

FORTUNE OIL CO.

IBLA 82-832

Decided November 19, 1982

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, requiring acceptance of stipulations and rejecting in part non-competitive oil and gas lease offer W-79398.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas leases: Stipulations -- Secretary of the Interior

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

2. Environmental Quality: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations
Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

APPEARANCES: John R. Anderson, President, Fortune Oil Company, Salt Lake City, Utah.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Fortune Oil Company (Fortune) appeals from a decision dated April 27, 1982, issued by the Wyoming State Office of the Bureau of Land Management (BLM), rejecting in part and requiring execution of stipulations for oil and gas lease offer W-79398. 1/ Appellant's offer described the following lands: "Sec. 23: All, sec. 24: NE 1/4 NE 1/4, S 1/2 NE 1/4, W 1/2, N 1/2 SE 1/4, SE 1/4 SE 1/4 T. 32 N., R. 80 W. 6th Principal meridian."

BLM required execution of a no surface occupancy stipulation on sec. 23: SW 1/4 and sec. 24: NE 1/4 NE 1/4, S 1/2 NE 1/4, W 1/2, N 1/2 SE 1/4, SE 1/4 SE 1/4.

A second stipulation for nonconventional oil recovery was also required, but Fortune acknowledges that this stipulation is a standard provision in all Federal oil and gas leases now issued, and as such is acceptable to it (Statement of Reasons at 2).

BLM rejected the remainder of the offer stating that the land could not be leased because it was "within the Bald Eagle Area of Critical Environmental Concern." 2/

On appeal Fortune states that "no surface occupancy would be allowed on 680 acres of the lease. The Federal Government only owns 160 acres (Sec. 24: W 1/2 SW 1/4, SW 1/4 NW 1/4, SW 1/4 SW 1/4) of those 680." 3/ Fortune's argument is that the United States only owns the surface of 160 acres on which it is requiring no surface occupancy, and that BLM should not attempt to regulate surface occupancy on land where it does not own the surface. In addition, Fortune asserts that no reasons have been provided to support the no surface

1/ The BLM decision did not state that part of lease W-79398 was rejected. Instead, it required execution of a "no lease stipulation" for certain acreage. A determination not to lease is not the proper subject of a stipulation. A stipulation is a condition attached to issuance of a lease. Where no lease will be issued for certain lands, there is no basis for a stipulation. The same result obtains whether a "no lease stipulation" is executed or not, the offer is rejected as to the acreage in question. Thus, in this case we must construe the "no lease stipulation" as a partial rejection of the offer.

2/ Lands declared to be unavailable for leasing are those in T. 32 N., R. 80 W., sec. 23, N 1/2, SE 1/4, which contain 480 acres.

3/ Although Fortune states that 680 acres of the offer are covered by the no surface occupancy stipulation, calculation of the acreage yields a figure of 720 acres. In addition, Fortune describes the SW 1/4 SW 1/4 as being part of the 160 acres owned by the United States. It is apparent that Fortune meant to describe the SE 1/4 SE 1/4, since the SW 1/4 SW 1/4 is part of the W 1/2 SW 1/4. Examination of Exhibit A attached to Fortune's statement of reasons confirms this. It appears from the oil and gas plat in the case file that the United States actually owns the surface of only 40 acres described in the lease offer, the SE 1/4 SE 1/4 of sec. 24.

occupancy stipulation. It states, however, that it would be willing to accept a no surface occupancy stipulation on those portions of the lease where the United States owns both the surface and mineral estate.

Fortune argues that none of the land should be unavailable for leasing. It states that, instead, a no surface occupancy stipulation adequately would protect the lands. Fortune contends that it is the lessee of record of over 31,000 acres which form a contiguous block of which W-79398 is a part. It states that the rejected acreage (480 acres) is near the center of its block of leases. Fortune argues that a no surface occupancy stipulation would provide the same degree of protection as rejection. Fortune indicates a willingness to accept a no surface occupancy stipulation for the 480 acres. It states that "[b]ecause the 480 acres is nearly surrounded by fee lands, access under these lands by directional drilling could easily be employed."

[1] The Secretary of the Interior, through BLM, has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965). 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); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper Departmental purpose. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981). There is no question that protection of the habitat of endangered wildlife is in the public interest. Ted C. Findeiss, 65 IBLA 210 (1982); Placid Oil Co., 58 IBLA 294 (1981); Esdras K. Hartley, *supra*.

The record contains a memorandum issued by the BLM Acting District Manager, Casper, Wyoming, which serves as a justification for the no surface occupancy stipulation and for partial rejection of the offer. That memorandum reads as follows:

The no surface occupancy and no lease stipulations have been placed on the subject Oil and Gas Lease Offer in accordance with Wyoming State Office Supplement to Bureau Manual 3109-Surface Management Requirements for Oil and Gas Operations. This lease offer is located in its entirety within the Jackson Canyon Bald Eagle Roost.

The roost is one of the largest Bald Eagle roosting areas in the Rocky Mountain Region and has been designated as an Area of Critical Environmental Concern in the Natrona Management Framework Plan.

Bald Eagles and their nesting roosting habitat are protected by the Bald and Golden Eagle Act of 1969 (16 U.S.C. 668-668c) and the Endangered Species Act (16 U.S.C. Sec. 1531).

As per the Platte River Resource Area Oil and Gas EA [Environmental Analysis] proposed stipulation, surface occupancy is to be restricted in Bald Eagle roosting areas to protect important winter habitat.

[2] BLM, as manager of the public lands, must consider all available information when it weighs the various uses of the land. Clearly, protection of Bald Eagle roosting areas is in the public interest; however, neither a copy of the environmental analysis nor a copy of the Wyoming State Office Supplement to Bureau Manual 3109, upon which the stipulations are based, or pertinent excerpts from those documents are a part of the record in this matter. Without these materials it is impossible to ascertain whether BLM considered all information available to it and whether BLM adequately weighed the factors involved.

BLM stated that all the lands covered by the lease offer are within the Jackson Canyon Bald Eagle Roost. However, the record does not indicate why BLM distinguished between the 720 acres subject to the no surface occupancy stipulation and the 480 acres that were rejected. We note that the last paragraph of the justification quoted above appears to indicate that a no surface occupancy stipulation would provide adequate protection in the roosting areas. This is consistent with Fortune's position. Accordingly, we have no alternative but to set aside the BLM decision and remand this case for reconsideration of the lease offer.

If BLM decides again to impose a no surface occupancy stipulation, the record must provide adequate justification for its imposition, and BLM should give particular attention to Fortune's argument that BLM should limit imposition of such a stipulation to lands in which the United States holds both the surface and mineral interest. If BLM determines not to lease, the record must reflect that proper consideration was given to leasing with a no surface occupancy stipulation.

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 set aside and remanded to the Wyoming State Office for reconsideration consistent with the views expressed herein.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

