

JAMES O. BREENE, JR.

IBLA 80-646

Decided August 29, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, requiring endorsement of special stipulations on oil and gas lease W 63858.

Affirmed.

1. Oil and Gas Leases: Stipulations

BLM's decision to impose a no-surface occupancy stipulation covering a canyon and creek bed on an oil and gas lease will be affirmed where the record shows that these areas have significant aesthetic values, where much of the balance of the leased lands is apparently suitable for drilling, and where the lessee has previously expressed his willingness to accept the lease subject to designation by BLM of 'zones of nondisturbance.'

APPEARANCES: C. M. Peterson, Seq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This matter has previously been before the Board. In James O. Breene, Jr. (On Reconsideration), 42 IBLA 395 (1979), we held that the Wyoming State Office, Bureau of Land Management (BLM), had improperly rejected Breene's oil and gas lease offer, W 63858, and we remanded the case to BLM with instructions to issue the lease with appropriate and reasonable protective stipulations. 1/ On December 28, 1979, BLM

1/ Initially, in James O. Breene, Jr., 38 IBLA 281 (1978), we affirmed BLM's decision to reject this offer, based on representations in the record by local BLM officials that oil and gas leasing would be incompatible with management plans and would be detrimental to archeological, paleontological, and scenic values there. Breene petitioned

issued a decision requiring Breene to accept the imposition of seven special stipulations, on pain of rejection of his offer. Breene (appellant) appealed this decision.

[1] Appellant states that he has no objection to or is willing to accept five stipulations (Nos. 2 through 6). His only objections concern the remaining two (Nos. 1 and 7). Stipulation No. 1 provides that '[n]o occupancy or other activity will be allowed on the portion of the lease within Whoop-up Canyon [as depicted on a map of the area which was attached to the stipulations]. This restriction may be modified upon completion of the archeological survey in 1980.' Stipulation No. 7 provides that

[n]o occupancy or other activity on the surface of this lease will be allowed prior to intensive cultural resource inventory by an archeologist possessing valid antiquity permit, and a report of findings filed with the Casper District Manager of the Bureau of Land Management. Approval of occupancy or other surface activity will be granted by the District Manager only after appropriate levels of review have been conducted to satisfy federal responsibility under Section 106 of the National Historic Preservation Act.

Appellant argues that the area could be adequately protected by the conditional no-surface occupancy provision of stipulation No. 7, in lieu of the absolute no-surface occupancy provision of stipulation No. 1.

We are unable to find fault with BLM's decision to forbid drilling in the canyon itself and on its floor near the Whoop-up creekbed, which, the record shows, have significant archeological potential and aesthetic value. While, as appellant suggests, stipulation No. 7, the archeological protection stipulation, might be adequate to locate and protect sites of archeological value, it appears that the best way to protect the aesthetic values of the canyon and creekbed is to bar completely all surface occupancy there, as does stipulation No. 1. Much of the balance of the leased area will apparently be suitable for drilling upon completion of archeological inventory. Thus, we are unable to find that stipulation No. 1 is unduly burdensome.

for reconsideration of this decision, pointing out several inaccuracies in these representations. In James O. Breene, Jr. (On Reconsideration), supra, we vacated this decision, noting that the supporting facts were misstated.

Moreover, appellant had previously suggested that he would be willing to accept a lease subject to designation by BLM of 'zones of nondisturbance.' 38 IBLA at 283. It appears that BLM has provided precisely this, and, as there appears to be no unreasonable bar to reasonable enjoyment of the lease, we affirm BLM's decision.

Therefore, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

