

EASON OIL COMPANY
ROBERT G. LYNN

IBLA 76-122
IBLA 76-140

Decided March 24, 1976

Appeals from decisions of the California State Office, Bureau of Land Management, rejecting appellants' geothermal lease applications.

Affirmed.

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

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land is neither arbitrary nor capricious where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

APPEARANCES: Gerald J. Petzel, for appellant, Eason Oil Company. Robert G. Lynn, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

In IBLA 76-122, Eason Oil Company appeals a decision of the California State Office, Bureau of Land Management (BLM), dated July 10, 1975, rejecting appellant's noncompetitive geothermal lease application (CA 1304) for Sec. 5, T. 44 N., R. 17 E., M.D. Mer., Modoc County, California. The rejection was based upon a

letter from the BLM District Manager, Susanville District, pointing out that an Environmental Analysis Record 1/ of proposed geothermal leasing in the Surprise and Warner Valleys has been prepared in which it was concluded that only lands of low environmental sensitivity should be leased. The letter further noted that the land embraced in the subject lease application is identified in the EAR as land of "high environmental sensitivity." Specifically, the decision notes that the applied-for tract is within a critical wildlife habitat and refers to the threat to the sage grouse which leasing would pose in view of the proximity of the tract to active sage grouse strutting grounds.

In IBLA 76-140, Robert G. Lynn appeals a decision of the California State Office, also dated July 10, 1975, rejecting his noncompetitive geothermal lease offers (CA 1297, CA 1299, CA 1301, and CA 1302) on the ground that the land involved is within a critical wildlife habitat and more specifically within either a sage grouse strutting ground, critical deer winter range, or antelope habitat. The subject lands are in close proximity to the tract involved in the Eason appeal and are embraced within the same EAR. The decision was based on the finding of the EAR that all of the land included in the lease applications is situated in a critical wildlife habitat area. 2/

Appellant Eason Oil Company raises several contentions on appeal. First, it is asserted that there are actually no sage grouse strutting grounds within the area covered by lease application CA 1304. Further, it is contended that leasing would not harm the deer population. Appellant also asserts that it is willing to enter into stipulations designed to protect the environment and mitigate any adverse effects. Appellant further argues that the EAR recommends adoption of the alternative permitting geothermal exploration with the imposition of certain restrictions and that rejection of appellant's application is inconsistent therewith. Appellant also contends that rejection of its application is "confusing and unreasonable" because it was concluded in the EAR that preparation of an environmental impact statement is not required.

1/ Geothermal Environmental Analysis Record; Surprise, Warner, and Long Valleys; California, Oregon, Nevada [hereinafter cited as EAR].

2/ As the appeals in these two cases (IBLA 76-122 and IBLA 76-140) involve similar factual situations and the same legal issues, the two cases are hereby consolidated for purposes of decision.

Robert G. Lynn raises some of the same contentions on appeal made by Eason Oil Company. In addition, Lynn asserts that his applications do not include any land within antelope kidding grounds and that only a small part of one of the applications involves a sage grouse strutting ground. Appellant also cites examples from which it can be inferred that neither the sage grouse nor the winter deer range would be adversely affected by geothermal operations. It is further noted by appellant that the sage grouse strutting ground in question is already subject to recreational and other forms of casual use as evidenced by the jeep trails located on the land.

The similarity between the terms of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001 et seq. (1970), and the provisions regarding oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), was recognized in the report of the House Interior and Insular Affairs Committee. ^{3/} The similarity between the statutes had also been recognized by this Board in prior decisions. Edward B. Towne, 21 IBLA 304, 305-306 (1975); Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 400 (1975).

It is well established under § 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970), regarding oil and gas leasing that the Secretary of the Interior has the discretionary authority to refuse to issue any lease at all on a given tract of land. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). Statutory provisions pertaining to geothermal leasing which are similar to § 226 regarding oil and gas leasing are found at 30 U.S.C. §§ 1002 and 1003 (1970). The geothermal leasing statute provides that the Secretary "may" issue geothermal leases, 30 U.S.C. § 1002 (1970). Thus it is clear that the initial decision of whether or not to issue a geothermal lease for a given tract of public domain land is within the discretion of the Secretary under the Geothermal Steam Act of 1970.

Environmental factors are an important part of the public interest which the Secretary must consider in the exercise of the discretion to lease. The Secretary's plenary authority over administration of the public lands includes the implementation of

^{3/} H.R. Rep. No. 1544, 91st Cong., 2d Sess., 3 U.S. Code Cong. and Admin. News, p. 5116.

measures designed to protect the lands and resources. 43 U.S.C. § 1457 (1970); A. Helander, 15 IBLA 107, 109 (1974). The Secretary is authorized by the Geothermal Steam Act of 1970, supra, to adopt regulations for the "protection of water quality and other environmental qualities." 30 U.S.C. § 1023 (1970). This is reflected in the geothermal leasing regulations at 43 CFR 3200.0-6 where it is provided that consideration shall be given to the potential effect of geothermal resources operations on the environment in a given area prior to issuance of any leases. The Secretary of the Interior is further bound to support and carry out the policy established by Congress in the National Environmental Policy Act of 1969. 42 U.S.C. § 4321 et seq. (1970); A. Helander, supra at 109.

[1] A decision to refrain from leasing a given tract of land for geothermal resources which is based on considerations of public interest and which is necessary and appropriate to fulfill such public interest constitutes neither an arbitrary nor a capricious exercise of the Secretary's discretion and will generally be upheld. See Jack E. Griffin, 7 IBLA 155, 157 (1972).

The BLM has conducted a detailed study of proposed alternatives with respect to geothermal leasing, which is embodied in its Geothermal Environmental Analysis Record; Surprise, Warner, and Long Valleys; California, Oregon, Nevada. This study contains a thorough analysis of environmental factors. The conclusion reached in that study, based on the public interest, is that the alternative of leasing only lands of low environmental sensitivity should be adopted. EAR, 144. The EAR states that: "Current preclusion of critical wildlife habitat areas from geothermal leasing is needed to protect significant habitat from deterioration." EAR, 132. In light of the detailed study of environmental factors undertaken in the EAR upon which the decisions below are based, we are unable to find that the decisions were arbitrarily made.

Our affirmation of the decisions of the California State Office is premised upon the principle involved rather than upon our independent conclusion that the facts require the result.

There is some doubt that the sage grouse population may be endangered due to the fact that a strutting ground exists a mile from the nearest boundary of the land applied for, as in the case of the Eason Oil application. This is also true with respect to the anticipated harmful effect of leasing on the area's deer herd. As appellants point out, habitat and forage might even be improved

if the lease were granted with stipulations designed to further that end. Accordingly, we are not convinced that the Bureau is right and the appellants are wrong as to the proper course of action.

Nevertheless, we do not regard it as the function of this Board to substitute its judgment for that of the technical experts employed by the Department to analyze the facts and to make recommendations in their particular fields of expertise, except when it can be perceived by the Board that they are plainly in error.

We cannot hold in this instance that the decision is plainly wrong, nor can it be characterized as arbitrary or capricious. The decision implements the reasoned recommendation of a team of specialists who examined the land carefully and collected extensive data, and considered possible alternatives before reaching their conclusion. Their report was reviewed and approved by others who are responsible for exercising the delegated authority of the Secretary. The record affords no basis for our holding that the decision is demonstrably incorrect. There is no conflicting public interest to be served by reversal, since a large area of nearby land will, apparently, be available for geothermal development.

Although appellants have been persuasive in showing that the decisions might be wrong, it has not been demonstrated that the decisions are wrong. As we stated in Rosita Trujillo, 21 IBLA 289, 291 (1975):

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Appellants assert that the rejection of their applications in the context of the conclusion in the EAR that preparation of an environmental impact statement is not required is unreasonable. This argument also is without merit. As noted above, the Secretary's discretion is not limited to carrying out the policy considerations

of the National Environmental Policy Act of 1969, supra, but is limited by the broader scope of the public interest. Further, the National Environmental Policy Act of 1969, supra, does not limit its applicability to those situations where an environmental impact statement is required. The statute requires consideration of environmental factors in all agency decision making. Citizens for Reid State Park v. Laird, 336 F. Supp. 783 (D. Me. 1972).

Therefore, 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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

