STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS
GOVERNOR

July 24, 1990

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Mr. David Vandiver
Fisk & Vandiver
Attorneys at Law
Seventh and Mahone, Suite E
Artesia, New Mexico 88210

Re: CASE NO. 9904
ORDER NO. R-9237

Applicant:

Yates Petroleum Corporation

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Florene Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD x

Other Thomas Kellahin

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July 5, 1990

Mr. David R. Catanach
Energy, Minerals and Natural
Resources Department
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

Re: Case No. 9964
Lusk "AHB" Federal No. 1 Well
Township 19 South, Range 32 East, NMPM
Section 35: N/2
Lea County, New Mexico

Dear Mr. Catanach:

At the June 27 hearing on the application of Yates Petroleum Corporation for an unorthodox gas well location for its Lusk "AHB" Federal No. 1 Well, you inquired whether Yates could have obtained a suspension of the term of Federal Lease NM 59392 because of the problems arising from the application for permit to drill submitted by Anadarko Petroleum Corporation. In connection with your inquiry, I am enclosing copies of the following:

1. 43 C.F.R. §3103.4-2, the federal regulation governing suspension of operations and/or production.

2. Beartooth Oil and Gas Co., 94 IBLA 115, GFS(O&G) 112(1986).

3. Nevdak Oil and Exploration, Inc., 104 IBLA 133, GFS(O&G) 84(1988).

4. Bronco Oil and Gas Co., 105 IBLA 84, GFS(O&G) 101(1988).

Under 43 C.F.R. §3103.4-2, a suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources, and a suspension of operations only or of production only may be directed or consented to where the lessee is prevented from operating on the lease or producing the lease, despite the exercise of due care and diligence, by reason of matters beyond the reasonable control of the lessee. In the Nevdak Oil and Exploration, Inc. case, the Interior Board of Land Appeals held that the

Bureau of Land Management properly denied a request for suspension of operations and production where an application for permit to drill was filed less than 30 days prior to the lease expiration date, the application was processed expeditiously and approved by the Bureau of Land Management prior to that date, and there was no basis to conclude that the suspension was necessary in the interest of conservation. In the Bronco Oil and Gas Co. case, the Interior Board of Land Appeals affirmed the Bureau of Land Management's decision denying the lessee's request to grant a suspension of operations and production where the lessee failed to present evidence that the Bureau of Land Management in any way prevented the lessee's activities on the lease.

In the present case, there was a pending application for permit to drill the Yates "35" Federal No. 1 Well (later changed to the Lusk "AHB" Federal No. 1 Well) at the time Yates learned that Anadarko did not intend to drill its Bone Spring test, and the application was subsequently approved. The lease was not in a wilderness study area or potash area, and a suspension of operations and production in the interest of conservation was not available to Yates. The Bureau of Land Management took no action precluding Yates from drilling its well. Yates submits that under the circumstances, the Bureau of Land Management would not have granted a suspension of operations and production or a suspension of operations only which would have extended the term of the lease and allowed Yates to submit a new application for permit to drill.

In view of the time constraints Yates was facing, it could only drill its Lusk "AHB" Federal No. 1 Well at the location requested in the existing application for permit to drill. Yates could have completed the well in the Bone Spring or Delaware formation, produced from the shallower formation and later obtained administrative approval to deepen the well to the Morrow formation. This course of action would have been more costly and wasteful.

The testimony at the hearing showed that Yates' preferred location for a Morrow test was in NW/4 NE/4 Section 35. There were aqueducts and a pipeline in that tract which precluded Yates from moving the location to an orthodox location. Even if an orthodox location had been available in NW/4 NE/4, Yates did not have sufficient time to obtain an archaeological clearance for a different location. Yates faced a dilemma when Anadarko Petroleum Corporation elected not to drill its well at the last minute, and Yates acted in good faith in drilling the well to the Morrow formation.

In light of the unusual circumstances of this case, the fact that the well is only slightly unorthodox and that no offset operator objected to Yates' location, Yates requests that it be granted authority to produce its well at the unorthodox location without receiving a penalty on the allowable.

Please let me know if I can provide any further information in connection with this case.

Very truly yours,

FISK & VANDIVER

David R. Vandiver

DRV:pvw
Enclosures

cc: Mr. Rob Bullock

cc w/enclosure: Mr. W. Thomas Kellahin

§ 3103.4 Promotion of development.

§ 3103.4-1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development or that the leases cannot be successfully operated under the terms provided therein, may waive, suspend or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the above benefits shall be filed in the proper BLM office. It shall contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of the lands by legal subdivision and a description of the relief requested.

(2) Each application shall show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty,

[49 FR 11636, 3/27/84]

the number of wells counted as producing each month and the average production per well per day.

(c) Every application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental. Where the application is for a reduction in royalty, full information shall be furnished as to whether overriding royalties, payments out of production, or similar interests are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant shall also file agreements of the holders to a reduction of all other royalties or similar payments from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

(d) Petition may be made for reduction of royalty under § 3108.2-3(f) for leases reinstated under § 3108.2-3 of this title and under § 3108.2-4(i) for noncompetitive leases issued under § 3108.2-4 of this title. Petitions to waive, suspend or reduce rental or minimum royalty for leases reinstated under § 3108.2-3 of this title or for leases issued under § 3108.2-4 of this title may be made under this section.

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983]

[49 FR 30446, 7/30/84]
[53 FR 17351, 5/16/88]

§ 3103.4-2 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and

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production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17351, 5/16/88]

Subpart 3104—Bonds

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

BEARTOOTH OIL AND GAS CO.

IBLA 85-394 Decided October 9, 1986

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying a request for a suspension of operations and production for oil and gas lease U-44434.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Suspensions

When an oil and gas lease of lands located within a wilderness study area is issued after enactment of the Federal Land Policy and Management Act of 1976, subject to the wilderness protection stipulation prohibiting impairment of wilderness suitability, and the lessee is denied an application for permit to drill for failure to meet the nonimpairment standard, the denial is not a restriction tantamount to a suspension under 30 U.S.C. § 209 (1982).

