

BILL J. MADDUX

IBLA 83-229

Decided April 4, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, requiring acceptance of special stipulation prior to issuance of noncompetitive oil and gas lease, M-55562.

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

1. Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases:
Stipulations

The Secretary of the Interior may, in his discretion, condition the issuance of an oil and gas lease upon the acceptance of special stipulations reasonably designed to protect environmental and other land use values. Where on appeal evidence suggests that a "no surface occupancy" stipulation has embraced more land than necessary to protect the identified resource values due to BLM's use of full legal subdivisions to describe the land to be so restricted, and that a topographical description might provide the same protection while limiting the restriction to a smaller area, the decision will be set aside and remanded for reconsideration.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bill J. Maddox appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated November 16, 1982, requiring acceptance of a no surface occupancy stipulation for part of the public land to be leased as a condition precedent to the issuance of noncompetitive oil and gas lease, M-55562.

Appellant filed a noncompetitive oil and gas lease offer for 4,057.36 acres of public land in Madison County, Montana. As a condition to issuance of the lease, a no surface occupancy stipulation was required

by BLM for approximately 38 percent of the land designated in the offer: S 1/2 N 1/2, S 1/2, sec. 17; lots 3, 4, S 1/2 NE 1/4, E 1/2 SW 1/4, Sec. 18; lots 1, 2, 3, 4, E 1/2, E 1/2 W 1/2, sec. 19; T. 7 S., R. 2 W., Principal meridian, Montana.

In his statement of reasons, appellant states that he would have no objection to accepting the stipulation as to part of the land, but argues that encumbering the land outside of the drainage area of the Axolotl Lakes is not required in the public interest. Accordingly, appellant contends that the area restricted under the stipulation should be defined by topographical features rather than according to the public survey system.

[1] Appellant accepts that the Secretary of the Interior has discretionary authority to issue oil and gas leases and that issuance of the lease may be conditioned upon the acceptance of special stipulations. See Ted C. Findeiss, 69 IBLA 34, 37 (1982). However, as appellant points out, proposed 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. Id. James M. Chudnow, 69 IBLA 16 (1982); H.E. Shillander, 44 IBLA 216 (1979).

To justify imposition of the stipulation, BLM supplemented its decision with a statement containing its rationale. BLM stated in part, "The management objective for the area is to preserve and protect the unusual occurrence of the Axolotl in Blue Lake; provide for undeveloped, unconfined recreational experiences, and resolve recreation resource/use conflicts within the Axolotl Lakes area." BLM has not defined exactly what comprises "the Axolotl Lakes area." Appellant also received part of the Dillon District's Management Framework Plan (MFP), used in the decision process. The record supports the decision that there should be a no surface occupancy stipulation. Appellant, however, argues that the restriction covers more land than is necessary and that therein BLM has not justified its decision.

BLM's statement declares that the Axolotl Lakes area, situated in the proposed lease lands, is Montana's only habitat for neotenic (axolotl) tiger salamander, a species of special interest and concern. In addition, this area is considered by BLM to contain extremely valuable and high quality regional recreational values due to the fishery resources found there. Construction and drilling activities could adversely affect the lakes and glacial potholes, thereby, damaging the fishery resources and salamander habitat. Appellant illustrates from topographical maps prepared by Geological Survey that the stipulation covers most of secs. 17, 18, and 19, but that drainage from portions of the S 1/2, sec. 17 and S 1/2, NE 1/4, sec. 19, would not be into the Axolotl Lakes area, but away from those sensitive lands. Appellant argues that surface occupancy on the south side of the divide that separates the different drainage areas would not adversely affect the Axolotl Lakes area. Thus, appellant defines the Axolotl Lakes area by use of appropriate contour lines found on the topographical map.

Another concern found in BLM's rationale is the potential watershed degradation in the restricted areas. The MFP refers to unstable soils found

there. Appellant has submitted a geological map obtained from Geological Survey showing the surface makeup of these lands. The map reflects that the Axolotl Lakes area north of the drainage divide (which appellant uses to define the Axolotl Lakes area) is composed of felsic tuff and landslide deposits, but that the soils on the south side of the divide are of Olivine basalt flows and tuff, with minor intrusive basalt. Appellant argues that surface occupancy outside the area of felsic tuff and landslide deposits would not disturb the soils which comprise the sensitive environment being considered by BLM for protection.

