

RICHARD C. HOEFLE

IBLA 76-190

Decided March 16, 1976

Appeal from separate decisions of the Nevada State Office, Bureau of Land Management, rejecting portions of noncompetitive geothermal lease applications N-8945 and N-8946.

Set aside and remanded.

1. Environmental Quality: Generally -- Geothermal Leases: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Environmental Protection: Generally -- Geothermal Leases: Lands Subject to

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

APPEARANCES: Richard C. Hoefle, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Richard C. Hoefle has appealed from separate decisions of July 25 and July 28, 1975, wherein the Nevada State office, Bureau of Land Management (BLM), rejected in part each of his applications N-8945 and N-8946 for noncompetitive geothermal leases. The rejection in both cases was for the following stated reason: "The

completed Environmental Analysis Record has recommended against leasing the lands \* \* \* because they lie within an area associated with historic trails."

Application N-8945 described the following lands, totalling 1,920 acres:

T. 31 N., R. 22 E., M.D.M., Nevada

Sec. 22, All;  
Sec. 23, All;  
Sec. 24, All.

On April 2, 1975, BLM informed Hoefle that the application had been found acceptable for further processing as to section 22, containing 640 acres, and suspended action on sections 23 and 24 pending further study to evaluate the historic and archaeological significance of particular sites and trails in the area. Application N-8946 covered the following-described lands, totalling 2,560 acres:

T. 31 N., R. 22 E., M.D.M., Nevada

Sec. 10, All;  
Sec. 13, All;  
Sec. 14, All;  
Sec. 15, All.

BLM's decision of April 1, 1975, found sections 10 and 15, containing a total of 1,280 acres, available for further processing and suspended further action on sections 13 and 14.

In both cases the applicant was required to execute lease forms and submit an acceptable lease bond and his proposed plan of operations. He has fully complied with these requirements and the leases appear to be in order for execution by the authorized officer of BLM. Subsequently, BLM issued the decisions, from which these appeals are taken, rejecting the applications as to all of the lands on which it had previously suspended action.

In his appeal briefs, appellant presents identical arguments against the rejection of the applications. The substance of his relevant argument is his objection to the mere conclusion given in the decisions for rejection without giving any reasons as a basis for such conclusion. He questions what criteria is used to determine that a trail is historic. How much land is necessary to preserve a historic trail? Why cannot such a trail be preserved with adequate stipulations, rather than outright rejection? We believe these points merit further consideration.

This case arises under the relatively new Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-25 (1970). The House Interior and Insular Affairs Committee, in its report on the Geothermal Steam Act, drew an analogy between leasing under that act and the leasing of lands for the development of their oil and gas deposits under the Mineral Leasing Act of 1920, as amended, specifically, 30 U.S.C. § 226 et seq. (1970). See Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 400 (1975), and the quotation therein from H.R. Rep. No. 1544, 91st Cong., 2d Sess., 3 U.S. Code Cong. and Admin. News, at 5116.

The Secretary of the Interior has discretionary authority under section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1970), to lease oil and gas deposits in public lands. If he decides, however, to lease land not within any known geological structure of a producing oil or gas field, he must issue the lease to the first qualified applicant. Id. § 226(c). Carolyn S. Edwards, 14 IBLA 141, 143 (1974). Similarly, he has discretionary authority under section 3 of the Geothermal Steam Act, 30 U.S.C. § 1002 (1970), to issue geothermal leases on public lands but, under 30 U.S.C. § 1003, if he decides to lease land not within any known geothermal resource area (KGRA), he must issue the lease to the first qualified applicant.

The Secretary may refuse to lease certain lands in order to protect other uses and resources by withdrawing the lands from oil and gas leasing and, in the absence of an express withdrawal of the oil and gas deposits, by rejecting offers in the exercise of his discretionary authority. Udall v. Tallman, 380 U.S. 1, 4 (1965); Carolyn S. Edwards, supra. He has the affirmative obligation to preserve historic and archaeological sites pursuant to the Act of August 21, 1935, 16 U.S.C. § 461 (1970). Rosita Trujillo, 20 IBLA 54, 56-57 (1975). He is also obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969, 42 U.S.C. § 4331 (1970). A. Helander, 15 IBLA 107, 109 (1974).

[1] The statements in the decisions that the Environmental Analysis Record (hereinafter EAR) has recommended against leasing the lands because they lie within an area associated with historic trails are merely conclusory.

An examination of the EAR 1/ indicates that they are apparently based on the following text appearing on page 91:

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1/ The report is identified as ENVIRONMENTAL ANALYSIS RECORD, OIL AND GAS/GEOTHERMAL LEASING, WINNEMUCCA DISTRICT, SONOMA-GERLACH RESOURCE AREA, BUFFALO HILLS PLANNING UNIT, EAR No. 27-020-4-99, June 1975. The report is filed in Case File N-11022.

5. Trails (Map 12)

On the following lands impacts resulting from the proposed leasing program could disturb or destroy important values that may be associated with historic trails.

Because sufficient locational details are lacking it is recommended that the excluded area extend one mile from the center line of each trail, with one exception as noted below for the Fremont Route.

- a. Applegate-Lassen Trail - Emigrant route to California, 1849, with resting and watering locations.
- b. Nobles Trail - Emigrant route to California, 1850, with resting and watering locations.
- c. Nobles Route-Black Rock Cutoff - Emigrant route to California, 1851-1860, with resting and watering locations.
- d. John C. Fremont Route - Exploration of northern Great Basin, 1843-1844, with campsite and dates. It is recommended that all the playa area between the trail alignment and the Western Pacific railroad right-of-way be excluded from lease. This area would extend from a point represented by the intersection of State Highway 34 and the Western Pacific railroad right-of-way and thence northeast 13 miles along the railroad to Trego. The excluded area for this segment of the trail varies from one to approximately three miles in width south of its center line.

Map 12 (page 91a of the EAR) shows the Fremont Trail running through the subject T. 31 N., R. 22 E., in a general north-south direction near its eastern boundary, which would indicate that at least portions, if not all, of the rejected sections in the subject lease applications would be within the excluded area extending 1 mile from the center line of the Fremont Trail. However, we find nothing in the EAR to indicate whether any consideration was given to leasing these lands with suitable protective stipulations.

We note from File N-11022 that BLM has made some exceptions that will permit lands within the excluded areas to be leased subject to stipulations. The file contains a memorandum dated December 18, 1975, from the Chief, Division of Resources, to the Chief, Division of Technical Services, which was approved by the Nevada State Director, indicating that these exceptions were made for the expressed purpose of offering the maximum acreage possible in the Gerlach and San Emidio Desert KGRA competitive bid lease sale. An examination was conducted by archaeologists from the Nevada State Office for any cultural or historic values which may be present in the trail corridor portion of the Gerlach and San Emidio Desert KGRA's. As a result it was found that certain designated sections in Ts. 32 and 33 N., R. 23 E., which contain possible National Historic Register quality materials, could be offered for lease sale with a special "no surface occupancy" stipulation. The memorandum concluded:

The remaining areas of the KGRA's, falling within the trail corridor lease exclusion zone, as identified in the Buffalo Hills EAR decision document, are to be available for lease with the standard archaeological stipulation. This stipulation requires that the certified statement required by Section 18 of the lease form must be completed by a qualified archaeologist acceptable to the Authorized Officer.

Although leasing of lands within a KGRA may be more compelling than lands located outside of a KGRA, such exceptions would tend to indicate that the exclusions proposed by the EAR may be subject to modification. Therefore, we return the case records to BLM for further consideration as to whether the lands in question should be leased with suitable protective stipulations. If so, the applicant should be requested to execute the designated stipulations. If BLM adheres to its original refusal to lease, the applications should be rejected with clearly stated reasons justifying that action. Cf. Kirk Greene, 24 IBLA 113 (1976).

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 set aside and the case records are remanded to the BLM for further action consistent with this decision.

Martin Ritvo  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joseph W. Goss  
Administrative Judge

