

WESTERN OIL SHALE CORPORATION

IBLA 78-569

Decided June 11, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, requiring that special stipulations be accepted prior to the issuance of appellant's noncompetitive geothermal lease offers N-18031 through N-18038.

Affirmed.

1. Geothermal Resources Leases: Generally: Stipulations

A stipulation requiring an offeror under a geothermal resources lease to provide a certified statement by a qualified archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee and to accept reasonable conditions of use for the protection of such areas and which requires the lessee to bear the cost of salvaging objects of antiquity is reasonable and will be upheld.

APPEARANCES: Frank J. Allen, President, Western Oil Shale Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Western Oil Shale corporation has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 10, 1978, requiring it to accept certain stipulations as a condition precedent to the issuance of noncompetitive geothermal lease offers N-18031 through N-18038.

Appellant objects primarily to special stipulation section 31, which requires a certified statement from a qualified archaeologist acceptable to the authorized officer that either no archaeological values exist on lands subject to these leases or that they may exist

and might be impaired by geothermal operations. Appellant asserts that section 18 of the Geothermal Resources Lease form, which allows the lessee to furnish such a statement, provides sufficient protection for archaeological values without the supplementation of section 31 by BLM.

The relevant part of section 18, the Antiquities and Objects of Historic Value stipulation, which provides the basis for the section 31 stipulation, reads as follows:

Prior to operations, the Lessee shall furnish to the Authorized Officer a certified statement that either no archaeological values exist or that they may exist on the leased lands to the best of the Lessee's knowledge and belief and that they might be impaired by geothermal operations. If the Lessee furnishes a statement that archaeological values may exist where the land is to be disturbed or occupied, the Lessee will engage a qualified archaeologist, acceptable to the Authorized Officer, to survey and salvage, in advance of any operations, such archaeological values on the lands involved. The responsibility for the cost for the certificate, survey, and salvage will be borne by the Lessee, and such salvaged property shall remain the property of the Lessor or the surface owner.

In supplementing this general stipulation, BLM in an attachment to its July 10, 1978, decision, required assent to an additional stipulation which provided that "the certified statement required by Section 18 of the lease form must be completed by a qualified archaeologist, acceptable to the Authorized Officer." (Emphasis supplied.)

Appellant contends that this requirement imposes unreasonable expense and delay on the offeror in that an archaeologist will not certify an area to be devoid of archaeological values without extensive research of the literature on the area and field investigation, which would probably include some excavation. Appellant further states that the area to which the identified applications relate has been the subject of State and Federal geologic and geographic investigation for decades and is well recognized as having represented a totally unacceptable environment for human habitation or animal sustenance during any time when man can be speculated to have inhabited the region.

The issue raised, therefore, is whether an offeror under a Geothermal Resources lease can be required by supplemental stipulation of BLM to furnish a certified statement by a qualified archaeologist

as to the existence of archaeological values on lands to be leased when the general lease form stipulation provides that such a statement may be furnished by the lessee.

Statutory authority for the leasing of geothermal resources is provided by the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-25 (1970). The statute provides that the Secretary of the Interior "may" issue geothermal resources leases. 30 U.S.C. § 1002 (1970). Thus, the decision of whether or not to issue a geothermal lease for a given tract of land is within the discretion of the Secretary. The Anschutz Corp., 34 IBLA 270 (1978); Earth Power Corp., 29 IBLA 37, 41 (1977); Eason Oil Co., 24 IBLA 221, 223 (1976). Several statutes establish the authority for the Department's involvement in the protection of archaeological values. <sup>1/</sup>

In response to appellant's general complaint, this Board has repeatedly upheld this type of stipulation in similar circumstances involving oil and gas leases. Milan S. Papulak, 30 IBLA 220 (1977); General Crude Oil Co., 28 IBLA 214, 83 I.D. 666 (1976); W. E. Haley, 25 IBLA 311 (1976); Duncan Miller, 24 IBLA 203 (1976). Those decisions have held, generally, that the Secretary of the Interior may require offerors for noncompetitive oil and gas leases to accept stipulations reasonably designed to protect environmental and other land use values prior to issuing the leases. See 43 CFR 3109.2-1. <sup>2/</sup>

[1] Appellant has presented no arguments which would warrant a different result here. A stipulation requiring an offeror under a geothermal resources lease to provide a certified statement by a qualified archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee and to accept reasonable conditions of use for the protection of such areas and which requires the lessee to bear the cost of salvaging objects of antiquity is reasonable and will be upheld. The fact that the lessee may have to bear the cost of such a requirement does not make the stipulation objectionable. This Board has previously held that the financial burden of complying with protective stipulations in federal land leases is the sole responsibility of the lessee. Bill J. Maddox, 24 IBLA 147, 150 (1976).

<sup>1/</sup> See, e.g., The Antiquities Act of June 8, 1906, 16 U.S.C. §§ 431, 432 (1970); The Historic Sites Act, as amended, 16 U.S.C. §§ 461-467 (1970); and Act of May 24, 1974, 16 U.S.C. §§ 469-469c (Supp. IV, 1974).

<sup>2/</sup> 43 CFR 3109.2-1 provides:

"The Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease." (Emphasis supplied.)

Stipulations, however, 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). In the case of Cecil A. Walker, 26 IBLA 71 (1976), involving a nearly identical stipulation as presented in the instant appeal, the Board took notice of the Act of May 24, 1974, 88 Stat. 174, 16 U.S.C. § 469 (1976), which directed any Federal agency to notify the Secretary of the Interior whenever it becomes aware that its activities "in connection with any Federal construction project or Federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical or archeological data." 16 U.S.C. § 469a-1(a) (Supp. IV, 1974).

The section following 16 U.S.C. § 469a-2(a) (Supp. IV, 1974), describes the Secretary's responsibilities when notified of a possible loss or destruction of archaeological data:

The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

The broad language of that statute is sufficient to indicate a Congressional desire to preserve archaeological values from surface-disturbing activities conducted under Federal leases. See also Western Slope Gas Co., 40 IBLA 280 (1979). In view of the fact that this authority was granted at the request of this Department, we are not disposed to hold that a stipulation for the protection of archaeological values is unreasonable even in a situation as here, where the appellant suggests that no known values exist on a particular parcel or lease. Moreover, unless appellant is a qualified archaeologist, it is clearly possible that he might inadvertently overlook values which a qualified archaeologist might discover.

In that the record supports BLM's determination to require the stipulation for this lease offer, and because appellant has failed to present any substantive evidence or argument to persuade us that

BLM's conclusions are in error, we find that the requirement that the appellant agree to BLM's stipulation as a condition to issuance of the leases was reasonable and proper.

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.

James L. Burski  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joan B. Thompson  
Administrative Judge

