

MILAN S. PAPULAK

IBLA 75-49

Decided March 7, 1975

Appeal from a decision of Utah State Office, Bureau of Land Management, rejecting application for lease of geothermal resources U 26265.

Affirmed as modified.

1. Geothermal Leases: Applications: Generally-- Geothermal Leases:  
Lands Subject to--Navigable Waters

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

APPEARANCES: Milan S. Papulak, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Milan S. Papulak appeals from so much of a decision by the Utah State Office, Bureau of Land Management, rejecting his application for a lease of geothermal resources, U 26265, as relates to land in the bed of Bear River in T. 10 N., Rs. 2, 3 W., S.L.M., Utah. 1/

The BLM decision indicated there was a question whether title to the bed of Bear River is in the United States, as well as the present location of the river since survey of the riparian uplands was made in 1856. BLM concluded that the cost of investigation of these matters would likely exceed the value of the land for geothermal resources.

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1/ Application U 26265 was also rejected as to surveyed land in a section granted to the State of Utah under its grant for common schools, sec. 6, Act of July 16, 1894, 28 Stat. 107. No appeal was taken as to this part of the decision, and it has become final.

Our examination of the land status plats for the affected townships discloses that all riparian lands bordering the stretch of Bear River sought by this appellant have been patented without any reservations to the United States relating to geothermal resources. The BLM decision indicated that no determination has ever been made as to the navigability of the Bear River.

Congress, in making a distinction between streams navigable and those not navigable, intended to provide that common rules of riparian ownership should apply to lands bordering on the latter but that title to lands bordering upon navigable streams should stop at the stream. Railroad Company v. Schurmeir, 7 Wall. 272 (1869).

If the Bear River, in the subject townships, is navigable in fact (or law), title to the bed of the navigable river is vested in the State of Utah. Pollard's Lessee v. Hagan, 3 How. 212 (1845). If the Bear River is not navigable, title to the bed of the river is shared ratably by the upland riparian owners. R.S. § 2476, 43 U.S.C. § 931 (1970). Title to land under non-navigable water passes from the United States to the grantee of upland bounding on such non-navigable waters as an incident to such grant. Nephi Irrigation Company v. Bailey, 111 Utah 402; 181 P.2d 215 (1947); Anderson Pritchard Oil Corporation v. Key Oklahoma Oil Company, 299 P. 850 (1931).

[1] Thus, in either case, none of the bed of Bear River sought herein is under jurisdiction of the United States for geothermal resources leasing. Accordingly, rejection of application U 26265 was correct for the reasons above stated.

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.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Newton Frishberg  
Chief Administrative Judge

