

NANCY J. MOFFITT, ET AL. (ON RECONSIDERATION)

IBLA 76-732 through 76-736

Decided July 5, 1977

Petition for reconsideration of Nancy J. Moffitt, 30 IBLA 107 (1977), which affirmed separate decisions of the Oregon State Office, Bureau of Land Management, rejecting, in part, five applications for noncompetitive geothermal leases. OR 12437, OR 11906, OR 12387, OR 11985, OR 12006.

Petition granted; Nancy J. Moffitt, 30 IBLA 107 (1977), affirmed.

1. Geological Survey—Geothermal Leases: Known Geothermal Resources Area

A known geothermal resources area determination must be based upon one or more of the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and where the Geological Survey, as the delegate of the Secretary, makes such a determination based on all available data, regardless of whether such data were previously known, the determination will stand, absent a showing of error by one questioning the designation.

APPEARANCES: James W. McDade, Esq., McDade and Lee, Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Appellants have petitioned for reconsideration of Nancy J. Moffitt, 30 IBLA 107 (1977), which affirmed separate decisions of the Oregon State Office, Bureau of Land Management, rejecting in part, five applications for noncompetitive geothermal leases, OR 12437, OR 11906, OR 12387, OR 11985 and OR 12006.

Appellants assert in their petition that the Board's decision responded only on a policy level in restating the statutory role of the Geological Survey (GS) in determining known geothermal resources areas. Appellants believe that the Board ignored the evidence which they submitted and that the Board failed to examine the record.

The evidence which was submitted by appellants and which they charge was ignored by the Board was the affidavit of one Eugene V. Ciancanelli, a professional geologist. Mr. Ciancanelli examined the Oregon Known Geothermal Resources Area Minutes No. 18-Minutes of the Mineral Land Evaluation Committee relating to the "Definition of the Newberry Caldera Known Geothermal Resources Area, Deschutes County, Oregon." In his opinion such material did not contain on May 21, 1976, the date of the minutes, "new or different information from that available in the literature for several years." After reviewing the pertinent geologic literature, he concluded that in his opinion the KGRA determination was "based on information of the same general type as was known long prior to February 1, 1974, the effective date of the designation, and is indeed based on information which cannot possibly be used to establish the existence of geothermal resources in commercial quantities in this area."

[1] Appellants believe that Mr. Ciancanelli's affidavit refutes the findings of the GS. We cannot agree. There was no intent on the part of GS to imply that young volcanism and hot spring activity were new evidence to support the designation of a KGRA. As stated in our original decision, at 110:

Appellants' argument ignores the fact that the GS, as the delegate of the Secretary, has a continuing obligation to examine all the factors outlined in 30 U.S.C. § 1001(e) (1970), set forth supra, to determine whether an area should be designated as a KGRA. Necessarily, such obligation envisions the review of factors which individually may or may not afford a sufficient basis for the designation of a KGRA, but which taken collectively clearly establish a sufficient predicate for determination of a KGRA.

Appellants reassert that GS failed to follow the regulatory definition of competitive interest and that the Board refused to consider the issue. The GS concludes in the Mineral Land Evaluation Committee Minutes that:

Based on the foregoing information, the following described lands, totaling 31,283.53 acres, more or less, are recommended as the Newberry Caldera Known Geothermal Resources Area:

* * * * *

Of these lands, competitive interest has been determined on 17,102.50 acres as a result of overlaps of geothermal lease applications received during January 1974 (BLM Serial No. OR-12765). Also included

in the above described lands are 11,980.89 acres of national forest land and 2,200.14 acres of unsurveyed lake beds.

As stated by GS, on over one half of the acreage recommended as the Newberry Caldera KGRA, competitive interest was shown as a result of overlaps of geothermal lease applications received during the January 1974 filing period. Appellants assert that none of the records involved herein exhibit the required 50 percent overlap necessary to show competitive interest.

While such may be the case, a large amount of acreage was designated KGRA, even though there was no competitive interest shown. Appellants' arguments presuppose that if that were true, the KGRA determination was inappropriate as to those lands because the only other factors involved were geologic data known for a long period of time.

The Survey, in making its determination that the land is within a KGRA, is not limited to any single or particular indicium of that fact, nor to any time frame for acquisition of the information. The KGRA determination may be based upon a combination of factors, such as a coupling of known geological data with a demonstration of competitive interest. The competitive interest need not conform to the literal requirements of 43 CFR 3200-0-5(k)(3), since if it did, that interest would be sufficient in and of itself to cause a KGRA determination de jure. But, for example, if there are a number of conflicting geothermal applications which indicate de facto competitive interest, although no one application overlaps another by the 50 percent required in 3200.0-5(k)(3), Survey is not obliged to blind itself to that knowledge. Indeed, some of the applications under consideration here were subject to partial rejection, in earlier decisions, because of evinced competitive interest, but removal of such conflicts in no wise eliminated the competitive interest. If such de facto competitive interest, taken together with known geological data or other indicia in combination, would reasonably lead to the conclusion that the land is within a geothermal resource area, Survey would be justified in impressing the land with a KGRA classification. 30 U.S.C. § 1001(e) (1970). Moreover, there is no stricture of statute, regulation or logic which prevents the Survey from reevaluating "old" known geological data and arriving at a new conclusion.

It is perhaps unfortunate that so much time elapsed between the filing of these applications and the decision under appeal. Especially troublesome is the fact that each application had been cleared by Survey as not being within any KGRA, but BLM did not make any meaningful adjudication until after the Newberry KGRA had been promulgated. Whatever the reason for the long delay, promulgation of the KGRA before the permits had been issued effectively foreclosed such issuance. 30 U.S.C. § 1003 (1970).

What appellants fail to take into consideration is that the KGRA determination was based on a review of all available data. The fact that such data were previously known does not foreclose the reevaluation or reassessment of all such factors by the Secretary.

Following completion of a reevaluation of the data by the Secretary (in this case his delegate-Geological Survey), it was determined that in the Secretary's opinion the data would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose. See 30 U.S.C. § 1001(e) (1970).

Any of the factors listed in the statute, 30 U.S.C. § 1001(e) (1970), individually or in any combination, may in the opinion of the Secretary afford a sufficient basis for designation of a KGRA.

The evidence presented by appellants is not persuasive that the GS determination was in error. For that reason, we must affirm our earlier decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision, Nancy J. Moffitt, 30 IBLA 107 (1977), is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge