

EDWARD B. TOWNE

IBLA 75-268

Decided August 14, 1975

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting in part the appellant's geothermal lease application (CA 1166).

Affirmed.

1. Applications and Entries: Amendments -- Geothermal Leases:  
Applications: Amendments -- Geothermal Leases: Applications:  
Description -- Geothermal Leases: Description of Land

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

APPEARANCES: Edward B. Towne, by Lowell E. Garrison, Attorney-in-fact.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Edward B. Towne appeals from the decision of the California State Office, Bureau of Land Management (BLM), dated November 25, 1974, rejecting in part his noncompetitive geothermal lease application, CA 1166. The decision was based on noncompliance with 43 CFR 3210.2-1(c) requiring a geothermal lease application to include all available lands within a given section.

Appellant is appealing only that part of the decision rejecting his offer for all lands described in section 5, T 16 N., R. 10 W., M.D.M., California. Accordingly, this is the only part of the decision before us for review. <sup>1/</sup> As his ground for appeal, appellant contends that the description of the land in the lease application contained a typographical error which was subsequently amended after the decision was rendered, namely, the description of the land in section 5, T. 16 N., R. 10 W., M.D.M., was amended to change W 1/2 SW 1/4 to read E 1/2 SW 1/4.

It is clear that a noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. 43 CFR 3210.2-1(c). If it describes less, the application is properly rejected as to such section. Robert G. Lynn, 19 IBLA 167, 169 (1975). Therefore, the action of the BLM office was proper at the time it was taken. Appellant does not dispute that less than all available land in the section was applied for when the application was originally filed.

This appeal raises the question whether an amendment in the land description of an application filed after the close of the monthly filing period in which the application was filed, which would cure the failure to comply with 43 CFR 3210.2-1(c) as to section 5, may be considered on appeal where a typographical error is alleged. The original geothermal lease offer was filed by the appellant on January 31, 1974. In this case, the amendment to the land description was filed after an adjudication rejecting the lease offer in part. The revision of the land description was attempted in the form of a letter dated November 27, 1974, and received by BLM on November 29, 1974. The decision rejecting the offer in part was dated November 25, 1974, and was received by the applicant on November 26, 1974.

This is a case of first impression with respect to noncompetitive geothermal lease applications. This Board has recognized the similarity between the geothermal leasing statute and regulations and the statute and regulations pertaining to oil and gas leasing, and has held that the administrative interpretations of the oil and gas leasing statutes and regulations may be followed

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<sup>1/</sup> We note that the case file contains a letter sent to the appellant by the BLM September 6, 1974, stating that, "There appears to be no reason why the application may not be amended to correct the [typographical] error." Although the amendment of the land description referred to in that letter is not before us for our consideration on this appeal as it pertained to lands in a different section, we wish to note that this letter is erroneous to the extent that it is inconsistent with our decision herein.

in analogous geothermal leasing situations. <sup>2/</sup> However, where distinctions exist between oil and gas leasing procedures and those regulating geothermal leasing, they may warrant different interpretations and conclusions.

One distinction pertains to the factors establishing the status of land for competitive as opposed to noncompetitive leasing. To lease land for oil and gas, the existence of a "known geological structure of a producing oil or gas field" (KGS), mandates competitive leasing. The determination of a KGS is based entirely upon geological information of the existence of structures containing oil or gas underneath the surface of the land. <sup>3/</sup> For geothermal leasing, leases shall be issued competitively if lands are within a known geothermal resources area (KGRA). 30 U.S.C. § 1003 (1970). However, a KGRA is defined in a way which compels consideration of factors in addition to geological information, including "competitive interests." 30 U.S.C. § 1001(e) (1970).

The Geothermal Leasing Act has been implemented by regulations. One provides that applications for noncompetitive geothermal leases shall be filed only during the monthly filing periods beginning on the first business day of each month and ending on the last business day of each month. 43 CFR 3210.2-2. Another regulation provides:

"Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by that application are also covered by another application which was filed during the same application filing period \* \* \*.

43 CFR 3200.0-5(k)(3).

[1] Accordingly, in order to ascertain whether or not a known geothermal resources area is generated by competitive interest, it is necessary that the land descriptions of all geothermal

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<sup>2/</sup> We have held that in enacting the geothermal leasing statute Congress must have been aware of the interpretations placed by the Interior Department on similar provisions under the oil and gas leasing statute. Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 401 (1975). We have also noted that the Department's oil and gas leasing regulations served as a model for the geothermal resources leasing regulations and thus decisions under the former may be helpful in interpreting the latter. California Geothermal Inc., 19 IBLA 268, 271 (1975); E & H Investments, Inc., 19 IBLA 141, 142 (1975).  
<sup>3/</sup> 30 U.S.C. Sec. 226 (1970); 43 CFR 3100.0-5(a).

lease applications submitted during the same monthly filing period be compared. This process involves sealed applications which are not opened until after the end of the filing period. 43 CFR 3210.2-2. The purpose of this procedure established for regularly-filed geothermal lease applications, to assure whether there is competitive interest, could not be fulfilled if an application were amended to describe different lands after the close of the monthly filing period.

There is no comparable procedure for regularly-filed oil and gas lease applications and no underlying reason for such a procedure since the number of oil and gas lease applications for the same land is not a factor in determining whether the lands applied for are within a KGS and subject to competitive leasing. Therefore, decisions have permitted amendments of regularly-filed (over-the-counter) oil and gas lease offers to cure the defects in the original applications, but with priority only as of the time of the filing of the amendment. E.g., Duncan Miller, 70 I.D. 512 (1963); see M. P. Shifflet, 15 IBLA 112 (1974); R. C. Bailey, 7 IBLA 266 (1972).

In contrast, oil and gas applications filed in the special simultaneous filing procedure (43 CFR 3112) may not be amended to cure original defects, because of the special procedure established to determine priority of filing in that circumstance. See Robert D. Houston, 12 IBLA 336 (1973); Richard Hubbard, 2 IBLA 270, 78 I.D. 170 (1971).

The difference in the procedure and reason for the procedure for regularly-filed geothermal lease applications and regularly-filed oil and gas lease applications dictates a different result for geothermal applications. Indeed, the situation is more akin to the simultaneous filing procedure for oil and gas lease applications, with additional reasons which compel the conclusion that an amendment of a geothermal steam lease application for different lands after the monthly filing period has passed may not be allowed.

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 to the rejection of the offer for all lands described in section 5, T. 16 N., R. 10 W., M.D.M.

Joan B. Thompson  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

