

TRENT J. PARKER

IBLA 80-503

Decided August 11, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 32182.

Reversed and remanded.

1. Oil and Gas Leases: Lands Subject to -- Segregation -- Withdrawals and Reservations: Generally

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

APPEARANCES: Raymond K. Peete, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated February 19, 1980, by the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer M 32182, as follows:

The offer to lease is rejected in its entirety because all of the lands are included within a proposed withdrawal for the protection of geothermal resources. The proposed withdrawal is a segregation from all appropriations under the public land laws, including without limitation the

mining laws and the mineral leasing laws except Geothermal. (See enclosed copy of proposed withdrawal order as published in the Federal Register December 28, 1973).

The proposed withdrawal of the lands in question is summarized as follows in 38 FR 35507, 35508 (Dec. 28, 1973):

### GEOHERMAL RESOURCES

#### Amendment of Notice of Proposed Withdrawal and Reservation of Lands

1. The notice of proposed withdrawal and reservation of lands for the protection of geothermal resources, published in the FEDERAL REGISTER issue of March 24, 1967 (32 FR 4506-4507), amended by a revised notice appearing in the issue of April 12, 1967 (32 FR 5860), is hereby further amended to remove the segregative effect of the proposed withdrawal and reservation as far as is necessary to permit the Secretary of the Interior to issue geothermal resources leases under the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. Ch. 23). Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b), at 10 a.m. on January 1, 1974, the following described lands will be relieved of the segregative effect of said notice of proposed withdrawal with respect to leasing under the provisions of the Geothermal Steam Act of 1970:

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3. The foregoing lands will continue to remain segregated from all other forms of appropriation under the public land laws, including, without limitation, the mining laws and the remainder of the mineral leasing laws. [Emphasis added.]

Appellant argues that in view of the energy crisis, the lands should be available for oil and gas leasing subject to appropriate stipulations. Appellant adverts to 32 F.R. 4506 (Mar. 24, 1967) as opening the lands to oil and gas leasing. That application covers all public lands valuable for geothermal steam development, in contradistinction to the amendment of December 19, 1973, 38 F.R. 35507-8 (Dec. 28, 1973), which applies to specifically described public lands. The latter obviously governed and precluded 1/ other mineral leasing, including without limitation, oil and gas leasing.

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1/ The revised notice of application, published on March 24, 1967, permitted oil and gas leasing, if found by the Secretary to be compatible with geothermal development.

[1] The application for withdrawal was noted on the State Office records and therefore was effective to segregate the lands covered thereby from any appropriation inconsistent with the withdrawal if consummated. 43 CFR 2351.3 and 43 CFR 2091.2-5. See Mrs. Ethel H. Myers, 65 I.D. 207, 210 (1958); cf. Marion Q. Kaiser, 65 I.D. 485 (1958); Lyla S. Lofgren, A-28358 (July 20, 1960).

Our examination of the historical index and serial register sheet, which the Board requested from BLM, demonstrate that the application for withdrawal was terminated in 41 FR 22964 (June 8, 1976), as follows:

ALL PUBLIC LAND STATES  
Termination of Proposed Withdrawal and  
Reservation of Lands

June 1, 1976.

On February 7, 1967, there appeared in the Federal Register at page 2588, a Notice of an application by the Bureau of Land Management to withdraw all public lands which were valuable or prospectively valuable for geothermal steam resources. The application was amended and revised, Notices of which appeared in the Federal Register on the dates and pages shown: March 14, 1967, at page 4030; March 24, 1967, at pages 4506-07. The application is hereby cancelled. Therefore, in accordance with the regulations contained in 43 CFR 2300, the lands which were segregated as a result of the above-mentioned application and Notices shall on June 15, 1976, be relieved of the segregative effect of such application

The lands involved in this Notice of termination are described in the above referenced Notices.

CURT BERKLAND, Director.

It is apparent that the segregative effect of the application for withdrawal terminated June 15, 1976. The oil and gas offer was filed August 29, 1975; at a time when the lands therein were segregated from mineral leasing. The question comes to the fore as to what viability such an offer possesses. 43 CFR 2091.2-5(a) and (b) provide:

§ 2091.2-5 Withdrawal or reservation of Federal lands.

(a) Application. The noting of the receipt of the application under §§ 2351.1 to 2351.6 in the tract books or on the official plats maintained in the proper office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms

of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) Amendments. (1) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The authorized officer of the Bureau of Land Management will have a notice published in the Federal Register specifying the date and hour that the lands so eliminated will be relieved of the segregative effect of the agency's application and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application. [Emphasis supplied.]

It is clear from the regulation that an oil and gas offer, filed while the land has been segregated, is to be suspended, pending final action on the withdrawal application, and that to the extent that the offer is not inconsistent with the terms of any amendment to the withdrawal application, it may be processed on its merits. A fortiori, cancellation of the withdrawal application in toto, as in the case at bar, permits the offer to be considered on its merits. See The Law of Federal Oil and Gas Leases, § 2.12, pp. 74-75.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is set aside and the case remanded for appropriate action consistent herewith.

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Frederick Fishman  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

