

PRADO PETROLEUM CO.

IBLA 86-1404

Decided July 26, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, affirming the imposition of special stipulations on applications for permit to drill on oil and gas lease R 07004 (Acq.).

Affirmed.

1. Endangered Species Act of 1973: Section 7: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Consent of Agency--Oil and Gas Leases: Drilling--Oil and Gas Leases: Stipulations

When approving applications for permit to drill on an existing acquired lands oil and gas lease, BLM may properly impose seasonal restriction stipulations on drilling in order to protect an endangered species of bird and, at the behest of the surface managing agency, to preclude drilling during the flood season.

APPEARANCES: Shalom Katz, Esq., Los Angeles, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Prado Petroleum Company (Prado) has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 16, 1986, affirming the approval by the California Desert District Office of applications for permit to drill (APD's) with certain special stipulations.

Competitive oil and gas lease Riverside 07004 (Acq.) issued effective December 1, 1965, for approximately 195.32 acres in T. 3 S., R. 7 W., San Bernardino Meridian, in the Prado Corona Field in Riverside County, California. The lease lies within the Prado Flood Control Basin Project area upstream from the Prado Dam. The lease area is subject to periodic inundation. The Corps of Engineers, Department of the Army (Corps), the surface managing agency, required that various stipulations be included in the lease. One stipulation provided the Corps with the right to inundate the lease permanently or intermittently. Also, all work on the lease was to be performed under the supervision of the Corps District Engineer, "subject to such conditions and regulations as may be prescribed by him." (Stipulation for Lands Under Jurisdiction of the Department of the Army, Corps of Engineers, at paragraph 3).

Appellant's predecessors-in-interest drilled three producing wells on the lease in 1969. In the early 1970's the drilling of three more wells

was proposed and approved, but no drilling occurred because of unfavorable economic conditions. Thereafter, the lease was assigned to appellant in 1982, approved effective July 1, 1983.

In June 1985, appellant filed APD's with BLM seeking permission to drill three additional wells from the existing well pad on the lease. Prado estimated drilling would take 10 days per well.

On February 27, 1986, BLM and the Corps issued an Environmental Assessment (EA) to address environmental aspects of the APD's. The EA stated that Prado's well pad was near known and potential nesting areas of the least Bell's vireo and that drilling noise would impact this subspecies most during the spring and early summer nesting season 1/ (EA at 21). The EA attached a letter from FWS, dated January 14, 1986, commenting on the draft EA. Therein, FWS stated that the nesting season drilling restriction would adequately mitigate the impact of the proposed activity on the least Bell's vireo (EA at 78-79). The EA also discussed possible consequences of an oil spill, given the periodic inundation of the area (EA at 19-20).

On March 17, 1986, the California Desert District Office approved the APD's with the addition of three stipulations. 2/ Two seasonal restriction stipulations are in dispute here. 3/ One stipulation, imposed at the request of the Corps, prohibits drilling during flood season from November 15 to March 15, with the exception that drilling during that period may be allowed with the specific approval of the Corps. 4/ BLM imposed another stipulation in order to avoid disturbance

1/ The least Bell's vireo (*Vireo bellii pusillus*) is a migratory songbird which the California Fish and Game Commission declared endangered on June 27, 1980. The Fish and Wildlife Service (FWS), U.S. Department of the Interior, proposed this subspecies for Federal listing as endangered on May 3, 1985 (50 FR 18968). FWS supported that proposal with references to data showing that the subspecies was declining due to habitat destruction and parasitism. *Id.* at 18968-72. The 25 nesting pairs found in the Prado Basin and Santa Ana River zone form the fourth largest remaining population in this country. *Id.* at 18969. Federal listing became final shortly before BLM issued the decision on appeal. 51 FR 16482 (May 2, 1986).

2/ The stipulations were included in the EA under the heading "Mitigation of Potential Impacts/Plan Approval Stipulations" (EA at 24).

3/ A third stipulation specified the type of corner markers to be used for the well pad.

4/ On Nov. 26, 1986, BLM issued an addendum to the EA. The purpose of the addendum was to provide further support for the inclusion of the flood season stipulation. Therein, BLM estimated that the well pad might be inundated approximately once every 5 years, most likely during January or February, less likely during November and December, and least likely during the summer months. It also stated that the threat to water quality would be greater during drilling operations than during normal production operations. Finally it added that the restriction on drilling during the flood season would avoid potential impacts of a spill during drilling operations. BLM forwarded a copy of this addendum to appellant.

to nesting birds, including the least Bell's vireo; no drilling would be allowed from March 1 to July 15.

