

AMOCO PRODUCTION CO. ET AL. (ON RECONSIDERATION)

IBLA 85-70

Decided March 26, 1987

Petition for reconsideration of Amoco Production Co., 92 IBLA 333 (1986), affirming a decision of the Utah State Office, Bureau of Land Management, denying request for suspension of operations and production for oil and gas leases U-39578 through U-39585, U-50720, and U-50880.

Petition granted; Board decision vacated; Utah State Office decision vacated and case remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Oil and Gas Leases: Suspension

Where an oil and gas lease, issued after the enactment of the Federal Land Policy and Management Act of 1976, embraces lands within a wilderness study area and the lessee is denied an application for permit to drill for failure to meet the nonimpairment standard, a subsequent request for suspension of operations and production will be adjudicated on the basis of whether or not at the time of issuance BLM encumbered the lease with a wilderness protection or no surface occupancy stipulation. The suspension policy, as set forth in the Interim Management Policy and Guidelines for Lands under Wilderness Review, is to grant a suspension for such a lease issued without either of those stipulations.

APPEARANCES: John F. Shepherd, Esq., and Ruth B. Johnson, Esq., Denver, Colorado, for petitioner.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On August 28, 1986, Amoco Production Company (Amoco) filed a petition for reconsideration of the Board's decision in Amoco Production Co., 92 IBLA 333, issued on June 30, 1986, and a request that the Board stay the effectiveness of its decision. In its request Amoco asserted that a stay would allow the parties to avoid unnecessary litigation pending the Board's ruling on its petition, citing T.E.T. Partnership (On Reconsideration), 88 IBLA 13, 16-17 (1985).

On September 3, 1986, the Board issued an order staying the effectiveness of the decision pending a ruling on the petition. In that order we also granted the Bureau of Land Management (BLM) 30 days from receipt of the order in which to file its response to the petition. BLM has filed no response to the petition.

In its petition Amoco asserts that the Board's affirmation of the BLM decision denying lease suspensions for the 10 oil and gas leases in question was based on a mistake of fact. Amoco states that the parties and the Board incorrectly assumed that the leases were encumbered with a wilderness protection stipulation, when, in fact, they are not. <sup>1/</sup>

The history of the issuance of the leases in this case is set forth by Amoco as follows:

In February 1978, the BLM issued eight of the ten leases in question here, all effective March 1, 1978. These leases (Serial No. U-39578 through U-39585) were not issued subject to a wilderness protection stipulation. (See Exhibit 3, which contains copies of the leases and attached stipulations.) The reason for this is simple: the leases were issued prior to the commencement to any wilderness review of BLM lands in the State of Utah.

On September 27, 1978, some seven months after the leases were issued, the BLM announced that it was beginning its initial wilderness review required by Section 603 of the Federal Land Policy and Management Act of 1976 ("FLMPA"), 43 U.S.C. § 1782. (Exhibit 4.) On December 1, 1978, some nine months after the leases were issued, the BLM began its initial wilderness inventory of lands in the State of Utah. (Exhibit 5.) This inventory included the Mancos Mesa area.

On November 14, 1980, the Utah State Office Director announced his final decision on what areas would be dropped from further wilderness review and what areas would be designated as "wilderness study areas." (Exhibit 6.) At that time, the State Director dropped the Mancos Mesa area from further study. (*Id.*, 45 Fed. Reg. at 75604.) That decision, in which other BLM lands were also dropped from further wilderness review, was protested by the Utah Wilderness Association. On March 5, 1981, the State Office Director published his decision denying the protest as to Mancos Mesa and other areas. (Exhibit 7.) The Utah Wilderness Association appealed to this Board.

While the IBLA appeal was pending, the Utah State Office issued the two other leases committed to the Mancos Mesa Unit:

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<sup>1/</sup> Amoco also notes that none of the leases are encumbered by a no-surface occupancy stipulation.

U-50720, effective July 1, 1982, and U-50880, effective June 1, 1982. These leases were also not issued with a wilderness protection stipulation (see Exhibit 3), apparently because the State Director had dropped the lands from further wilderness review, and even though an appeal was pending, the area was not yet a wilderness study area to which the nonimpairment standard applied.

On April 18, 1983, the Board issued its decision in the appeal by the Utah Wilderness Association. 72 IBLA 125. With respect to the Mancos Mesa area, the Board remanded the matter for further consideration by the State Office. 72 IBLA at 184-186. The State Office later designated the Mancos Mesa area as a wilderness study area.

The Board's June 30, 1986 decision discusses the subsequent approval of the Mancos Mesa Unit Agreement, the filing by Amoco of three APD's as required by the unit agreement, the denial of the APD's and the denial of Amoco's request for suspension of the leases.

(Petition at 3-5).

[1] The basis for BLM's original denial of the request for suspension was the statement in BLM's Interim Management and Policy Guidelines for Lands Under Wilderness Review (IMP) at Chapter III.J.1.d., that

[i]n instances where a lease is encumbered by a wilderness protection or no-surface occupancy stipulation and there has been no discovery and a lessee's request for application for permit to drill has been denied, the Secretary's policy generally has been and will be to not grant relief from the terms of the stipulation by granting a suspension.

(IMP at 25; 44 FR 72029 (Dec. 12, 1979)); see Amoco Production Co., 92 IBLA at 335.

Amoco points out, however, that none of the leases were issued with the wilderness protection stipulation. It states that there may have been an assumption that the leases were encumbered with the stipulation based on the language in the IMP, Chapter III.J.1.b., which states:

Regardless of the conditions and terms under which these leases [post-FLPMA leases issued prior to the IMP] were issued, there are no grandfathered uses inherent in post-FLPMA leases. Activities on post-FLPMA leases will be subject to a special wilderness protection stipulation as stated in Appendix A. If there is already production on any lease issued in this period, it would be allowed to continue in the least impairing manner. Increases in production or production facilities would not be allowed if the resultant impacts would further impair.

(IMP at 24; 44 FR 72029 (Dec. 12, 1979)).

Amoco asserts that this language deals with the regulation of "activities" on post-FLPMA leases and basically states that all post-FLPMA leases are subject to the nonimpairment standard. Amoco does not dispute the applicability of the nonimpairment standard, but it contends the quoted language does not mean all post-FLPMA oil and gas leases are ineligible for a suspension. Support for this contention, Amoco argues, may be found by analyzing the relevant IMP provisions.

The quoted language of Chapter III.J.1.b., Amoco states, is in the section of the IMP dealing with the management of oil and gas activities and that section clearly distinguishes between pre-FLPMA and post-FLPMA leases. On the other hand, Amoco points out that the Secretary's policy on lease suspension is set forth subsequently in Chapter III.J.1.d. and does not distinguish between pre-FLPMA and post-FLPMA leases, rather it distinguishes between leases encumbered by the wilderness protection stipulation and those without such encumbrance.

Amoco claims that if the Secretary had intended that all post-FLPMA leases would be ineligible for suspension, he could have done so; however, he did not. Therefore, Amoco asserts, it is reasonable to conclude that the language in Chapter III.J.1.b. on regulating activities on post-FLPMA leases does not mean that "all post-FLPMA leases are encumbered by the wilderness protection stipulation for the purposes of the Secretary's suspension policy" (Petition at 10; emphasis in original).

Amoco cites the following language in BLM Instruction Memorandum (I.M.) No. 83-355 in support of its construction of the IMP provisions:

For post-FLPMA leases, which are not encumbered with wilderness protection or no-surface occupancy stipulations suspensions will be granted only in accordance with the Interim Management Policy and Guidelines for Land Under Wilderness Review, Chapter III.J.1.d., U.S. Department of the Interior, Bureau of Land Management, December 12, 1979. For all other post-FLPMA leases without a discovery, no suspensions will be granted and the lands will be subject to the IMP and the nonimpairment standard. [Emphasis in original.]

Amoco asserts that in order to give meaning to the instruction memorandum, one must conclude all post-FLPMA leases are not subject to the wilderness protection stipulation for purposes of the Secretary's suspension policy.

