysis for the area is not objective in that it fails to take into account the best interests of the public and does not consider mitigating factors.

[1] Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to impose stipulations or refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. Id. However, a decision to impose stipulations or refuse to lease land must be supported by facts of record that the action is required in the public interest. Ted C. Findeiss, 65 IBLA 210 (1982); Tucker and Snyder Exploration Co., Inc., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

The pertinent oil and gas environmental analysis record and the supplement thereto indicate that the Interstate 70 corridor has outstanding resource values. These analyses recommend that some areas be closed to leasing while others be leased subject to various stipulations. BLM's decision indicates that all pertinent factors were adequately considered in the determination to require a no surface occupancy stipulation. Appellant has not shown how BLM's requirement of the stipulation is contrary to the public interest. Appellant's reliance on Rocky Mountain Oil and Gas Association, *supra*, is misplaced. That case did not hold, as appellant alleges, that the Secretary may not condition the issuance of a lease upon execution of a no-surface occupancy stipulation. It held that issuing "shell" mineral leases with no development rights was an unconstitutional taking. However, in Sierra Club v. Peterson, Civ. No. 31-1230 (D.D.C. Mar. 31, 1982), the court stated:

The conclusion in [Rocky Mountain] that leases with no development rights result in an unconstitutional taking is of questionable validity. Moreover, in this case, it is difficult to conceive how a bargained-for lease with restrictive stipulations (that both sides concede may prevent development) is tantamount to a taking in the constitutional sense. [Footnote omitted.]

(Slip Op. at 13). In both of these cases, the courts were referring to the wilderness protection stipulation. In the case before us the wilderness protection stipulation was required for a portion of the lands. That stipulation has been executed and is contained in the file.

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.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

