

WILLIAM S. BURNES

IBLA 70-72

Decided December 24, 1970

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Consent of Agency

As a condition to the issuance of an oil and gas lease for oil shale lands subject to the Secretary of the Interior's Order No. 2906 of September 27, 1968, an applicant for such an oil and gas lease must execute the special stipulations required by that order.

1 IBLA 180

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: Colorado 8011

WILLIAM S. BURNES

: Oil and gas lease  
: special stipulations  
: required

: Affirmed

#### DECISION

William S. Burness has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated June 20, 1969, affirming a Colorado land office decision of December 10, 1968, requiring him to execute special stipulations as a condition to the issuance of a noncompetitive oil and gas lease pursuant to his offer Colorado 8011, filed in a simultaneous filing.

The decision below pointed out that the lands involved here are oil shale lands and subject to the Secretary of the Interior's Order No. 2906 of September 27, 1968, 33 F.R. 14789 (published October 3, 1968), requiring the special stipulations set forth in the footnote. 1/

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1/ The stipulation required by the order provides as follows:

"1. No wells will be drilled for oil or gas except upon approval of the Regional Oil and Gas Supervisor of the Geological Survey, it being understood that drilling will be permitted only in the event that it is established to the satisfaction of the Supervisor that such drilling will not interfere with the mining and recovery of oil shale deposits or the extraction of shale oil by in situ methods or that the interest of the United States would best be served thereby.

"2. No wells will be drilled for oil or gas at a location which, in the opinion of the Regional Oil and Gas Supervisor of the Geological Survey, would result in undue waste of oil shale deposits or constitute a hazard to or unduly interfere with mining or other operations being conducted for the mining and recovery of oil shale deposits or the extraction of shale oil by in situ methods.

Appellant contends generally that the stipulations give undue priority to oil shale exploration over conventional oil and gas exploration and development, that they place onerous burdens upon the oil and gas lessee, and that the requirement is arbitrary and capricious and an abuse of discretion by the Secretary.

Since the issuance of oil and gas leases on public lands is within the discretion of the Secretary under such rules and regulations as he may prescribe in accordance with the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1964), stipulations considered necessary to protect other mineral resource values of the land are well within the Secretary's authority. We see no abuse of this authority by this requirement. The Secretary's order was issued prior to the filing of the appellant's offer, and appellant is in no position to complain of these terms now. Cf. Duncan Miller, A-30713 (November 21, 1966).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Joan B. Thompson, Alternate Member

I concur:

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Newton Frishberg, Chairman

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Francis E. Mayhue, Member

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Fn. cont.

1/ "3. When it is determined by the Regional Oil and Gas Supervisor of the Geological Survey that unitization is necessary for orderly oil and gas development and proper protection of oil shale deposits, no well shall be drilled for oil or gas except pursuant to an approved unit plan.

"4. The drilling or the abandonment of any well on this lease shall be done in accordance with applicable oil and gas operating regulations including such requirements as the Regional Oil and Gas Supervisor of the Geological Survey may prescribe as necessary to prevent the infiltration of oil, gas, or water into formations containing oil shale deposits or into mines or workings being utilized in the extraction of such deposits."

