

CHRISTIAN F. MURER

IBLA 76-191

Decided April 29, 1976

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting geothermal lease offers N-9866 and N-9867.

Set aside and remanded.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Lands Subject to -- Administrative Procedure: Decisions

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

APPEARANCES: Christian F. Murer, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Christian F. Murer has appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting his geothermal lease offers N-9866 and N-9867. Application N-9866 described the following lands totalling 1,280 acres:

T. 34 N., R. 26 E., M.D. Mer., Nevada

sec. 3, all;

sec. 4, all.

Application N-9867 described the following 640 acres of land:

T. 37 N., R. 26 E., M.D. Mer., Nevada

sec. 27, all.

The State Office rejected appellant's offers for the stated reason that, "The completed Environmental Analysis Record [EAR] has recommended against leasing the lands described by your applications, because the lands lie within a critical natural area (Black Rock Desert)." Appellant has raised a number of objections on appeal against the BLM's decision, one of which concerns his dissatisfaction over the conclusions presented within the EAR respecting limitations on geothermal development activity. <sup>1/</sup> We conclude, however, that the decisions should be set aside and the cases remanded for another reason, namely, because the record contains confusing and ambiguous statements regarding the basis relied upon for rejecting appellant's applications.

Following receipt of appellant's lease applications, the BLM transmitted a letter to appellant dated April 15, 1975, informing him that his applications would be temporarily suspended pending completion of environmental studies. The BLM added that the lands described within application N-9867 (sec. 27, T. 37 N., R. 26 E.) would require an "evaluation of the historic and archaeological significance of particular sites and trails in the area." Appellant's application was then given the added notation "Trails" to highlight the importance of this factor with regard to consideration of his offer.

In June of 1975, the BLM completed its EAR for the Buffalo Hills Planning Unit, Nevada. The EAR identified the Black Rock Desert area as having significant archeological, historical and aesthetic values. The report detailed the unique values found in the desert playa and concluded that a geothermal leasing program in this area could result in degradation of these values. Accordingly, the EAR recommended that the Black Rock Desert be excluded from leasing. A description of the lands to be excluded from leasing within the desert area is set out on pages 5 and 85 of the EAR. The lands identified in application N-9867 are included within such description.

The lands applied for by appellant in application N-9866 (secs. 3 and 4, T. 34 N., R. 26 E.) are not included within the above-described Black Rock Desert lands excluded from leasing. Instead,

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<sup>1/</sup> As to appellant's allegation that "confiscation" of his nonrefundable service charge is a fraud on the part of the Government, the retention is required by regulation. 43 CFR 3205.2(b).

they were part of lands identified in a memorandum dated June 27, 1975, as "Additional Areas to be Excluded from Leasing in the Buffalo Hills Planning Unit" (EAR at 3). No reason was stated in this memorandum for the addition of these lands as areas subject to exclusion from leasing; however, reference is made to an earlier memorandum dated June 24, 1975 (EAR at 1). The June 24 memorandum contains the views of the Planning Coordination Staff and the Division of Resources, BLM, regarding the EAR recommendations. The following was stated:

We concur with the District recommendations that certain lands be excluded from leasing. These lands include the playa area of the Black Rock Desert, areas of archaeological and historical significance, historic trails and unique wildlife habitat.

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All lands to be excluded from leasing are identified in the EAR, pages 82-91a, and are attached, less maps, as Enclosure 1 to the memorandum.

The last quoted line refers to areas within the Black Rock Desert, areas having archaeological significance, and areas associated with historic trails. The lands included within the June 27 memorandum were described as areas to be excluded "in addition to those lands identified in our memorandum of June 24, 1975."

The problem which exists is that the June 27 memorandum does not attempt to correlate the bases for the exclusions with the descriptions of the land, *i.e.*, one cannot glean from the face of the June 27 memorandum whether the additionally excluded parcels of land were removed from leasing on the basis of their association with the Black Rock Desert, archaeological values, or proximity to historic trails. Nor is this confusion remedied by further investigation of the EAR as the lands described within appellant's application N-9866 might well be considered within the Black Rock Desert playa (Map 10: EAR at 86), as well as associated with an historic trail near the Western Pacific Railroad right-of-way (EAR at 91; Map 12: EAR at 91a).

[1] In light of the duplicative bases used for considering application N-9867, namely "Trails" and the Black Rock Desert, and the ambiguous basis for rejection of application N-9866, the Board holds that the cases must be remanded to the BLM because the decisions fail to disclose a clear and adequate rationale for rejection of appellant's lease offers. In the event the BLM determines on remand that the subject lands were properly considered to be excluded from leasing on the basis of their location within the Black Rock Desert area, we direct the State Office to incorporate

into its decisions adequate citations from relevant portions of the EAR and from other sources of information which set out the reasons for the recommended action. This is necessary in order to properly notify the appellant of the rationale behind the State Office decisions. Kirk Greene, 24 IBLA 113 (1976).

Should the BLM determine that all or a portion of the lands applied for were rejected, not because development of such lands would threaten Black Rock Desert values, but rather because the land was in proximity to historic trails, we direct the State Office to consider whether such lands may be leased subject to protective stipulations. Recently in Richard C. Hoefle, 24 IBLA 181 (1976), the Board noted that in appropriate situations the exclusions proposed in the Buffalo Hills Planning Unit EAR have been subject to modification. The EAR file (N-11022) contains a memorandum dated December 18, 1975, approved by the Nevada State Director, BLM, permitting the use of "no surface occupancy" stipulations and standard archaeological protection stipulations for certain lands situated within historic trail corridors. The memorandum adds that lands within the Black Rock Desert Natural Area will remain in the "excluded from leasing" category.

If the State Office adheres to its original refusal to lease in this instance also, the decisions rejecting the applications should clearly state the reasons justifying that action. Kirk Greene, supra. Should appellant appeal from future BLM decisions, he will have the burden of presenting an affirmative showing that exploration and development activities will not adversely affect the areas excluded from leasing. Rosita Trujillo, 20 IBLA 54 (1975).

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 cases 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