APPEARANCES: Gary G. Broeder, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Beartooth Oil and Gas Company (Beartooth) has appealed from the January 18, 1985, decision of the Utah State Office, Bureau of Land Management (BLM), denying appellant's request for a suspension of operations and production for oil and gas lease U-44434. This lease, a 5-year competitive lease issued on March 1, 1980, was due to expire less than 2 months from the date appellant filed its request for a suspension.

Oil and gas lease U-44434 was issued after the effective date of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1982), and is subject to the Wilderness Protection Stipulation set forth in the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP) of December 12, 1979. 1/ 44 FR 72014 (Dec. 12, 1979). Chapter III(J)(1)(b) of the IMP states:

1/ The IMP was revised on Apr. 6, 1981 (46 FR 20607), and on July 12, 1983 (48 FR 31854).

INDEX CODE:
43 CFR 3103.4-2

> Regardless of the conditions and terms under which these leases [post-FLPMA leases issued prior to the IMP] were issued, there are no grandfathered uses inherent in post-FLPMA leases. Activities on post-FLPMA leases will be subject to a special wilderness protection stipulation as stated in Appendix A.

(IMP at 24, 44 FR 72029 (Dec. 12, 1979)). This stipulation, which was made a part of the lease, states that "[a]ctivities will be permitted under the lease so long as BLM determines they will not impair wilderness suitability" (IMP at 27, 44 FR 72031 (Dec. 12, 1979)).

The lease includes land in secs. 26 and 35 of T. 15 S., R. 22 E., Salt Lake Meridian, Utah, which is within the boundary of a wilderness inventory unit designated as the Winter Ridge Unit UT 080-730. Although BLM initially determined the unit did not qualify as a Wilderness Study Area (WSA), the Board set aside BLM's decision and remanded the matter to BLM. On remand BLM was directed to reassess the naturalness of the area with special attention to whether boundary adjustments might eliminate imprints of man which would disqualify the area from wilderness consideration. Utah Wilderness Association, 72 IBLA 125, 189-90 (1983).[a] BLM subsequently designated 42,462 acres of the 43,963 acres included in the inventory unit as a WSA. 48 FR 46858 (Oct. 14, 1983). No appeal was taken from this determination.

On June 8, 1984, Beartooth filed an Application for Permit to Drill (APD) a well in the SE 1/4 NW 1/4 of sec. 35. By letter dated August 6, 1984, BLM denied appellant's application, noting the well site was within a WSA and that APD approval would not be consistent with the IMP.

Subsequently, by letter dated January 3, 1985, Beartooth requested a suspension of operations (SOP). 2/ Beartooth stated that it spent more than $500,000 in drilling a directional well in an attempt to save the lease; that this well was a dry hole; and that it is not technically feasible to drill directionally to the western portion of sec. 35, the most favorable geologic location. Appellant cited its inability to drill to the target area as the basis for requesting an SOP. On January 18, 1985, BLM issued a decision denying Beartooth's request. The decision stated in part: "Where leases are subject to wilderness protection, and there has been no discovery and a lessee's request for application for permit to drill has been denied, the Secretary's policy generally has been to not grant relief from the denial by granting a suspension." Appellant has appealed from this decision.

[1] In its statement of reasons, appellant asserts it does not question the authority of BLM to require adherence to stipulations issued with the lease. Appellant contends the Department has authority to grant suspension for environmental purposes, citing Rocky Mountain Mineral Law Foundation,

2/ Appellant's request for a suspension was not submitted in triplicate, as required by 43 CFR 3103.4-2.

a) GFS(MISC) 42(1983)

Law of Federal Oil and Gas Leases § 14.16[2] (1985), which refers to a memorandum from the Assistant Solicitor to the Director, Geological Survey, entitled "Suspension of Operating and Producing Requirements of Onshore Federal Oil and Gas Leases for Environmental Reasons" (July 14, 1975). Specifically, appellant contends that where legal procedures are instituted on environmental grounds which bar approval of the APD, the Secretary may grant a suspension. Appellant notes the land within the lease had initially been determined to be outside a WSA, and contends that, in the absence of the legal proceedings by the Utah Wilderness Association, the stipulation would not have been applicable and Beartooth would have been able to obtain the APD at its preferred location. However, those proceedings concluded in 1983 when BLM designated the Winter Ridge Unit as a WSA. Because those proceedings have concluded, they provide no basis for granting a suspension in the instant case. Moreover, the 1975 memorandum anteceded the enactment of FLPMA and its mandate to inventory land for wilderness review, and the memorandum may not be accepted as a statement of policy if it has been superseded by a later policy more particularly directed to land under wilderness review.

Notwithstanding our conclusion, we agree with appellant's general proposition that the Department has authority to grant suspension for environmental reasons. Section 39 of the Mineral Leasing Act states:

> In the event the Secretary of the Interior, in the interest of conservation, shall direct * * * the suspension of operations and production under any lease granted under the terms of this chapter any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and productions; and the term of such lease shall be extended by adding any such suspension period thereto.

30 U.S.C. § 209 (1982); 43 CFR 3103.4-2. This section of the Act was considered by the court in Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595 (D.C. Cir. 1981), which involved the imposition of a "winter season only" restriction in an APD on an oil and gas lease because of the fragile nature of the tundra. The lease terms did not include such a restriction. The court found imposition of the restriction constituted a suspension of operations and production within the meaning of 30 U.S.C. § 209 (1982), and that Copper Valley was entitled to an automatic lease extension equal to the period of suspension.

In Copper Valley the question was whether the Secretary had, in essence, suspended a lease by limiting drilling thereon to a specified period of time to protect the tundra. The court ruled the Secretary had done so and that such action was in the interest of conservation under the suspension provision of the Mineral Leasing Act, 30 U.S.C. § 209 (1982). The court held the Secretary's failure to suspend the running of the lease term at the same time he effectively suspended beneficial use of the lease was not justified under the Mineral Leasing Act.

Section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1982), specifically directs BLM to carry out a wilderness review of the public lands and section 603(c), 43 U.S.C. § 1782(c) (1982), instructs BLM to manage the lands under review "in a manner so as not to impair the suitability of such areas for preservation as wilderness." Section 603(c) provides a special exemption from the nonimpairment mandate for mining, grazing, and mineral leasing uses existing as of October 21, 1976. Section 701(h) of FLPMA, 90 Stat. 2786, recognizes valid existing rights.

As noted in the IMP, these FLPMA mandates establish as a matter of law that, while some development activities are permissible on lands under wilderness review, they are subject to important limitations and must be carefully regulated. All activities except those specifically exempted must be regulated to prevent impairment of wilderness suitability. If a nonexempt activity on lands under wilderness review cannot meet this condition, the activity cannot be permitted. Under the general standard for interim management, lands under wilderness review must be managed so as not to impair their suitability for preservation as wilderness. This is known as the "nonimpairment" standard (IMP at 6-7, 44 FR 72015 (Dec. 12, 1979)). Because the lease in question was issued after the effective date of FLPMA, the activity on this lease must meet the nonimpairment standard.

The critical distinction between Copper Valley and the present case is the applicability of section 603 of FLPMA, 43 U.S.C. § 1782 (1982). Appellant holds an oil and gas lease which has been impressed with the wilderness protection stipulation prohibiting activities which would impair the suitability of the leased lands for inclusion in a wilderness area. This affirmative limitation was mandated by Congress when it enacted section 603 of FLPMA, and was not a suspension authorized by administrative decision pursuant to the Mineral Leasing Act, 30 U.S.C. § 209 (1982).

In Rocky Mountain Oil and Gas Ass'n v. Andrus, 500 F. Supp. 1338 (D. Wyo. 1980), Judge Kerr rejected the Department's attempts to impose post-FLPMA leases with the wilderness protection stipulation. He stated, "such a system of issuing 'shell' leases with no development rights is clearly an unconstitutional taking and is blatantly unfair to lessees." Id. at 1345. Judge Kerr found the imposition of a restriction that would allow the Government to continue to collect rental at the same time it might never authorize beneficial use of the leases to be inequitable. The U.S. Court of Appeals for the Tenth Circuit in Rocky Mountain Oil and Gas Ass'n v. Watt, 696 F.2d 734 (10th Cir. 1983), expressly cited his reasoning on this point (696 F.2d at 740) and rejected it.

In its Rocky Mountain Oil and Gas Ass'n decision the Tenth Circuit Court of Appeals relied on the clear congressional intent underpinning section 603 of FLPMA to find Congress directed the Secretary to take such steps as were necessary to prevent impairment of lands suitable for wilderness designation until such time as Congress could determine what course of

action it should take. Thus, the issue in cases involving the imposition of the nonimpairment standard is not whether by the application of such standard the Secretary has effectively suspended a lease pursuant to 30 U.S.C. § 209 (1982), but the authority of the Secretary to issue leases in which ultimate beneficial use may never occur. The Tenth Circuit Court of Appeals found in Rocky Mountain Oil and Gas Ass'n that Congress had given the Secretary that authority and that such limitations on beneficial use did not constitute a compensible taking.

These cases were recently discussed by this Board in Amoco Production Co., 92 IBLA 333 (1986),[b] 3/ an appeal involving a factual situation similar to the appeal in issue. Amoco also concerned post-FLPMA leases for lands located within a WSA which were apparently subject to the wilderness protection stipulation prohibiting impairment of wilderness suitability. The lessees in Amoco also were denied APD's for failure to meet the nonimpairment standard.

The Board held in Amoco that the imposition of the wilderness protection stipulation and denial of the APD's did not constitute a suspension under 30 U.S.C. § 209 (1982), but in fact, implemented the will of Congress, as expressed in section 603 of FLPMA. 4/ We find this holding applicable in the present case. This is not to say the Secretary may not suspend leases in these cases. Rather, the circumstances of this case are not, under the reasoning of Copper Valley, equivalent to a suspension under 30 U.S.C. § 209 (1982). Appellant has presented no evidence that an automatic suspension would be appropriate herein. Section 603 of FLPMA was in existence when appellant obtained its lease, and appellant must be considered to have known that beneficial use of the leases might be restricted or denied. Appellant took that risk when it filed its offer.

We note BLM based its decision denying appellant's request for a SOP on "the Secretary's policy * * * not to grant relief from denial [of an APD] by granting a suspension." There is a question of whether the IMP represents Secretarial policy. See Amoco, supra at 335-36, 338. Because we have concluded appellant is not entitled to suspension of its lease on the grounds set forth above, we need not address the issue of whether the IMP represents Secretarial policy and, therefore, is binding on the Board and controlling in this case.

3/ A petition for reconsideration has been filed with this Board.

4/ In Texaco, Inc., 68 I.D. 194 (1961),[c] an oil and gas lessee had been denied a drilling permit in order to protect potash deposits. The Department held, however, that the refusal to permit drilling on the leases amounted to an order prohibiting operations; that the order was in the interest of conservation; and that suspension under 30 U.S.C. § 209 (1982), was appropriate. The same rationale set forth above is applicable to distinguish the Texaco case from the present case.

b) GFS(O&G) 74(1986)

c) GFS(O&G) SO-39(1961)

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 as modified.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

NEVDAK OIL AND EXPLORATION, INC.

IBLA 86-325 Decided September 2, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming denial of request for suspension of operations and production and notification of termination of oil and gas lease W-72441.

Affirmed.

1. Oil and Gas Leases: Suspensions

BLM properly denies a request for the suspension of operations and production under an oil and gas lease where an application for a permit to drill on the lease was filed less than 30 days prior to the lease expiration date, the application was processed expeditiously and approved by BLM prior to that date, and there is no basis to conclude that a suspension was necessary in the interest of conservation.

APPEARANCES: Dale W. Moench, Esq., Bismarck, North Dakota, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

NevDak Oil and Exploration, Inc. (NevDak), has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 26, 1985, affirming the denial of a request for the suspension of operations and production and notification of the termination of oil and gas lease W-72441.

