

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting geothermal resources lease offers N-42803 and N-42806.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Lands Subject To

Land included within an outstanding geothermal resources lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

2. Geothermal Leases: Relinquishments

A relinquishment of a geothermal lease will not be accepted if it is filed by an individual who cannot establish his authority to act on behalf of the lessee of record.

APPEARANCES: Richard Keith Corbin, Esq., Sacramento, California, for appellant; Alice A. White, Esq., for Steam Reserve Corporation.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ralph L. Phelps, Jr., has appealed from the February 4, 1986, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting geothermal resources lease offer N-42803 and a separate decision issued February 25, 1986, rejecting his application for geothermal resources lease N-42806. Both applications were rejected because they described lands included in existing geothermal resources leases. Lease N-9647 was issued to Ronald E. Stone effective June 1, 1975. Leases N-31991 and N-31993 were issued to Amax, Inc., effective September 1, 1981. Record title to these leases is currently held by GEO/SRC Joint Venture pursuant to assignments approved effective February 1, 1985. Steam Reserve Corporation, on its own behalf and as managing venturer of GEO/SRC Joint Venture, has filed an answer to appellant's statement of reasons in this appeal.

[1] Inasmuch as the leases held by GEO/SRC were outstanding at the time Phelps filed his applications, there can be no question that BLM acted properly

in rejecting his applications. In many cases involving leases issued pursuant to the Mineral Leasing Act, 30 U.S.C. § 181 (1982), this Board has held that land included within an outstanding lease, whether that lease is void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Irvin Wall, 69 IBLA 321 (1982); Curtis Wheeler, 56 IBLA 58 (1981); Leonard R. McSweyn, 26 IBLA 376 (1976); John F. Brown, 22 IBLA 133 (1975). The same result obtains here.

[2] Appellant asserts that he is the beneficiary of a constructive trust on the outstanding leases, and "elects to withdraw same" in order that his applications might be considered. This is not a matter of which we may take cognizance. Under 43 CFR 3244.1, relinquishments of the outstanding leases must be filed in triplicate with the Nevada State Office, not with this Board. Appellant has filed no appeal from a BLM decision refusing to accept his relinquishment, so we have no jurisdiction over this issue. See 43 CFR 4.410. We observe, however, that the regulation requires that a relinquishment be filed "by the record title holder," and the answer to appellant's statement of reasons filed by the record title holder makes it clear that the record title holder has given appellant no legal authority to act on its behalf. Whether appellant has a "constructive trust" and is thereby empowered to act for the lessee of record is a matter which can be resolved only by a court of competent jurisdiction, not by this Board. See Lawrence H. Merchant, 81 IBLA 360 (1984). Even if we were to assume that appellant had authority to relinquish these leases, appellant did not do so prior to the filing of his own applications, so BLM's decision rejecting his applications would still be correct.

Appellant alleges that the holders of the outstanding leases have exceeded the applicable acreage limitation set forth in the statute. This argument might have been timely had appellant raised it in a protest prior to the issuance of those leases. See 43 CFR 4.450. It would also be timely in the context of an appeal from rejection of an offer if the offer had been filed prior to the issuance of the outstanding leases. In this appeal, this argument provides no basis for reversing the decision below. Regardless whether the outstanding leases are void, voidable, or valid, they were nevertheless outstanding at the time appellant filed his offer. Even if the outstanding leases were canceled or relinquished, or if they expired or terminated, BLM would be precluded from accepting appellant's offers. If the lands were not within a known geothermal resource area, BLM could consider applications for such lands only after the land had been posted as available pursuant to 43 CFR 3210.1(b). Land within a known geothermal resource area is subject only to competitive leasing, and competitive bids would be considered only after publication of a notice of sale. See 43 CFR Subpart 3220.

Appellant has requested a hearing on a number of issues. As we have noted, however, there is only one issue relevant to the disposition of this appeal: whether the land was within an outstanding lease. There is no dispute that it was. Accordingly, appellant's request for a hearing is denied.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

John H. Kelly
Administrative Judge