

EARTH POWER CORPORATION ET AL.

IBLA 77-445  
77-446

Decided October 21, 1977

Appeals from decisions of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease applications W-44088 (943) and W-44087 (943).

Affirmed.

1. Geothermal Leases: Consent of Agency

The directives of 30 U.S.C. § 1014(b) (1970) and 43 CFR 3201.1-3 are mandatory, and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

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

OPINION BY ADMINISTRATIVE JUDGE GOSS

Earth Power Corporation in IBLA 77-445 and Thermal Resources, Inc., in IBLA 77-446 appeal from June 24 and June 8, 1977, decisions of the Wyoming State Office, Bureau of Land Management, rejecting their separate noncompetitive geothermal lease applications W-44088 and W-44087, respectively.

All of the lands applied for by Thermal Resources, and all of the lands in connection with which Earth Power has appealed, lie within the Bridger-Teton National Forest. The Forest is administered by the Forest Service, U.S. Department of Agriculture. The remaining lands included in Earth Power's lease application are located within the Yellowstone National Park and the John D. Rockefeller, Jr., Memorial Parkway, and Earth Power expressly

does not appeal with respect to such lands. <sup>1/</sup> As to such national forest lands, the Geothermal Steam Act of 1970, 30 U.S.C. § 1014(b) (1970), provides:

Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

See also 43 CFR 3201.1-3. The State Office based its rejections primarily upon the lack of Forest Service consent to approval of the lease applications.

Appellants' principal arguments are stated in the brief in IBLA 77-446:

Applicant submits that the Decision rejecting the Application herein fails to demonstrate that the head of the applicable Department has exercised any independent judgment concerning the terms and conditions necessary to insure adequate utilization of the withdrawn or acquired lands.

Applicant is told only that the Forest Service has recommended that the lease not be issued and that the Forest Service recommendation was based on that Agency Environmental Impact Statement.

At some point, Applicant should be appraised of specific reasons why total rejection is required to insure adequate utilization of the lands withdrawn or acquired. \* \* \*

In the alternative, Applicant requests that the rejection of application be remanded with instructions

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<sup>1/</sup> Both the Park and Parkway are administered under the National Park System, which was created by the Act of August 25, 1916, 39 Stat. 535, as amended. See Act of March 1, 1872, 17 Stat. 32-33, creating Yellowstone National Park, and Act of August 25, 1972, 86 Stat. 619-20, creating the Rockefeller Parkway. Under the Geothermal Steam Act and the leasing regulations, 30 U.S.C. § 1014(c) (1970) and 43 CFR 3201.1-6, geothermal leases may not be issued on such lands.

for the preparation of terms and conditions (stipulations) which would enable the Secretary to obtain the consent of the Department of Agriculture and which stipulations would insure adequate utilization of the lands herein.

The files in both cases include a copy of a May 3, 1977, letter from the Acting Regional Forester in Ogden, Utah, to the Wyoming State Director, BLM. The letter states that:

[G]eothermal lease applications W-44087 and W-44088 cover lands which are located along a scenic, heavily traveled recreational area which is still roadless. We recommend "no lease" for these applications also.

These recommendations are based on the Environmental Impact Statement Proposed Addition to Teton Wilderness, Bridger-Teton National Forest.

The State Office decisions both noted the facts determined and conclusion given by the Forest Service.

[1] It is clear that the directives of the Geothermal Steam Act, 30 U.S.C. § 1014(b) (1970), and the regulations, 43 CFR 3201.1-3, are mandatory; unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands. Cf. Sallie B. Sanford, 24 IBLA 31 (1976), which involved the requirement in the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. § 351 et seq. (1970), that the agency having jurisdiction over the acquired lands give its consent prior to the Department's issuing a lease. Any presentation appellants wish to make regarding such consent should therefore be presented to the Forest Service rather than to Interior.

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.

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Joseph W. Goss  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

