

CHARLES J. HERINGER

IBLA 74-228

Decided August 11, 1975

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting application for noncompetitive geothermal resources lease M 27412.

Affirmed, as modified.

1. Geothermal Leases: Known Geothermal Resources Area

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in section 2(e) of the Geothermal Steam Act of 1970.

2. Geothermal Leases: Competitive Leases -- Geothermal Leases: Known Geothermal Resources Area -- Geothermal Leases: Noncompetitive Leases

Section 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

## 3. Geothermal Leases: Applications: Generally

A noncompetitive geothermal resources lease application must include all available land within a surveyed or protracted section. If it fails to include a metes and bounds description of a nonnavigable river bed within the section, the application is properly rejected as to the whole of the section.

APPEARANCES: Earl M. Cranston, Esq., Billings, Montana, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles J. Heringer appeals from a decision of Montana State Office, Bureau of Land Management, dated February 19, 1974, which rejected his application for noncompetitive geothermal resources lease M 27412, 1/ filed during the January 1974 filing period. The decision recited that because of competitive interest between applications M 27412 and M 27461, as defined in 43 CFR 3200.0-5(k)(3), the land applied for is considered to be within a known geothermal resources area (KGRA), and is not available to noncompetitive leasing. 2/

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1/ Application M 27412 sought a lease on national resource lands described as all, sec. 20, lots 7, 8, W 1/2 NW 1/4, S 1/2 SW 1/4, SW 1/4 SE 1/4 sec. 24, lots 6, 7, 8, 9, 12, SE 1/4 SW 1/4 sec. 30, lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, E 1/2 NW 1/4 sec. 32, T. 8 S., R. 8 E., P.M., Montana, and on a acquired lands of the United States described as all sec. 29, lots 2, 3, 4, 5 sec. 30, T. 8 S., R. 8 E. By letter dated February 12, 1974, Heringer requested that application M 27412 be amended to show lands described in sec. 24, T. 8 S., R. 8 E., to be in sec. 24, T. 8 S., R. 7 E. The Montana State Office, by decision dated February 19, 1974, denied the request to amend. No appeal was taken from that decision. 2/ The decision recited that application M 27412 describing 2,437.96 acres and application M 27461 describing 2,289.78 acres, overlapped 1,363.75 acres, an excess of 50% of the area in each application.

[1] Appellant contends that BLM erred in considering the conflict between the indicated applications as creating a KGRA. In this he is correct. There is no authority for a State Director, BLM, to make a determination of a KGRA; that authority has been delegated only to the Director, Geological Survey (or his designate). Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (1975). Determination of a KGRA must be based upon evidentiary factors set out in the Geothermal Steam Act of 1970, 30 U.S.C.A. § 1001. Id. The point is now moot, however, as the Geological Survey has defined, effective February 1, 1974, the Corwin Springs Known Geothermal Resources Area, embracing, inter alia, all the lands described in application M 27412. 40 F.R. 30729, July 22, 1975.

[2] Sec. 4 of the Geothermal Steam Act, 30 U.S.C.A. § 1003, authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA. Hydrothermal Energy and Minerals, Inc., supra. Rejection of the subject application is proper.

[3] The State Office decision stated that application M 27412 was defective insofar as it did not include all available land within various sections because of omissions of subdivisions or because of omission of unsurveyed land in the bed of the Yellowstone River. Although not necessary to disposition of this appeal, we are constrained to remark on the indicated defects. A noncompetitive geothermal resources lease application must include all available land within a surveyed or protracted section. 43 CFR 3210.2-1; Robert G. Lynn, 19 IBLA 167 (1975). This Board has not heretofore been confronted with the question of whether an application for a geothermal resources lease which does not describe the bed of an unsurveyed nonnavigable river satisfies the requirement set out in 43 CFR 3210.2-1. The legislative history of the Geothermal Steam Act persuades us that Congress intended the administration of the Act to be similar to that given to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181, et seq. (1970). In considering appeals from cases arising because of the 640 acre minimum area limitation to oil and gas leases generally, this Board has held that an oil and gas lease offer for less than 640 acres which does not include adjacent unsurveyed nonnavigable river bed lands is properly rejected. The Board adheres to that position. Accordingly, if the resolution of this appeal required a holding on the State Office decision that the application was defective for not including the bed of the Yellowstone River through the sections described in the application, we would affirm the State Office holding.

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

Frederick Fishman  
Administrative Judge

