

W. E. HALEY

IBLA 76-514

Decided June 29, 1976

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, requiring execution of special stipulations as a condition precedent to further consideration of appellant's oil and gas lease offers W-43264 through W-43283.

Affirmed.

1. Oil and Gas Leases: Stipulations

An applicant for an oil and gas lease may be required to accept stipulations designed for the protection of the land and its resources in the public interest as a condition precedent to issuance of a lease where the stipulation does not unreasonably interfere with the rights conferred by an oil and gas lease. A stipulation requiring lessee, at his own expense, to make an inventory of archeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

APPEARANCES: W. E. Haley, pro se; Erol R. Benson, Esq., Office of the General Counsel, U.S. Department of Agriculture, Ogden, Utah.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is filed from decisions 1/ of the Wyoming State Office, Bureau of Land Management (BLM), requiring appellant to

1/ Appeals of 20 separate decisions of the Wyoming State Office (W-43264 through W-43283, inclusive) have been brought before this Board by the appellant. These appeals have been consolidated for the purpose of this decision because the relevant facts and legal issues are identical.

execute certain special stipulations as a condition precedent to further consideration of his noncompetitive oil and gas lease offers. The decisions advised appellant that failure to execute the stipulations would result in rejection of the offers. 2/

Appellant objects to that part of the stipulations requiring that an inventory of archeological, paleontological, and historical sites be made prior to entry upon the surface of the lands for exploration and drilling purposes. Appellant contends this requirement is irrelevant, impractical, and an obstacle to development of energy sources.

The case files disclose that the lands embraced in the various oil and gas lease offers are public domain withdrawn for national forest purposes as part of the Teton and Bridger National Forests. The Forest Service, United States Department of Agriculture, posed no objection to issuance of leases for the land subject to the condition that the appellant execute certain stipulations, including the following:

1. Lessee agrees not to enter upon the lease area or disturb the surface for exploration or drilling purposes until either:

(a) An inventory of archeological, paleontological, and historical sites is made by the surface management agency or its designated representative, or

(b) Lessee has made or caused to be made an inventory of all archeological, paleontological, and historical sites in those areas of the lease subject to development, occupancy, or surface disturbance. The survey must be made by a qualified archeologist acceptable to the surface management agency and the results of this survey provided to the surface management agency. Costs of this survey will be borne by the lessee. After inventory by either lessee's archeologist or the surface management

2/ Certain land embraced in one of the lease offers (W-43270) is located in the Gros Ventre Wilderness Candidate study area and the said offer was rejected as to the land for this reason. Appellant has not appealed this holding and accordingly it stands as final.

agency reasonable conditions of use will be prepared to protect the sites or salvage objects of antiquity in accordance with the Antiquities Act of June 8, 1906 (34 Stat. 225; 16 USC 431), and the Historical Sites Act of August 21, 1935 (49 Stat. 666; 16 USC 461-467). Costs of salvage of artifacts will be borne by the lessee and all objects of antiquity salvaged will remain the property of the U.S. Government.

These stipulations, which the BLM required the appellant to execute, are the subject of this appeal.

The issue raised is whether a stipulation providing for a survey of historical and archeological sites to be performed by an oil and gas lessee at his own cost prior to entry upon the leased lands for purposes of exploration or drilling is reasonable where the survey is restricted to those areas which lessee proposes to enter, the protection of such sites is authorized by statute, and the stipulation does not substantially abridge the lessee's rights under the lease.

Section 2 of the Antiquities Act of June 8, 1906, 16 U.S.C. § 431 (1970), authorizes the creation of national monuments centered around "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States."

It is further provided in § 1 of the Historic Sites Act of August 21, 1955, 16 U.S.C. § 461 (1970), that there is a national policy "to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States." The Secretary of the Interior is authorized under the Act to make a survey of historic sites, buildings, and objects and to restore and preserve them. 16 U.S.C. § 462 (1970). The Secretary may seek the assistance of other federal departments in administering the Act. 16 U.S.C. § 464 (1970).

It is provided in the regulations that jurisdiction over archeological sites, historic and prehistoric monuments and structures, and other objects of historic or scientific interest located within the limits of forest reserves on the public domain shall be exercised by the Secretary of Agriculture. 43 CFR 3.1.

[1] The Secretary of the Interior may require an applicant for an oil and gas lease to accept stipulations as a condition

precedent to issuance of a lease where such stipulations are designed for the protection of the land and its resources and do not unreasonably interfere with the rights conferred by an oil and gas lease. Earl R. Wilson, 21 IBLA 392, 393 (1975); A. Helander, 15 IBLA 107, 109 (1974).

Stipulations must be supported by valid reasons which will be weighed by the Department with due regard for the public interest. A. A. McGregor, 18 IBLA 74, 78 (1974); George A. Breene, 13 IBLA 53 (1973). Further, stipulations must be necessary and appropriate to fulfillment of those legitimate purposes. A. A. McGregor, supra at 78.

With respect to the leasing of public domain land withdrawn for national forest purposes (as contrasted with acquired land), the Department will give careful consideration to the recommendations of the Forest Service, but the Forest Service does not have final authority over leasing public domain. Earl R. Wilson, supra at 393; George A. Breene, supra. This Board will review a proposed stipulation to determine whether there is a need for the stipulation and whether the stipulation is a reasonable means for achieving the intended purpose. Earl R. Wilson, supra at 393.

The inventory of archeological and historical sites required by the stipulation in this case is restricted to those areas of the leased land which lessee actually proposes to enter for purposes of exploration or production operations. This stipulation does not embody a prohibition against use or occupancy of the surface of the leased lands. It provides that, if something of value is turned up by the inventory, reasonable conditions of use will be developed to protect the site or objects involved. Thus, the rights of the lessee under the oil and gas lease are not significantly abridged.

The fact that the lessee may have to bear the cost of the inventory does not make the stipulation objectionable. This Board has previously held that the financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee. Bill J. Maddox, 24 IBLA 147, 150 (1976).

The statutes referred to above establish the authority for the protection of archeological and historical sites and objects in the public interest. The stipulation in this case appears both necessary and appropriate to avoid inadvertent destruction of such sites or objects. For these reasons, we find that the stipulation involved here is a reasonable one which should be upheld in the public interest.

The present case can be distinguished from George A. Breene, supra, where a decision requiring execution of a Forest Service stipulation prohibiting occupancy of the surface of the leased land by the lessee was reversed by this Board. Denial of surface occupancy involves substantial curtailment of the rights ordinarily conveyed by an oil and gas lease. The stipulation in the present case, by contrast, merely requires the lessee to conduct a survey of archeological and historical sites prior to conducting operations on the lease and to agree to reasonable conditions for the protection of any sites or objects discovered which might be threatened by operations.

Similarly, the present case can be distinguished from the situation in Earl R. Wilson, supra. The stipulation in that case precluded surface occupancy until such time as the Forest Service conducted an inventory of historical and archeological sites and objects. The decision of the BLM requiring execution of the stipulation in the Wilson case was reversed by this Board because there was no time limit for the Forest Service to conduct the inventory and the lessee's rights would have been substantially abridged (by denial of surface occupancy) for an indefinite period of time. This is not true in the present case where the lessee can make arrangements for an inventory at any time, and thus the lessee has control of when the inventory will be made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