Oil and gas lease W-72441 was issued on December 1, 1980, to the Western American Exploration Company (Western American) for 160.02 acres of land situated in lot 1 and the SE¼NE¼, E½SE¼ sec. 1, T. 46 N., R. 64 W., sixth principal meridian, Weston County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). The lease term was 5 years "and so long thereafter as oil or gas is produced in paying quantities." On November 18, 1985, BLM approved the assignment of the oil and gas lease from Western American to William Eberspecher, effective November 1, 1985. NevDak is Eberspecher's designated operator under the lease, by virtue of a November 5, 1985, designation.

INDEX CODE:
43 CFR 3103.4-2(a)
43 CFR 3162.3-1(d)

On November 8, 1985, less than 30 days before the expiration of the oil and gas lease, NevDak filed with the Newcastle Resource Area Office, Wyoming, BLM, an application for a permit to drill (APD) a well (NevDak Federal No. 5) in lot 1, sec. 1. 1/ In its APD, NevDak proposed the drilling of a 6¼-inch hole to a depth of 710 feet, with an approximate starting date of November 30, 1985. By letter dated November 13, 1985, the Area Manager, Newcastle Resource Area, notified NevDak that the APD was "deficient" because of the absence of a Class III cultural resources survey, which BLM required to be submitted within 45 days of the date of the notice. The record indicates that the site of proposed drilling operations was inspected by BLM on November 14, 1985, and that the APD continued to be subject to BLM review throughout that month. On November 29, 1985, BLM received a Class I cultural resources survey prepared by a private archaeological consulting firm. In a May 7, 1986, affidavit submitted by BLM on appeal, John Hanson, a BLM petroleum engineer, states that the survey report was filed by a representative of NevDak. The survey report states that the area of proposed drilling operations had been inspected on November 22, 1985, but that a Class III survey was precluded by snow cover. 2/ Nevertheless, the report concludes, based on the field inspection and a records search, that there is a very low probability that the area contains any cultural resources and recommends that a cultural clearance be issued, "with a special stipulation that the area be reevaluated in the spring, following natural snow melt" (Survey Report at 1).

In a "Categorical Exclusion/Land Report/Decision Record," dated November 29, 1985, BLM concluded that the proposed well would have a negligible effect with respect to various environmental factors, including cultural resources. Further, the record indicates that BLM accepted the Class I cultural resources survey in lieu of a Class III survey on November 29, 1985. In his May 7, 1986, affidavit, Hanson explains that the survey was accepted "due to minimal surface disturbance, shallow well and truck mounted portable drilling rig." Also, on November 29, 1985, the Acting Area Manager approved NevDak's APD, subject to certain conditions, including completion and submission of a Class III cultural resources survey "immediately after normal snowmelt occurs." In addition, the conditions attached to the approved APD, at page 3, state:

> If this well intends to earn drilling extension, active drilling must be in progress on November 30, 1985, advance lease rentals must have been paid, and two copies of a notarized affidavit of actual well operations performed on November 30, 1985 and December 1, 1985 received by this office.

1/ In a letter received by the Wyoming State Office on Nov. 8, 1985, Eberspecher stated that an APD was being filed "so we can start drilling operations before the Lease expires December 1, 1985."

2/ According to the survey report, at page 2, the Nov. 22 field inspection detected recent activity in the area of proposed drilling operations: "Part of the well pad has been recently bladed, and an area of about 350 square feet of the natural ground surface is clear of snow. A backhoe trench adjacent to the well centerstake is about 40' long, 2-4' wide, and 6-8' deep, with backdirt piled alongside."

The record contains the handwritten notes of Margaret Ferguson, a BLM petroleum engineer technician, which indicate she inspected the site of NevDak's proposed drilling operations at various times on November 30, 1985. These notes state that the road to the site had been plowed and that there was a rig on the site at midnight of that date, but the hole had not been spudded. In a May 7, 1986, affidavit submitted by BLM on appeal, Ferguson explains that she had found no rig on the site when she inspected the site at 12:30 p.m. and 5 p.m., but that she returned to the site shortly before midnight in the company of Hanson:

> We arrived on location at approximately 11:30 p.m. to find that the truck mounted rig had been moved onto the location but no drilling was taking place. There were no personnel on location at that time, either. There was a 5 gallon bucket over where the hole was to have been drilled but it had not been spud. We took numerous pictures at that time and remained on location until 12:20 of 12-1-85.

The record contains various photographs taken during the several visits to the well site on November 30, 1985.

By letter dated December 4, 1985, the Area Manager notified NevDak that oil and gas lease W-72441 had terminated at the end of its primary term on November 30, 1985, in the absence of production or diligent drilling operations, and required NevDak to cease any further oil and gas exploration activity and reclaim the well site. The Area Manager also stated that the APD was cancelled effective December 1, 1985 "as a result of the lease terminating at 12:00 midnight, November 30, 1985."

The record indicates that, prior to the end of the primary term of oil and gas lease W-72441, Eberspecher had filed a letter with the Casper District Office, Wyoming, BLM, on November 26, 1985, stating in full:

> Due to the fact that I have not been able to get a class 3 geological survey [3/] on said lease, because of the heavy amount of snow on the lease, I have applied for a drilling permit and Jack Hanson in the Newcastle office has informed me that everything has been approved with the exception of the geological survey. In reference to form #43CFR3103.4-2, I wish to request an extension on said lease.

3/ While Eberspecher refers to a Class III "geological survey," it is clear that he meant a Class III cultural resources survey which had been precluded by the snow cover on the site of the proposed drilling operations. Indeed, there is nothing in the record to indicate that BLM had required a geological survey and the record contains a Nov. 19, 1985, "Geologic Report," prepared by BLM. BLM, likewise, interpreted Eberspecher's letter to refer to a Class III cultural resources survey.

BLM responded to Eberspecher's "request" by letter dated December 6, 1985. In that letter, the Acting District Manager stated that BLM had construed the letter as a request for the suspension of operations and production filed pursuant to 43 CFR 3103.4-2. Noting that the requirement to submit a Class III cultural resources survey prior to approval of the APD had been waived and the APD had been approved, the Acting District Manager concluded that approval of the APD had "rendered your request for a suspension * * * invalid" and stated that the request was "returned herewith." In effect, the Acting District Manager denied Eberspecher's suspension request.

