

OCCIDENTAL GEOTHERMAL, INC.

IBLA 79-606

Decided July 11, 1980

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting applications to lease geothermal resources. N-21438, N-21439.

Set aside and remanded.

1. Act of December 24, 1970 -- Geothermal Leases:
Discretion to Lease -- Geothermal Resources

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

APPEARANCES: Roger Narinian, Occidental Geothermal, Inc., Bakersfield, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Occidental Geothermal, Inc. (Oxy), has appealed the decision dated September 5, 1979, wherein the Nevada State Office, Bureau of Land Management (BLM), rejected applications N-21438 and N-21439 for geothermal resources leases for secs. 8, 9, 16, 17, 20, and 21, T. 15 N., R. 29 E., Mount Diablo meridian, Churchill County, Nevada, for the reason that the lands lie within the area of aerial operations

connected with low level bombing and gunnery practice of the Fallon Naval Air Station. Oxy's application to lease was made pursuant to the Act of December 24, 1970, 30 U.S.C. § 1001 (1976), also known as the Geothermal Steam Act of 1970.

The BLM decision was predicated upon the objections of the commanding officer, Fallon Naval Air Station, who made the following arguments:

1. Significant discoveries of geothermal resources could result in the development of an industrial complex and ancillary community facilities which might be seriously damaged by malfunction of naval aerial ordnance materiel.
2. Exhaust gases and other emissions might be corrosive to the Navy's sophisticated electronic equipment, which Navy would not tolerate.
3. Exhaust gases would inhibit visibility for low level, high speed aircraft and create a severe operational hazard to the aircraft and crews.
4. Flight crews could easily mistake drilling rigs for their proper targets.

Appellant answers that the lands sought are not within or under Navy jurisdiction and that other applicants in the area have been granted geothermal resources leases. Oxy also points out that the Navy is presently engaged in its own geothermal research program on the Fallon Naval Air Station and other bombing ranges in California and Nevada, and that Oxy has been engaged in dialogue with the Navy relative to a joint exploration program for geothermal resources around the Fallon Naval Air Station.

The status report indicates that the subject lands are not within the Naval Air Station, but adjoin its western boundary. The Walker River Indian Reservation lies immediately contiguous to the south, and contiguous lands to the north are under lease for geothermal resources.

In S. Rep. No. 1160, 91st Cong., 2d Sess. (1970), it is stated:

Production of power from geothermal steam in the United States is relatively new. Costs to developers are not clearly established, but they will be high. Therefore, the terms of the Committee's bill are designed to give as much encouragement as possible to potential developers, and it is the Committee's intent that the Administrative Agencies should keep this basic purpose in mind. [Emphasis added.]

Furthermore, President Carter declared the energy crisis as being of such gravity and concern to the continued well-being of the United States that efforts to resolve it should be regarded by the American people as "the moral equivalent of war." President's Energy Message to the People, April 18, 1977.

The regulations reflect both the statutory purpose and the President concern. For example, 43 CFR 3200.0-6(b) states:

(b) Prior to the final selection of tracts for leasing, the Director, or the head of the agency charged with the administration of the surface, if that officer so elects, shall, when appropriate, evaluate fully the potential effect of the geothermal resources operations pursuant to a leasing program on the total environment, fish and other aquatic resources, wildlife habitat and populations, aesthetics, recreation, and other resources in the entire area during exploratory, developmental, and operational phases. This evaluation will consider the potential impact of the possible development and utilization of the geothermal resources including the construction of power generating plants and transmission facilities on lands which may or may not be included in a geothermal lease. To aid him in his evaluation and selection of tracts the Director shall request and consider the views and recommendations of appropriate Federal agencies, may hold public hearings after appropriate notice, and shall, as appropriate, consult with State agencies, organizations, industries, and lease applicants, and shall consider all other potential factors, such as use of the land and its natural resources, the need for the energy mineral deposits, and socio-economic conditions consistent with multiple-use management principles. If a decision is made

to lease, the Director shall develop special terms and conditions to be included in leases as required to protect the environment, to permit use of the land for other purposes, and to protect other natural resources.

The decision below does not indicate that BLM made any independent decision whether the geothermal resources leases sought would or would not be in the public interest. Cf. Vern K. Jones, 33 IBLA 74 (1977); Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Kenneth F. Cummings, 28 IBLA 73 (1976).

It is apparent that BLM has had no opportunity to consider the arguments of appellant. Therefore, we will remand the cases so that BLM may pursue a dialogue with the Naval Air Station relative to the argument of appellant. Thereafter, BLM will make an independent decision whether or not to lease.

Accordingly, 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 set aside and the cases are remanded to BLM for further consideration consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