Appellant strongly objected to the two seasonal stipulations and requested a technical and procedural review (TPR) of the imposition of those stipulations. The California State Office conducted the TPR and affirmed the District Office's action. The State Office noted that, on a case-by-case basis, Prado could request specific Corps approval to drill during the restricted flood season. It also stated that the prohibition on drilling during nesting season was a mitigating measure discussed with Prado and was for the protection of the least Bell's vireo and other avian species. It declared that the seasonal restrictions were supported by the EA. Prado filed this appeal from that decision.

In its statement of reasons for appeal, appellant argues that the two seasonal stipulations constitute a partial taking of its lease and a material breach of its lease right to drill at any time of year. Appellant refers to its prior objections in which it asserted that the stipulations were arbitrary and capricious. Appellant also claims that when drilling was approved on this lease in 1972, no closure period for drilling was mentioned. It doubts the need for greater basin protection now. Appellant also argues that it is unnecessary to reduce drilling noise to protect the least Bell's vireo, in view of active nesting by that species near the Corona airport which produces more noise than drilling would. Appellant questions the necessity to prohibit drilling during certain periods, when equally noisy workover rigs are allowed on the lease at any time.

[1] Drilling operations on a Federal oil and gas lease cannot begin without approval of an APD. 43 CFR 3162.3-1(c). After receiving an APD, the authorized officer consults with the appropriate interested parties. The officer may then approve the APD as submitted, approve the APD with modifications, disapprove the APD stating the reasons, or advise the applicant that final action will be delayed, providing the date final action can be expected. 43 CFR 3162.3-1(f). After receiving appellant's APD's, BLM consulted various agencies, including the surface managing agency, the Corps. The Corps identified a stipulation which would allow it to approve the proposed activity.

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. || 351-359 (1982), the consent of the administrative agency having jurisdiction over the lands sought for leasing must be obtained prior to lease issuance. Beard Oil Co., 88 IBLA 268, 271 (1985). In this case a stipulation in the original lease specified that work performed on the lease would be subject to conditions and regulations prescribed by the Corps. Thus, the Corps consented to leasing only with that stipulation and the lessee agreed to be bound by the stipulation by signing the lease. Prado, as the original lessee's successor in interest, is likewise bound. The Corps required the flood season stipulation as a condition to approval of the APD's. Under the above lease stipulation, it had the right to require the imposition of such a condition. Appellant has no grounds for objection to that stipulation.

Appellant also objects to the nesting season drilling restriction.

BLM imposed this restriction to safeguard the least Bell's vireo and other birds. At the time of approval of the APD's, FWS had proposed the least Bell's vireo for listing as an endangered species, and the State had already designated it as one. Section 7(a)(2) of the Endangered Species Act of 1973, as amended, 16 U.S.C. | 1536(a)(2) (1982), requires Federal agencies to ensure that the activities they authorize are not likely to jeopardize the continued existence of endangered species or destroy or adversely modify their habitat. See 50 CFR 402.02. 5/ Neither this Act nor its implementing regulations prohibit oil and gas leasing, however, BLM may impose reasonable stipulations to protect the public interest. Chevron U.S.A., Inc., 80 IBLA 324, 330 (1984). As we have stated: "There is no question that protection of the habitat of a species of animal, especially one listed as endangered by the state or Federal Government, is in the public interest." Placid Oil Co., 58 IBLA 294, 301 (1981).

BLM determined that approval of appellant's APD's would not jeopardize the least Bell's vireo, if it imposed the nesting season drilling restriction. FWS agreed that such a restriction would adequately mitigate the impact of drilling on that species. The fact that the least Bell's vireo is known to nest near an airport does not establish that the drilling restriction is unnecessary. BLM has documented its study of this species in the lease area and explained why it judges the additional restriction necessary (EA at 11, 21).

Finally, appellant's argument that it is illogical to prohibit drilling when other, equally noisy (and disruptive), activities are not limited does not mean that drilling should not be restricted, rather it indicates that perhaps BLM should consider whether workover activities should also be restricted to certain times of the year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

Gail M. Frazier
Administrative Judge

5/ Here, BLM anticipated no habitat changes because appellant proposed to use the existing well pad, road, and pipeline facilities.