

EUGENE WATER AND ELECTRIC BOARD

IBLA 85-903

Decided July 10, 1987

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive geothermal lease offers OR 20049 and OR 20050.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Lands Subject to -- Wilderness Act  
Lands designated by Congress as a component of the National Wilderness Preservation System are withdrawn from disposition under the mineral leasing laws effective January 1, 1984. A Bureau of Land Management decision rejecting geothermal lease offers for lands within a designated wilderness area will be affirmed in the absence of a showing of valid existing rights.

APPEARANCES: Garry W. Kunkel, Director, Power Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Eugene Water and Electric Board (EWEB) appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 6, 1985, rejecting in part appellant's noncompetitive geothermal lease offers.

On November 30, 1978, EWEB filed two noncompetitive geothermal lease offers with BLM (OR 20049 and OR 20050). The lease offers covered the lands included within secs. 5, 6, 7, 18, and 19 of unsurveyed T. 9 S., R. 8 E., Willamette Meridian, Oregon. The master title plat in the case files discloses that portions of the lands were withdrawn for the Willamette National Forest and the Mt. Hood National Forest.

Subsequently, on June 26, 1984, Congress enacted the Oregon Wilderness Act of 1984, P.L. 98-328, 98 Stat. 272. The purpose of that Act was, in part, to "designate certain National Forest System lands and certain public lands in the State of Oregon as components of the National Wilderness Preservation System, in order to promote, perpetuate, and preserve the wilderness character of the lands." Section 2(b)(1), 98 Stat. 272. Among those lands were certain lands in the Willamette and Mt. Hood National Forests which were

designated as a part of the Mount Jefferson Wilderness. Section 3(23), 98 Stat. 274-75. This addition is shown on copies of the master title plat appearing in the case files as embracing portions of sections 7, 18, and 19, which were included in appellant's lease offers.

Hence, on August 6, 1985, BLM issued a decision rejecting appellant's lease offers for those lands that had been designated wilderness by the Oregon Wilderness Act. The lands rejected amounted to approximately 616.38 acres. The BLM decision further advised appellant: "The acreages used above are subject to change when the final wilderness boundaries are approved for the Oregon Wilderness Act of 1984. You will be notified at that time of any discrepancies which may occur."

Appellant's major contention on appeal is that the partial rejection of its lease offers was premature. Appellant's contention is apparently premised on a perception the lands involved have merely been proposed and not designated as wilderness. Appellant argues that much of the land rejected lacks wilderness characteristics, is not isolated and "is unlikely to be included in the final wilderness area designation." In conclusion, appellant states: "[I]t is premature to reject EWEB's application based on present assumptions about future designations of the involved lands. We are convinced that the area in question is not a true wilderness area

\* \* \*."

Appellant's arguments reflect an apparent misunderstanding of the effect of the wilderness designation made by section 3 of the Oregon Wilderness Act. For example, appellant states: "Because the area [of the lease offer rejected by BLM] includes roads touching it on three sides, \* \* \* [it] is unlikely to be included in the final wilderness area designation." Contrary to appellant's perception, the Oregon Wilderness Act in fact made the "final wilderness designation" for the land in the lease offers that BLM rejected. Only Congress can designate an area as wilderness, and, once it has done so, as it has in this case, the land must be administered in a manner consistent with the legislative mandate.

[1] An area designated by Congress as wilderness becomes a component of the National Wilderness Preservation System, and as such is managed in accordance with the provisions of the Wilderness Act of 1964, 16 U.S.C. § 1131-1136 (1982). The Wilderness Act provides, in pertinent part, that: "Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining law and from disposition under all laws pertaining to mineral leasing and all amendments thereto." 16 U.S.C. § 1133(c)(3) (1982). Appellant has made no showing of valid existing rights which would exempt the land from the withdrawal from leasing. Accordingly, BLM was required to reject appellant's lease offers to the extent they embraced land within the designated wilderness.

We note the BLM decision states the acreage of land rejected is "subject to change when the final wilderness boundaries are approved for the Oregon Wilderness Act of 1984." Appellant may have interpreted this statement to mean that the boundaries of the wilderness area have not been determined;

however, we find no basis for such an interpretation. The area designated as wilderness has been legislatively determined. The boundary is not at issue. However, computation of the actual acreage within the wilderness rejected from appellant's offers may be subject to modification when the land is surveyed.

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

R. W. Mullen  
Administrative Judge

Will A. Irwin  
Administrative Judge

