

SULPHUR RIVER EXPLORATION, INC.

IBLA 78-357

Decided August 21, 1978

Appeal from decision of the California State Office, Bureau of Land Management, rejecting geothermal lease applications CA 4688 to CA 4692, inclusive.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

APPEARANCES: Rex Corey, President, Sulphur River Exploration, Inc., pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On March 17, 1978, the California State Office, Bureau of Land Management (BLM), issued a decision rejecting appellant's geothermal leasing applications CA 4688 through CA 4692, because the land had been withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, by PLO 431 of

December 19, 1947. The lands in question are part of the Naval Weapons Center (NWC), China Lake, California.

The appellant contends that the rejection is in error because it is contrary to the regulations, the BLM Manual, and the Memorandum of Understanding between the NWC and BLM. Appellant relies on 43 CFR 3201.1-2(b)(2) which provides in part:

Upon receipt of an application for a geothermal lease affecting lands withdrawn under \* \* \* any other appropriate authority, notice thereof and an opportunity to comment thereon shall be given to the head of the agency for whose benefit the withdrawal was made. No geothermal lease affecting lands withdrawn for any agency outside the Department of the Interior shall be leased without the consent of the head of the agency for which the lands are withdrawn.

Appellant states: "This regulation clearly contemplated that lands subject to outstanding withdrawals are subject to being leased for geothermal resources \* \* \*." Appellant's Statement of Reasons, p. 2. Appellant cites the BLM Manual, Vol. VI, § 2.1.21A for the proposition that withdrawn lands may be leased subject to stipulations requested by the agency for whom the withdrawal was made. This provision of the Manual relates to oil and gas leasing, but appellant believes the policy should apply to geothermal leasing as well.

The Memorandum of Understanding between the NWC and the BLM, signed on December 6, 1977, and November 30, 1977, respectively, states the agreement of the two agencies that the land withdrawn by PLO 431 "shall be available for geothermal leasing upon NWC's written consent \* \* \*," and that they will "cooperate in obtaining modifications to the applicable Public Land Orders to permit the leasing and development of geothermal resources on those lands \* \* \*," with jurisdiction to be vested in the Secretary of the Interior. Thus, the Memorandum clearly evinces an understanding that a modification of the withdrawal order is necessary in order to permit geothermal leasing.

According to appellant, the State Director of the California State Office, BLM, sent a draft modification of PLO 431 to Washington, D.C. No modification has been issued. Technically, the land is still under the jurisdiction of the Navy and withdrawn from all forms of appropriation, including the mining and mineral leasing laws.

[1] The general rule under the mining and mineral leasing regulations is that land withdrawn for use by another agency remains open to leasing unless the withdrawal specifically states otherwise. Joseph C. Manga, Azel L. Crandall, 9 IBLA 319 (1973). However, it is well established that lands withdrawn from all forms of appropriation under the public land laws, including mining and mineral leasing laws, are not available for leasing and an offer to lease must be rejected. R. C. Jim Townsend, 18 IBLA 100 (1974), aff'd on reconsideration, 18 IBLA 407 (1975); Kenneth E. Sites and C. Burglin, 13 IBLA 276 (1973); Vance W. Phillips, Aelisa A. Burnham, 10 IBLA 125 (1973).

While the wording of the geothermal leasing regulations is somewhat different from the regulations on oil and gas leasing, the meaning of a withdrawal from all forms of appropriation is unchanged. The Geothermal Leasing Act, section 3, 30 U.S.C. § 1002 (Supp. 1978), allows the Secretary of the Interior to issue geothermal leases for "lands administered by him, including public, withdrawn, and acquired lands." It also provides for leasing of lands administered by the Forest Service and lands conveyed to the United States with a reservation of the geothermal resources. However, it makes no provision for leasing lands withdrawn for another agency when the withdrawal precludes leasing. The Geothermal Leasing Act also amended the Multiple Mineral Development Act, 30 U.S.C. § 530 (Supp. 1970), to include the Geothermal Leasing Act in the term "mineral leasing laws." See Chevron Oil Co., 32 IBLA 275 (1977). Therefore, a withdrawal embracing those laws includes geothermal leasing.

When land is withdrawn from all forms of appropriation under the mineral leasing laws the Department of the Interior has no authority to lease the land for geothermal resource development. The withdrawal precludes it. Until PLO 431 is amended to allow geothermal leasing, all lease applications must be rejected. The provision in the regulation which allows leasing of withdrawn lands with the permission of the agency for whom the lands are withdrawn, contemplates withdrawals permitting leasing and cannot be read to allow such leasing when the withdrawal order itself specifically prohibits it. The Memorandum of Understanding does not purport to, and has no force of itself to modify the withdrawal order.

Appellant requests that his lease application be held in abeyance pending amendment of PLO 431. This request cannot be granted. A general regulation states that applications to lease withdrawn lands "must be rejected and cannot be held pending possible future availability of the land or interests in land \* \* \*." 43 CFR 2091.1. See Henry E. Reeves, 31 IBLA 242 (1977); Mobil Oil Corp., 20 IBLA 296 (1975); M. F. Trask, 4 IBLA 252 (1972).

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:

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