On December 13, 1985, NevDak filed a request for a technical and procedural review (TPR). NevDak contended that it was entitled to a "favorable review" because of "short notice" and "adverse weather conditions." NevDak explained:

> We were under the impression that the lease was going to be extended for the lack of a Class 3 Geological Survey [4/] because of snow cover. Therefore, we had made no attempt to dig the pit and move the rig to the location or plow out roads 3 feet deep with snow.
>
> * * * The APD was approved at 4:00 p.m. on Friday, November 29, 1985 which left us only 32 hours to move the rig 20 miles, dig the pit, plow out 2 miles of road and start drilling.
>
> * * * We plowed out the road, dug the pit, moved the rig to location in 14° below weather with 10 mile per hour wind. While raising the derrick at 7:00 p.m. on Saturday, November 30, 1985 we broke a hydraulic line because of the cold hydraulic oil and had to suspend operations for the night.

In its December 26, 1985, decision, the Wyoming State Office conducted its TPR. 5/ BLM concluded that the Acting District Manager had properly returned Eberspecher's request for a suspension of operations and production "since the APD was approved" and that the Area Manager had properly notified NevDak of the termination of oil and gas lease W-72441 "because actual drilling activity had not commenced before midnight on November 30, 1985." Referring to NevDak's "impression" that the request for a suspension of operations and production would be granted, BLM stated that "there is no reason to believe, nor any assurance, that such a request will be granted." Finally, BLM recognized that "weather conditions over the lease expiration date were less than conducive to drilling operations," but stated that the APD had not

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4/ NevDak clearly meant a Class III cultural resources survey.

5/ The State Office's December 1985 decision purports to be only a review of the Area Manager's December 1985 letter notifying NevDak of the termination of oil and gas lease W-72441. However, the State Office reviews both the Area Manager's December 1985 letter and the Acting District Manager's December 1985 letter, thus effectively affirming the denial of Eberspecher's request for a suspension of operations and production under the lease.

been filed "at least 30 days before commencement of operations is anticipated," as required by 43 CFR 3162.3-1(d). NevDak has appealed from that decision.

In its statement of reasons for appeal, appellant recognizes that the APD was not filed timely, but argues that BLM effectively waived the failure to file timely. Further, appellant contends that BLM failed to properly consider the request for a suspension of operations and production and that BLM should have approved the request where heavy snow cover precluded a Class III cultural resources survey and then extended the lease for a reasonable period of time "to allow for * * * obtaining" a suitable report.

This case raises the principal question whether BLM properly denied the request for a suspension of operations and production under oil and gas lease W-72441, filed prior to the expiration date of that lease, where a suspension would have extended the term of the lease and thereby prevented the lease's termination.

[1] The Secretary or his delegated representative is empowered by section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1982), to suspend operations and production under an oil and gas lease "in the interest of conservation," and thereby extend the term of the lease for the suspension period. We have construed section 39 of the Mineral Leasing Act to provide for suspension either as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded, or as a matter of discretion, in the interest of conservation. Sierra Club (On Judicial Remand), 80 IBLA 251 (1984)[a], aff'd, Getty Oil Co. v. Clark, 614 F. Supp. 904 (D. Wyo. 1985), aff'd sub nom., Texaco Producing, Inc. v. Hodel, 840 F.2d 776 (10th Cir. 1988).

In the present case, it is clear that beneficial enjoyment of lease W-72441 was not precluded by any act, omission, or delay by a Federal agency. An APD could have been filed at any time during the 5-year primary term of the lease. However, an APD was not filed until November 8, 1985, 22 days before the lease expiration date. BLM is not to blame for the late filing. Moreover, upon receipt of the APD, BLM acted with considerable dispatch, approving the APD in 21 days. 6/ In these circumstances, the processing of the APD cannot be characterized by any delay on the part of BLM. Thus, the fact that the APD was not approved until November 29, 1985, one day before the lease expiration date, is not attributable to any act, omission, or delay by BLM, but rather simply the fact that the process was "begun too late." Sierra Club (On Judicial Remand), supra at 263; see also Lario Oil & Gas Co., 92 IBLA 46, 51 (1986);[b] William C. Kirkwood, 81 IBLA 204, 207-08 (1984);[c] Jones-O'Brien, Inc., 85 I.D. 89, 96-97 (1978). Accordingly, neither Eberspecher nor appellant was entitled to suspension of operations and production under lease W-72441 as a matter of right. See Sierra Club (On Judicial Remand), supra at 264.

6/ In addition to requiring that an APD be filed at least 30 days prior to the commencement of operations, 43 CFR 3162.3-1(d) states that, where the APD process is initiated less than 30 days prior to that date, "the process may not be completed by the desired date."

a) GFS(O&G) 119(1984)
b) GFS(O&G) 54(1986)
c) GFS(O&G) 141(1984)

We, therefore, turn to the question of whether BLM should have granted a suspension of operations and production in the interest of conservation as an exercise of its discretionary authority under section 39 of the Mineral Leasing Act. See John March, 98 IBLA 143, 147 (1987).[d] We conclude that BLM properly denied the request for a suspension where there was no demonstration that a suspension would be "in the interest of conservation." 30 U.S.C. § 209 (1982).

In accordance with the court's opinion in Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981), the term "conservation" in section 39 of the Mineral Leasing Act is to be given its "ordinary meaning" and includes "prevention of environmental damage." Thus, operations and production may be suspended not only where to do so conserves the mineral resource, but also where suspension affords the Department sufficient time to decide whether and/or under what circumstances to permit exploration and development of the mineral resource so as to best protect other resources. See Solicitor's Opinion, 78 I.D. 256, 258-61 (1971); see also Gulf Oil Corp. v. Morton, 493 F.2d 141 (9th Cir. 1973); Sierra Club (On Judicial Remand), supra at 253; Texaco, Inc., 68 I.D. 194 (1961);[e] J. B. Mulcock, 61 I.D. 126 (1953);[f] Robert D. Snyder, A-25941 (Dec. 7, 1950).[g] In the present case, Eberspecher's suspension request contained no cogent assertion and no reasons in support of any assertion that suspension of operations and production under lease W-72441 was necessary to conserve the mineral resource, or to permit BLM to determine how to best protect other resources, or in any other way in the interest of conservation. 7/ Nor can we discern any basis for concluding that suspension was justified in the interest of conservation.

On appeal, appellant contends that suspension should have been granted in order to permit a proper survey of the cultural resources at the well site. However, in processing appellant's APD, BLM concluded that a Class III cultural resources survey need not be prepared prior to approval of the APD because of the negligible anticipated effect on cultural resources of drilling at the site and, accordingly, approved the APD, subject to a survey at a later point in time. Appellant has offered no basis to dispute that conclusion. 8/ Thus, we cannot conclude that suspension of operations and

7/ Eberspecher's suspension request was clearly deficient under 43 CFR 3103.4-2(a), which requires that, in the case of such requests, "[c]omplete information shall be furnished showing the necessity of such relief." The request was, therefore, subject to rejection for this reason alone. Prima Exploration, Inc., 102 IBLA 352, 354-55 (1988);[h] Duncan Miller, 21 IBLA 361 (1975).[i]

8/ It is clear from the record that appellant's real concern is not with the effect of drilling operations on cultural resources but, rather, the fact that it was under the "impression" that BLM, in absence of a Class III cultural resources survey, would not approve the APD and, accordingly, would suspend operations and production and extend the lease term (Request for TPR, dated Dec. 11, 1985, at 1). There is nothing in the record to indicate that BLM had acted in any way so as to create such an "impression." Also, if appellant was, in fact, under that "impression," its action in moving the portable drilling rig onto the site on Nov. 30, 1985, was inconsistent with

d) GFS(O&G) 68(1987)
e) GFS(O&G) SO-39(1961)
f) GFS(O&G) BLM-119(1954)
g) GFS(O&G) BLM-60(1950)
h) GFS(O&G) 52(1988)
i) GFS(O&G) 98(1975)

production was necessary to conserve cultural resources, or even to permit further study to determine the presence of, or anticipated effect of, drilling on such resources. Rather, it is apparent that the only interest that would have been served by a suspension was appellant's and the lessee's in extending the term of the lease and thereby permitting further exploration and development. In these circumstances, we must conclude that BLM properly denied the request for a suspension of operations and production under oil and gas lease W-72441 pursuant to BLM's discretionary authority under section 39 of the Mineral Leasing Act. See Jack J. Grynberg, 88 IBLA 330, 334 (1985);[j] Ben F. Swisher, A-27201 (Nov. 21, 1955); Continental Oil Company, A-26537 (Nov. 6, 1953).[k]

While a suspension of operations and production pursuant to section 39 of the Mineral Leasing Act is not justified in the present case, we recognize that BLM also has authority under section 17(i) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(i) (1982), to suspend operations or production, thereby also extending the lease term. See Solicitor's Opinion, 92 I.D. 293, 299-301 (1985).[l] The Department recently amended 43 CFR 3103.4-2 to set forth a standard for granting a section 17(i) suspension. Such a suspension may be granted where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. 43 CFR 3103.4-2(a) (53 FR 17354 (May 16, 1988)). We cannot conclude that appellant was prevented from operating on the lease "despite the exercise of due care and diligence" where the APD was filed less than 30 days prior to the lease expiration date at which time it was reasonably foreseeable that appellant would have little, if any, time to initiate drilling operations, let alone to deal with any mishaps, prior to the expiration date. The inability to conduct drilling operations on November 30, 1985, was clearly linked to the lack of diligence in submitting the APD. This lack of diligence precludes the granting of a suspension of operations pursuant to section 17(i) of the Mineral Leasing Act.

In the absence of a suspension of operations and/or production and the concomitant extension of the lease term, we must conclude that lease W-72441 expired at the end of its primary term on November 30, 1985, where there was no other basis for extension of the lease term. We can find no such basis. There was no production of oil or gas in paying quantities and no well capable of such production with respect to the lease. In such circumstances,

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fn. 8 (continued)
that "impression." Moreover, we are aware of no regulation or statute which precluded the approval of an APD in the absence of a Class III cultural resources survey. Rather, the record contains a page from Part 8143 of the BLM Manual (Release 8-3, Appendix 3, Page 1), which states that certain actions, including drilling from truck-mounted rigs, will generally be "excluded from the Class III inventory requirement unless the Class I inventory indicates the project will impact an area which contains or shows potential for significant cultural resources." The record indicates that an exclusion was appropriate herein.

j) GFS(O&G) 122(1985)
k) GFS(O&G) SO-54(1953)
l) GFS(O&G) SO-2(1985)

the lease could only be extended for 2 years pursuant to 30 U.S.C. § 226(e) (1982), where diligent drilling operations were conducted over the lease expiration date. Mobil Producing Texas & New Mexico, Inc., 99 IBLA 5, 7 (1987);[m] American Resource Management Corp. (On Judicial Remand), 88 IBLA 172, 175 (1985).[n] The record establishes that appellant was not engaged in actual drilling operations at the approved well site prior to or immediately after midnight November 30, 1985. Appellant's mere preparatory work to actual drilling operations will not suffice. Estelle Wolf, 37 IBLA 195, 197 (1978);[o] Inexco Oil Co., 20 IBLA 134, 139 (1975).[p] Indeed, appellant makes no assertion that it was engaged in actual drilling operations or that the lease was otherwise entitled to an extension. Accordingly, we conclude that lease W-72441 expired on November 30, 1985.

Based on the foregoing analysis, we conclude that the Wyoming State Office properly affirmed the December 4, 1985, letter from the Area Manager notifying appellant that lease W-72441 had terminated on November 30, 1985, and the December 6, 1985, letter from the Acting District Manager effectively denying Eberspecher's request for a suspension of operations and production under that lease.

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.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

m) GFS(O&G) 78(1987)
n) GFS(O&G) 113(1985)
o) GFS(O&G) 157(1978)
p) GFS(O&G) 52(1975)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

BRONCO OIL & GAS CO.

IBLA 87-195 Decided October 19, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming denial of request for suspension of operations and production under oil and gas lease W-44076.

Affirmed.

1. Oil and Gas Leases: Suspensions

> Under sec. 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1982), the Secretary of the Interior is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. Where an oil and gas lessee asserts entitlement to such a suspension, but there is no evidence in the record that from the time the lessee obtained a 2-year lease extension by drilling over until expiration of the lease BLM in any way prevented the lessee's activities on the lease, BLM's decision denying the request will be affirmed.

APPEARANCES: Joe H. Cox, President, Bronco Oil & Gas Company, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Bronco Oil & Gas Company (Bronco) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 28, 1986, affirming the October 7, 1986, denial by the Worland District Office, BLM, of Bronco's September 19, 1986, request for the suspension of operations and production under noncompetitive oil and gas lease W-44076.

Noncompetitive oil and gas lease W-44076 was issued to Bronco, effective April 1, 1974, for a 10-year term. 1/ The record indicates that Bronco sought under its lease to extract oil from oil sands in the Tensleep formation. Although Bronco drilled a well (5-B) in the fall of 1982, oil did not flow into the well bore. BLM informed Bronco in a March 4, 1983,

1/ The lease encompasses 640 acres of land, described as the NE¼, N½SE¼, SE¼SE¼ and the E½NW¼ sec. 32 and the NW¼NW¼, S½NW¼ and the SW¼ sec. 33, T. 52 N., R. 89 W., sixth principal meridian, Big Horn County, Wyoming.

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43 CFR 3103.4-2

letter that before considering more economical means of development, BLM would have to verify that "naturally occurring oil" would flow naturally. BLM concluded that the "concept of a natural flow means extraction by primary or secondary recovery methods and does not include tertiary (heat, solvent, etc.) means." (Emphasis in original.)

Bronco attempted to establish oil flow by drilling five closely spaced wells into the Tensleep formation and injecting water and air through the four exterior wells and seeking recovery from a single interior well. The project, undertaken in May and June 1983, was unsuccessful.

Thereafter, by letter dated July 6, 1983, BLM informed Bronco that the injection of preheated water "as in your May-June tests" would not be permitted to establish natural flow and that first recovery of oil would have to be established by natural reservoir pressure drive or by water or gas injection.

In that same letter, BLM indicated that an oil recovery method involving the injection of propane, proposed by Bronco in a June 14, 1983, letter, appeared acceptable, and by letter dated August 16, 1983, BLM confirmed that Bronco could inject propane at reservoir temperature "in order to recover hydrocarbons" and that "[i]f a measurable amount of hydrocarbons can be recovered by this means, you may then request authorization to use alternate recovery methods."

Although on November 14, 1983, Bronco submitted a sundry notice regarding the injection of propane at the site of the previous project completed in June 1982, and BLM approved the notice on November 28, 1983, the case file does not indicate that Bronco proceeded with the project. However, on November 23, 1983, Bronco submitted an application for a permit to drill (APD) well 1-33 to a depth of 1,000 feet to test the formation below the Tensleep, the Madison formation, for oil. By memorandum dated January 16, 1984, the Area Manager, Washakie Resource Area, BLM, notified the Chief, Branch of Fluid Minerals, Wyoming State Office, that he could not concur in approval of the APD for well 1-33 at that time, because of the need to prevent harm to elk and mule deer and damage to the soil during the winter months. The Area Manager recommended that Bronco be granted an extension of its lease and that drilling commence in late spring or early summer and terminate before November 1, 1984. By letter dated February 7, 1984, BLM notified Bronco that it could not act on Bronco's APD prior to the expiration of Bronco's lease on March 31, 1984. BLM stated that it could not approve the APD because (1) the location was in a "very crucial winter range for elk and mule deer"; (2) the location was in an area of high precipitation and surface operations prior to the drying up of spring moisture would be very damaging and impractical; and (3) it needed time to prepare an environmental assessment. BLM stated that Bronco could apply for a suspension of operations and production.

Prior to receipt of that letter, Bronco, on February 6, 1984, requested a temporary suspension of operations and production under its

oil and gas lease. On February 24, 1984, BLM granted that request effective February 1, 1984. BLM stated that the suspension would terminate automatically when the APD for well 1-33 was approved, whereupon Bronco would have 2 months to commence drilling the well. 2/

Thereafter, BLM approved the APD and by letter dated September 28, 1984, it notified Bronco that the suspension of operations and production terminated effective September 1, 1984, and that the lease would terminate October 31, 1984, in the absence of actual drilling operations. Bronco was engaged in actual drilling operations at midnight on October 31, 1984, and received a 2-year extension.

On February 10, 1986, Bronco submitted a proposal to BLM involving the injection of propane using the five existing drill holes. However, by letter dated September 17, 1986, Bronco informed BLM that it had been unable to undertake the project "before current onset of the Big Game Hunting Season in the Trapper Canyon Area," and it requested an immediate suspension of lease W-44076 in order that it could "unitize [the lease] with contiguous leases during the winter months and perform the flow test after resumption of the lease in 1987."

In its October 1986 decision, the Worland District Office denied that request for a suspension, explaining:

> A Suspension of Operations may be granted if a lessee is prevented from operating on the lease, despite the exercise of care and diligence, by reason of force majeure, that is by acts beyond control of the lessee, or if a Federal or State regulatory agency prevents a lessee from fulfilling obligations to start or continue drilling operations until a specified time. At this time no Application for Permit to Drill has been received for this lease. Also there are no restrictions on this lease for big game hunting season as mentioned in your letter. The no surface occupancy restriction due to critical winter-range habitat is from November 1 to April 30 which is after the lease expiration date.

Bronco requested a technical and procedural review of the October 1986 decision of the Worland District Office, contending that it had been "prevented by action of various levels of the [BLM], from qualifying to obtain a permit to conduct, or caus[ing] to be conducted, producing operations on * * * lease [W-44076]." In support of its request, Bronco submitted three exhibits regarding its May-June 1983 test activities and BLM's July 1983 approval of propane injection.

In its October 1986 decision, the Wyoming State Office affirmed the Worland District Office's denial of Bronco's request for a suspension. The Wyoming State Office noted that the exhibits submitted by Bronco with its request for a technical and procedural review related to past activities

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2/ BLM stated that the 2-month period was based on the time between the effective date of the suspension (Feb. 1, 1984) and the lease expiration date (Mar. 31, 1984).

and that Bronco had not requested or taken any action with respect to lease W-44076 since drilling operations were conducted on October 31, 1984. The Wyoming State Office stated that Bronco had not undertaken its proposed propane injection project, and that although Bronco attributed its failure to do so to the onset of the hunting season, there were "no restrictions governing Lease W-44076 regarding hunting season." The Wyoming State Office concluded that the Worland District Office properly denied Bronco's suspension request. Bronco has appealed the State Office's decision.

In its statement of reasons for appeal (SOR), appellant reiterates its contention that it was prevented by BLM actions from qualifying for a permit to conduct "production operations" on the lease. Appellant contends that the hydrocarbons underlying lease W-44076 "naturally occur in the earth as a fluid." Bronco requests that we declare those hydrocarbons to be "oil" and that lease W-44076 be suspended "from September 17, 1986, the date of our request, until at the earliest, July 1, 1987 in order that we may proceed to obtain the necessary permits for production."

Appellant attempts to raise a question whether hydrocarbons underlying lease W-44076 are subject to oil and gas leasing pursuant to the Mineral Leasing Act. However, the BLM decision being appealed only addressed the request for suspension; therefore, the only issue properly before us on appeal is whether appellant is entitled to a suspension of operations and production under that lease.

[1] Under section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1982), the Secretary of the Interior or his delegated representative has the authority to either direct or assent to the suspension of operations and production under an oil and gas lease "in the interest of conservation," thereby suspending the obligation to pay rent or minimum royalty and extending the term of the lease by adding the suspension period. See 43 CFR 3103.4-2. This authority has been interpreted to mean that the Secretary is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 603-04 (D.C. Cir. 1981); John March, 98 IBLA 143, 147 (1987)[a]; Sierra Club (On Judicial Remand), 80 IBLA 251, 260-64 (1984),[b] aff'd, Getty Oil Co. v. Clark, 614 F. Supp. 904, 917 (D. Wyo. 1985); aff'd, Texaco Producing, Inc. v. Hodel, No. 85-2338 (10th Cir. Mar. 11, 1988). However, where the lessee requests a suspension, and a suspension is not mandated by the circumstances, the Secretary has the discretionary authority to deny it or to grant it with any reasonable conditions, when to do so would be in the interest of conservation. Id.

In the present case, appellant essentially contends that a suspension is required because BLM prevented appellant from obtaining approval of an APD and commencing production operations. We do not agree with that assessment.

a) GFS(O&G) 68(1987)
b) GFS(O&G) 119(1984)

The primary term of lease W-44076 was to have expired on March 31, 1984. However, on February 24, 1984, BLM granted a request by appellant for a suspension of operations and production. The suspension was to terminate automatically upon approval of an APD for well 1-33, whereupon appellant was to have 2 months to commence drilling. After approval of an APD for well 1-33, BLM held that the suspension terminated September 1, 1984, and that appellant had until October 31, 1984, to commence actual drilling. Appellant was then engaged in actual drilling operations over October 31, 1984, and was accorded a 2-year extension until October 31, 1986.

Following abandonment of well 1-33, the record indicates that appellant did nothing in terms of seeking approval to drill another well or to resume drilling in well 1-33. Moreover, appellant did not follow up on its proposal to inject propane as a means to stimulate the recovery of oil. There is no evidence in the record showing that appellant was prevented at any time from undertaking its propane injection test or from submitting an APD to drill on its lease.

In its SOR, appellant does not specify what BLM actions prevented appellant from obtaining a permit to conduct "production operations." It is clear that following the 2-year extension obtained on October 31, 1984, by drilling over, appellant did not pursue its propane injection proposal nor did it submit another APD. Thus, there is no evidence that BLM refused to approve or delayed approval of further drilling. In these circumstances, we cannot conclude that BLM prevented appellant's drilling or "production operations." Therefore, appellant was not entitled to a suspension of operations and production as a matter of right pursuant to section 39 of the Mineral Leasing Act. 3/ See Sierra Club (On Judicial Remand), supra at 262-64; William C. Kirkwood, 81 IBLA 204, 207-08 (1984).[c]

Appellant has also not demonstrated that BLM should have exercised its discretionary authority to grant a suspension of operations and production in the interest of conservation. 4/ Accordingly, we conclude that

3/ In its September 1986 request for a suspension, appellant suggested that it was precluded from conducting its propane injection test by the onset of the hunting season. However, on appeal, appellant does not take issue with the statement in the State Office's October 1986 decision that the lease itself did not contain this restriction and, thus, it was not a restriction imposed by BLM.

4/ In its September 1986 request for suspension, appellant stated that suspension was necessary in order that lease W-44076 could be unitized with contiguous leases and further operations could be undertaken in 1987. The obvious aim was to preserve lease W-44076 by unitization. See Jack J. Grynberg, 88 IBLA 330, 332-33 (1985).[d] While unitization generally is intended to conserve natural resources (30 U.S.C. § 226(j) (1982)), appellant has offered no reason suggesting that suspension for the purpose of unitizing lease W-44076, under the circumstances of this case, was in the interest of conservation, within the meaning of section 39 of the Mineral Leasing Act. See Copper Valley Machine Works, Inc. v. Andrus, supra at 600; Jack J. Grynberg, supra at 334.

c) GFS(O&G) 141(1984)
d) GFS(O&G) 122(1985)

BLM properly denied appellant's request for a suspension of operations and production under oil and gas lease W-44076.

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.

Bruce R. Harris
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge