

OXY PETROLEUM, INC.

IBLA 78-200

Decided June 30, 1978

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting geothermal lease application C-22961.

Affirmed.

1. Geothermal Leases: Discretion to Lease -- Geothermal Leases:
Environmental Protection: Generally

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will be generally upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land will not be adversely affected as BLM described in rejecting the application.

APPEARANCES: W. W. Mercer for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Oxy Petroleum, Inc., the assignee of lease applicant Anschutz Corporation, appeals from the January 16, 1978, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting noncompetitive geothermal lease application C-22961. 1/ The State

1/ On June 22, 1976, an assignment to Petro Lewis Corp. of 50 percent of Anschutz' interest in the lease was filed in the State Office. On June 30, 1976, an assignment to appellant of 100 percent of Anschutz' remaining interest in the lease was filed. Since no lease has been issued, the State Office has taken no action on these assignments.

Office rejected the application because the lands are in a key or critical deer and/or elk winter range, as classified by the State of Colorado Division of Wildlife, because various other wildlife species are present in the area, because the area is drained by three fishing streams that would be damaged by production activities, and because visual impact would be major.

The lease application was filed on August 29, 1975, for 1,655 acres. Subsequently, Environmental Analysis Report (EAR) CO-050-6-395 was prepared. The EAR described the adverse environmental impacts of geothermal development which were later used by the State Office as reasons for rejecting the offer. The EAR found that the impact on wildlife and scenic value could only be mitigated through no leasing or no occupancy, but that the impact on the fishing streams would be mitigated by U.S. Geological Survey (USGS) Geothermal Resources Operational Order No. 4. The EAR recommended no leasing or no occupancy leasing.

After the EAR was prepared, BLM considered issuing the lease with a no-surface-occupancy stipulation but allowing geothermal development activity on a seasonal basis in certain non-critical deer and elk winter ranges. However, USGS reviewed this proposal and concluded that with actual development activity limited to 475 acres, only 380 additional acres could be reached by directional drilling which left 800 acres of the application unavailable for geothermal production. USGS recommended no lease be issued unless the stipulations were modified to allow maximum development. BLM then concluded that since the compromise leasing situation had failed, no lease should be issued.

In its statement of reasons, appellant disagrees with the conclusion that geothermal operations are incompatible with wildlife. It asserts that the statement regarding damage to the fishing streams is arbitrary, inflammatory, and untrue in fact. It also asserts use of the word "major" in describing the visual impacts is arbitrary and inflammatory. Appellant provides no substantiation of these arguments.

[1] Under Section 3 of the Geothermal Steam Act of 1970, P.L. 91-581, 84 Stat. 1566, 30 U.S.C. § 1002 (1970), the decision whether or not to issue a geothermal lease for a given tract of land is within the discretion of the Secretary of the Interior. Cortex, Inc., 34 IBLA 239 (1978); Eason Oil Co., 24 IBLA 221 (1976). A decision by BLM that a geothermal lease should not issue for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The Anschutz Corp., 34 IBLA 270 (1978); Cortex, Inc., supra. The burden is on the geothermal lease

applicant to show that exploration and development activity will not adversely affect the land as BLM described in rejecting the application. Cortex, Inc., *supra*; Kirk Green, 24 IBLA 113 (1976).

The BLM State Office rejected appellant's lease application after attempting to achieve a compromise solution. It considered all relevant factors in determining that no lease should be issued for these lands. Appellant's assertions are not supported by any evidence. It has not met its burden. Accordingly, we find that the BLM State Office properly rejected appellant's geothermal lease application.

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 affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