BLM's statement reads in part, "The recreational resources within this area undoubtedly provide some of the most important recreation opportunities and values in southwestern Montana." However, BLM's comments on this matter centered on activities connected with the Axolotl Lakes and did not specify how it anticipated that surface occupancy outside the Axolotl Lakes area would adversely affect those values. The MFP states, "With the exception of Axolotl Lakes area, which receive some winter sports type use, these areas are primarily utilized by hunters." Thus, the areas outside the Axolotl Lakes area are primarily subject to intermittent recreational use.

BLM has identified the restricted lease land by means of the public land survey system. Appellant contends that through this description method BLM has included more land than is necessary to achieve BLM's stated objectives and proposes that topographical features be used as the boundary identifying the restricted area. As an alternative, appellant has proposed a stipulation which would preclude surface activity on "those portions of the following described subdivisions within the drainage area of the Axolotl Lakes * * *." No statutory or regulatory basis for administering oil and gas lease stipulations according to the public land survey system exist. Cf. 43 CFR 3101.2-1. The public land survey system is a necessary reference when making an application for an oil and gas lease (except where certain conditions prevent its use). See 43 CFR 3101.1-4(a). The purpose of a description is to locate the land to be identified, both for purposes of recordkeeping and physical location. Henry S. Morgan, 65 I.D. 369, 378 (1958). The regulation requiring description by the survey system in oil and gas lease offers is intended to aid in the identification of the land applied for. The conditions existing on surveyed land have no relationship to the lands applied for. Id. However, without reference to the survey system, a boundary based on topographical features, as appellant proposes, may be difficult to locate and to administer. In James M. Chudnow, supra, this Board upheld a BLM imposed stipulation providing that "[n]o occupancy or other surface disturbance will be allowed within 1,320 feet of the [river] or [reservoir]." Thus, stipulations identified by means other than the survey system have been used and accepted. If the description is adequate, those concerned can locate the boundary for recordkeeping and for physical location. However, the process of establishing that land to be protected should not be limited to deciding exactly which land is to be encumbered by the restriction. Ease in identifying and administering stipulations is part of the protection to be afforded sensitive areas. An important consideration is that reasonable means have been employed which will achieve BLM's stated purposes.

This Board has held that a no surface occupancy stipulation should be imposed where there is evidence that "less stringent alternatives would not

adequately accomplish the intended purpose by containing the adverse affects of oil and gas operations within acceptable limits." Melvin A. Brown, 53 IBLA 45 (1981); Bill J. Maddox, 17 IBLA 234 (1974). BLM, as manager of the public lands, must consider all available information when it considers the various uses of the land. Fortune Oil Co., 68 IBLA 288 (1982). There is no evidence in the record that a less restrictive stipulation was considered; it is not clear that a no surface occupancy stipulation which includes all the land now proposed to be encumbered is the only method available to protect the lands in question from degradation and to protect recreational and environmental values. Protection of the area containing the Axolotl Lakes is in the public interest. However, the record does not show that BLM adequately considered other factors involved, and that the stipulation as it encumbers the lands in question is a reasonable means to accomplish the stated purposes.

Therefore, we affirm the decision as it relates to the imposition of a no surface occupancy stipulation on that land within the Axolotl Lakes area, but set it aside as it pertains to the determination of exactly which land comprises the area needing the protection provided by the stipulation and remand to BLM to consider the possibilities of imposing less restrictive or no stipulations on that land which BLM determines not to be within the Axolotl Lakes area. BLM should determine whether or not designating the land to be subjected to the stipulation by reference to topographical features is possible. If locating and administering such a boundary is determined to be an unreasonable means to achieve BLM's objectives, the feasibility of eliminating various legal subdivisions from the encumbrance should be considered. The record must reflect that proper consideration was given to the alternatives in leasing the land in question and justification should be provided for the determinations made.

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

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge.

