

THERMAL RESOURCES, INC.

IBLA 76-751      Decided February 2, 1977

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting, in part, appellant's geothermal lease application.

Set aside and remanded.

1.      Geothermal Leases: Generally

A decision rejecting a geothermal application in part may be set aside and the case remanded where the appellant requests an opportunity to consult with the Bureau of Reclamation which objected to issuance of the lease, and the decision itself notes that Bureau's objection as the basis for the decision, but there is no explanation of why the leasing proposal would interfere with some other federal function or would be contrary to the public interest pursuant to 43 CFR 3201.1-2.

APPEARANCES: P. Thomas Thornbrugh, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal by Thermal Resources, Inc., is from that portion of the July 15, 1976, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting its lease application, OR 12666, as to the following lands: Oregon T. 20 S., R. 46 E., Willamette Meridian, Sec. 5, Lots 1, 2, S 1/2 SW 1/4 that portion lying West of the Canal. BLM stated as grounds for the refusal to issue the lease only the fact that " \* \* \* the Bureau of Reclamation objects to issuance of a geothermal lease for this portion because it is United States fee land for the Owyhee North Canal right of way." The decision referred to regulation 43 CFR 3210.2(B)(1). As appellant has noted, that citation is in error.

[1] The applicable regulation 43 CFR 3201.1-2(b) provides that geothermal leases shall not be issued for,

\*\*\* (1) Lands which the Secretary has identified or may identify as being necessary to the performance of his or any other Federal officer's authorized functions and on which geothermal resource development would in his judgment interfere with such functions; or (2) lands respecting which the Secretary has made or may make a finding that the issuance of geothermal leases would be contrary to the public interest. \*\*\* (Emphasis added.)

Among other matters, appellant contends it was never advised prior to the decision of the Bureau of Reclamation's objections to leasing the land. It requests an opportunity to discuss the matter with the Bureau of Reclamation in an effort to seek issuance of a lease subject to special stipulations which could provide for compatible use of the rejected land. Basically, the appeal raises the issue of whether appellant's application should be rejected in part finally at this time, or whether the case should be remanded, as appellant requests, before any final action is taken.

We find that the case should be remanded and appellant be allowed a reasonable time to make its contacts with the Bureau of Reclamation. We are not deciding and, indeed, cannot decide from the state of the present record whether leasing should be completely proscribed from the particular lands, or whether it could be allowed with stipulations to protect the public interest and prevent interference with authorized Governmental functions.

The record below does not reflect the exercise of any independent judgment by BLM, nor does it set forth an explanation of the Bureau of Reclamation's objection to the proposed lease. The language of the above-quoted regulation allows for the exercise of a considerable degree of discretion, but this exercise of discretion should include giving the reasons upon which it is based. The record before us presents only an unexplained objection from the Bureau of Reclamation which is treated by BLM as dispositive of the merits of the case. Appellant is entitled to a statement explaining, however briefly, the manner in which its leasing proposal would interfere with some other federal function or would be contrary to the public interest, if its application is to be rejected under 43 CFR 3201.1-2.

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 set aside and the case remanded for appropriate action consistent herewith.

---

Joan B. Thompson  
Administrative Judge

We concur:

---

Martin Ritvo  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge

