

HASSIE HUNT EXPLORATION CO.

IBLA 79-408

Decided March 21, 1980

Appeal from the decision of the Nevada State Office, Bureau of Land Management, rejecting geothermal lease application, N-21646.

Affirmed.

1. Geothermal Leases: Acreage Limitations -- Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

APPEARANCES: James L. Parker, President, Hassie Hunt Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Hassie Hunt Exploration Company has appealed from the decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 9, 1979, rejecting geothermal lease application, N-21646, because it "did not include 640 acres as required by 43 CFR 3203.2(a)."

The lands covered by the application were identified as the NW 1/4 NE 1/4, S 1/2 NE 1/4, SE 1/4, and W 1/2 of sec. 16, T. 22 N.,

R. 63 E., Mount Diablo meridian, or, in other words, all of sec. 16 except the NE 1/4 NE 1/4. This is approximately 623 acres. In its statement of reasons, appellant argues:

[W]e complied with the rules insofar as they state "everything in the section must be applied for that is available". It so happens that the NE 1/4 NE 1/4 of Section 16 is unavailable for leasing, therefore, it was not applied for.

The rule of approximation states that "an offer can cover less than 640 acres if the land is surrounded by land 'not available' for leasing", and we, therefore, ask that the decision made on this application be reversed and remanded.

The copy of the status plat of T. 22 N., R. 63 E., Mount Diablo meridian, included in the case record indicates that the NE 1/4 NE 1/4 of sec. 16 has been patented without mineral reservation. Therefore, appellant is correct in stating that it is unavailable for leasing. However, appellant is incorrect in inferring that all of the land surrounding the land applied for was also unavailable for leasing. Sec. 17 was available on the date of appellant's lease application, January 2, 1979. The rule of approximation noted by appellant is mentioned at 43 CFR 3110.1-3(a) and defined at 43 CFR 3100.0-5(d), regulations applicable to noncompetitive oil and gas leasing, not geothermal leasing. <sup>1/</sup>

[1] The regulation cited by BLM, 43 CFR 3203.2(a), reads in relevant part as follows:

No lease will be issued for less than 640 acres, except at the discretion of the Secretary, or where a departure is occasioned by an irregular subdivision, or as provided in

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<sup>1/</sup> This Board has recognized the similarity between the geothermal leasing statute and regulations and those pertaining to oil and gas leasing. We have held that in enacting the geothermal leasing statute Congress must have been aware of the interpretations placed by this Department on similar provisions under the oil and gas leasing statute. Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 401 (1975). In addition, we have noted that the Department's oil and gas leasing regulations served as a model for the geothermal leasing regulations. California Geothermal, Inc., 19 IBLA 268, 271 (1975); E&H Investments, Inc., 19 IBLA 141, 142 (1975). However, the oil and gas leasing regulation noted here has no counterpart in the geothermal leasing regulations. Since the lands identified in appellant's application were not surrounded totally by lands unavailable for leasing, we need not decide whether the rule expressed in this regulation is equally applicable to geothermal leasing.

Subpart 3230 of this chapter. In event of a departure, the leased acreage may be less than 640 acres by amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added. (Emphasis supplied.)

While sec. 16 is an irregular subdivision, it actually contains more than 640 acres. The departure herein was not occasioned by a physical shortage of acreage within sec. 16, but rather was caused by the unavailability of lands patented without a mineral reservation. This regulation does not permit the unavailability of land within a section to substitute for an actual shortage of land within a section.

In addition to the above regulation, we must also consider the application requirements noted by appellant. The pertinent regulation, 43 CFR 3210.2-1(c), states that an application must include:

[A] complete and accurate description of the lands applied for, which must include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed or protracted and are described [sic], by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted; \* \* \*. [Emphasis added.]

This Board has consistently held that a noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section is properly rejected. Energy Partners, 21 IBLA 352 (1975); Robert G. Lynn, 19 IBLA 167 (1975).

When read together, exceptions aside, the two regulations lead to the following conclusion: If a section contains less than 640 unappropriated acres of available land, an application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirement of 43 CFR 3210.2-1(c) and to ensure that BLM will be able to issue a lease of no less than 640 acres. This means that an applicant would have to include as many as 640 undesired acres in an application in order to lease a desired section which is short by a few acres.

While under 43 CFR 3203.2(a), discretion exists to issue a lease of less acreage, 2/ it is an applicant's affirmative obligation to

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2/ The language of the regulation states "except at the discretion of Secretary." We have been informed that, in fact, the discretion is exercised by an authorized officer of BLM. The reference to the Secretary instead of the authorized officer was a regulatory oversight and will be corrected in future revisions to the regulations.

show why this discretion should be exercised in any case. This, appellant has not done. The State Office properly rejected appellant's 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.

James L. Burski  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Frederick Fishman  
Administrative Judge

