

ROBERT G. LYNN

IBLA 75-174

Decided March 17, 1975

Appeals from decisions of the California State Office, Bureau of Land Management, rejecting in part applications for noncompetitive geothermal leases (CA-1297 and CA-1301).

Affirmed as modified.

1. Geothermal Leases: Acreage Limitations -- Geothermal Leases: Applications: Generally -- Geothermal Leases: Noncompetitive Leases

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

2. Geothermal Leases: Applications: Generally -- Geothermal Leases: Known Geothermal Resources Area -- Geothermal Leases: Noncompetitive Leases

Lands within a known geothermal resources area (KGRA) are not available for noncompetitive leasing. Where lands included in a geothermal lease application are determined to be within a KGRA, and such determination is made after the filing of the application but before the issuance of a lease, or amendment thereto, pursuant to such application, the application must be rejected as to such lands.

APPEARANCES: Robert G. Lynn, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Robert G. Lynn appeals from decisions by the California State Office, Bureau of Land Management, dated August 26 and August 28,

1974, which rejected in part appellant's applications nos. CA-1297 and CA-1301 for noncompetitive leases of geothermal resources filed during the initial noncompetitive filing period in January 1974, pursuant to section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1970); 43 CFR 3210.1(b). Both applications were for leases of lands within T. 44 N., R. 17 E., M.D.M., California. Included among the lands applied for in CA-1297 were the E 1/2 W 1/2, E 1/2, and lots 1, 2 and 3, of section 18; and in CA-1301, lot 4, the sole remaining portion of that section. Each application was rejected as to the lands within section 18, on the ground that all of the land in that section "was available and could have been included in the application. \* \* \*"

The governing regulation, 43 CFR 3210.2-1, requires the applicant to submit in his application:

\* \* \* \* \*

(c) A complete and accurate description of the lands applied for, which must include all available lands, including reserved geothermal resources, within a surveyed or protracted section \* \* \*. (Emphasis added.)

In his appeal appellant contends:

The fact is, the inclusion of the remaining lands in section 18 in either of these applications would have caused said application to exceed the acreage limitation for a single lease as provided for in Section 7 of the Act and paragraph 3203.2(a) of the regulations, the exception for irregular subdivisions notwithstanding.

43 CFR 3203.2(a), implementing section 7 of the Act, 30 U.S.C. § 1006 (1970), provides:

A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. Where a departure is occasioned by an irregular subdivision, the leased acreage may exceed 2,560 acres by an amount which is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision were excluded. \* \* \*

The total area of the lands applied for in no. CA-1297 was 2,562.94 acres, of which 616.36 acres were within section 18. In

no. CA-1301 the total area applied for comprised 2,472.26 acres, including 44.86 acres in lot 4, section 18.

We need not decide whether 43 CFR 3203.2(a) may be interpreted to permit the rule of approximation set forth therein to include a subdivision larger than the usual smallest legal subdivision, *i.e.*, a quarter-quarter section consisting of 40 acres. <sup>1/</sup> Regardless of the reason given by appellant, he did not follow the mandate of 43 CFR 3210.2-1(c) to include all available lands within a section in an application. If appellant desired a lease on all available lands in section 18, he could have applied therefor in a third application.

[1] The facts do not excuse appellant's failure to comply with 43 CFR 3210.2-1(c) in describing less than the entire section 18 in each application, even though both applications considered together included all of the land within the section. The two applications cannot serve in tandem to remedy the deficiencies in one another. Each application must comply with the regulations by itself. A lease may not embrace more than the maximum acreage permissible under 43 CFR 3203.2. If an applicant wishes to avoid the consequences of including more lands in his application than can be leased, he must be selective in choosing which sections to include within a given application. Nevertheless, 43 CFR 3210.2-1(c) is clear in requiring that the applicant describe all the available lands within a section. Therefore, each application must include all available lands within a section. Appellant's applications were each properly rejected as to the lands in section 18 for the reason given by BLM.

[2] During the pendency of this appeal, the Geological Survey has informed us that certain sections within T. 44 N., R. 17 E., M.D.M., Calif., are within a known geothermal resources area (KGRA). The sections are: 7 and 18 (within application CA-1297); and 19 and 30 (within application CA-1301). Lands within a KGRA are not available for noncompetitive leasing. 30 U.S.C. § 1003 (1970); 43 CFR 3210.1(b), 3220.1. Where lands are determined to be within a KGRA and such determination is made after the filing of a noncompetitive application but before the issuance of a lease, the application

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<sup>1/</sup> We note that a Bureau of Land Management Instruction Memorandum No. 74-184, dated May 20, 1974, with an expiration date of December 31, 1974, pointed to the requirement of 43 CFR 3210.2-1(c), that all available lands within a section must be included for an acceptable application, and suggested that any irregular subdivision (a section is a subdivision for this purpose) may be used which will be to the advantage of the geothermal resources applicant, but only one irregular subdivision can be used in applying the rule of approximation.

must be rejected as to the lands within the KGRA. 43 CFR 3210.4. This rule is applicable to applications filed during the initial January 1974 filing period as well as subsequent periods. Hydrothermal Energy & Minerals, Inc., 18 IBLA 393, 82 I.D. \_\_ (1975). Cf. 43 CFR 3110.1-8; Minetta A. Miller, 17 IBLA 245 (1974); Silver Monument Minerals Inc., 14 IBLA 137 (1974) (lands determined to be within a known geological structure of a producing oil or gas field (KGS)).

Therefore, in any event, the applications would have to be rejected as to the lands in section 18, as well as the other sections within the KGRA, because they are not subject to noncompetitive leasing. The decision is modified to show this additional reason.

Accordingly, 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 as modified.

Joan B. Thompson  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Frederick Fishman  
Administrative Judge

