

CAROLINE L. HUNT

IBLA 76-565

Decided August 17, 1976

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease application I-9867.

Reversed and remanded.

1. Geothermal Leases: Applications -- Geothermal Leases: Generally -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Dismissal

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

2. Geothermal Leases: Acreage Limitations -- Geothermal Leases: Applications: Generally -- Geothermal Leases: Noncompetitive Leases

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

3. Geothermal Leases: Applications -- Geothermal Leases: Generally

Where an oil and gas lease offeror files a partial withdrawal of lands described in her application during the pendency of an appeal from a decision rejecting her offer in its entirety, the withdrawal is effective eo instanti when filed, and may not be ignored simply on the basis that it was permissible to have included those lands in the application.

APPEARANCES: Caroline L. Hunt, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Caroline L. Hunt appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 16, 1976, rejecting her application I-9867 for a noncompetitive lease of geothermal resources filed during the filing period in August 1975, pursuant to section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1970). The basis for the rejection was that the 2,598.98 acres described in the application exceeds the 2,560-acre limitation prescribed by the Geothermal Steam Act, 30 U.S.C. § 1006 (1970), which provides in relevant part:

A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions.

The State Office also held that the rule of approximation was not applicable. This rule, stated in 43 CFR 3203.2(a), provides in part:

A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of six miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. Where a departure is occasioned by an irregular subdivision, the leased acreage may exceed 2,560 acres by an amount which is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision were excluded.

The lands described in the application are as follows:

- T. 1 S., R. 23 E., B.M., Idaho
 - Sec. 3: Lots 1, 2, 3, 4, S 1/2 S 1/2 (A11)
 - Sec. 4: Lots 1, 2, 3, 4, S 1/2 S 1/2 (A11)
 - Sec. 9: All
 - Sec. 17: All
 - Sec. 18: Lots 1, 2, 3, 4, 5, 6, 7, 12, E 1/2

The offer included all of the available public land in each section. The State Office rejected the lease application in its entirety because of the excess acreage.

In her statement of reasons, appellant contends that under the rule of approximation, the acreage in a lease application can exceed 2,560 acres if elimination of the smallest legal subdivision covered thereby would result in a deficiency greater than the excess of 2,560 acres resulting from the inclusion of such legal subdivision. She also noted 43 CFR 3210.2-1(c) which provides that if any acreage in any given section is applied for, then all available acreage in that section must be included in the application to lease. Her conclusion, therefore, was that the smallest tract or subdivision which could have been left out of the application would have been Section 3, which contains 352.93 acres. By omitting this section, the application would have covered 2,246.05 acres, which is 313.95 acres under the 2,560 figure, as opposed to 38.98 acres which exceeded that figure by including Section 3.

The appeal had been reached on our docket and review of the case was in progress when the appellant filed a withdrawal of all of Section 3, 352.93 acres, thereby reducing the total acreage to an amount less than the maximum.

[1] However, this withdrawal does not moot the appeal. Were we to dismiss the appeal, the rejection of the entire application would constitute the final decision. The date of priority would be critical if any subsequent geothermal applications have been filed for any portion of the land remaining in appellant's application. Therefore, it behooves us to adjudicate the appeal in order to establish the priority of the application despite the fact that the issue which gave rise to the appeal has been eliminated by the partial withdrawal of the application.

[2] In Robert G. Lynn, 19 IBLA 167 (1975), the Board noted (while reserving judgment on the point) that a BLM Instruction Memorandum No. 74-184, dated May 20, 1974, pointed to the requirement of 43 CFR 3210.2-1(c), that all available lands within a section must be included for an acceptable application, and suggested

that any irregular subdivision (a section is a subdivision for this purpose) may be used which will be to the advantage of the geothermal resources applicant, but only one irregular subdivision can be used in applying the rule of approximation.

Instruction Memorandum No. 74-184 states:

Section 7 of the Geothermal Steam Act reads in part: "A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions." Department regulation 43 CFR 3203.2(a) reads in part: "A geothermal lease may not embrace more than 2,560 acres . . . except where a departure is occasioned by an irregular subdivision or subdivisions." Other regulations, among them 43 CFR 3100.0-5(d), apply the rule of approximation by using the smallest legal subdivision.

Given the fact that 43 CFR 3210.2-1(c) requires that all available lands within a section must be included for an acceptable application, 43 CFR 3203.2(a) should be interpreted in favor of the applicant so as not to defeat his otherwise acceptable application. Accordingly, in adjudicating geothermal resources lease applications, any irregular surveyed (but not protracted) subdivision will be used which will be to the advantage of the geothermal resources applicant. However, only one irregular subdivision can be used in applying the rule of approximation. (Emphasis added.)

What this Memorandum seems to be saying is that the smallest irregular subdivision need not be used in applying the special rule of approximation set forth in the Act and regulation applicable to geothermal resources, but any one irregular subdivision may be used. In practical consequences, this would permit using an irregular section, rather than an irregular subdivision of that section where it is to the applicant's advantage. We believe this interpretation is sound. There is no restrictive qualifying language in either the Act or in regulation 43 CFR 3203.2(a) limiting consideration to the "smallest irregular subdivision."

The circumstances of the case before us warrant using the irregular section as the irregular subdivision in applying the rule. There appears no sound administrative purpose for rejecting the application for the reason given.

Therefore, we find that it was error for the State Office to reject the application in this case because of the excess acreage. The rule of approximation should have been applied in accordance with the spirit and intent of the policy declared in BLM Instruction Memorandum No. 74-184.

[3] We presume that the partial withdrawal of the application was filed to preserve the remainder of the lease from outright rejection in the event that the State Office decision was affirmed by this Board. However, appellant may have been motivated by geological, financial, or other considerations completely unrelated to the issue on appeal. In any event, the withdrawal was effective eo instanti when filed, and may not be ignored simply on the basis of our finding that it was permissible to have included the land in the original application. See John J. Sexton (On Reconsideration), 20 IBLA 187, 195 (1975).

Accordingly, 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 reversed and the case remanded for adjudication of the application as to that portion which has not been withdrawn.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