Amoco capsulizes its interpretation of the IMP regarding post-FLPMA lease suspension as follows:

Lease activities on post-FLPMA leases are subject to the nonimpairment standard as embodied in the wilderness protection stipulation. If drilling operations would impair wilderness suitability, the BLM can therefore deny an APD [application for permit to drill]. However, whether the lessee of a post-FLPMA lease will receive a suspension depends on whether it was issued with a wilderness protection stipulation.

(Petition at 11).

Moreover, Amoco asserts that despite BLM's arguments in its briefs filed in the original appeal that the leases in question were encumbered by the wilderness protection stipulation, in May 1986 Amoco received a "Dear Lessee" letter from the Utah State Office indicating that the leases were not subject to that stipulation and that a suspension "may" be obtained (Petition, Exh.). <sup>2/</sup> The only error in that notice, Amoco argues, is the assertion that a suspension "may" be obtained. Under the Secretary's policy, Amoco contends, a suspension must be granted in this case since an otherwise acceptable plan of operations was denied for wilderness considerations.

We have reviewed Amoco's analysis of the IMP and find it convincing. None of the leases in question was issued with the wilderness protection stipulation. <sup>3/</sup> That fact was acknowledged by BLM in its May 1986 letter, and BLM has not come forward in response to the petition to claim otherwise or to argue that Amoco's interpretation of the IMP is incorrect. Thus, the applicable policy in this case is that set forth in Chapter III.J.1.d. of the IMP at page 25:

For leases not encumbered with wilderness protection or no-surface-occupancy stipulations and on which an application for an otherwise acceptable plan of operations was denied for wilderness or endangered species considerations, the Secretary

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<sup>2/</sup> This action by the Utah State Office was apparently precipitated by BLM I.M. No. 86-286, dated Feb. 27, 1986, entitled "Mineral Leasing in Wilderness Study Areas." Therein it was explained:

"1. Stipulations. A number of post-FLPMA leases lack any stipulation explicitly limiting activities to the nonimpairment standard. Some of these were issued before the "wilderness protection stipulation" was transmitted to field offices. Others were issued later, and lack the stipulation because field offices did not carefully check lease offers against maps showing WSA boundaries. The fact that some post-FLPMA leases lack the wilderness protection stipulation does not mean that wilderness values are in jeopardy. The stipulation is designed to notify lessees of their obligations under the lease. However, the requirements of Section 603 of FLPMA apply to those leases, whether or not a wilderness protection stipulation was included in the lease. Proposed activities on all post-FLPMA leases are regulated under the surface-disturbing activities on the leasehold.

"To help avoid future misunderstanding on this point, you should notify all affected lessees by letter that this constraint applies, even though no stipulation was attached to the lease. A letter used by the California State Office is enclosed as an example."  
(Emphasis added.)

The Utah State Office letter, in all pertinent aspects, is the same as the example letter enclosed with the I.M.

<sup>3/</sup> The present case is distinguishable from Beartooth Oil & Gas Co., 94 IBLA 115 (1986), which affirmed as modified a BLM decision denying a request for suspension of operations and production for an oil and gas lease in a wilderness study area. In Beartooth BLM expressly included the wilderness protection stipulation in the lease at the time of issuance.

has established a policy of assenting to a suspension of operation or production for the time necessary to complete necessary studies and consultations and, if applicable, for a decision on wilderness status to be made.

44 FR 72029 (Dec. 12, 1979). 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted; the Board's decision in Amoco Production Co., 92 IBLA 333 (1986), is vacated; and the decision of the Utah State Office, BLM, denying suspension of the leases is vacated and the case remanded to BLM for implementation of the policy on suspension of oil and gas leases not encumbered by a wilderness protection stipulation, all else being regular.

Bruce R. Harris  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Franklin D. Arness  
Administrative Judge.

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4/ We need not decide whether such policy is, in fact, Secretarial policy, as argued by Amoco, and, thus, binding upon the Board. See Amoco Production Co., 92 IBLA at 338, n.5. Clearly, the policy expressed in the IMP is binding upon BLM. Sierra Club, 61 IBLA 329, 334 (1982).

