

BAILEY AND ASSOCIATES, CORP.

IBLA 94-35 Decided December 3, 1996

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease application NMNM-89512.

Dismissed.

1. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Statement of Reasons

A statement of reasons for appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is properly dismissed. An appeal from rejection of a geothermal lease application is properly dismissed when the statement of reasons is devoted to arguing in support of proposals for use of other public lands which were not adjudicated by the decision under appeal.

APPEARANCES: Harry N. Bailey, President, for Bailey and Associates, Corporation; Gayle E. Manges, Esq., Office of the Solicitor, Southwest Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bailey and Associates, Corporation (Bailey), has appealed from a decision of the District Manager, Las Cruces District, New Mexico, Bureau of Land Management (BLM), dated September 28, 1993, rejecting its noncompetitive offer, NMNM-89512, for a geothermal resources lease of 640 acres of land situated in sec. 34, T. 20 S., R. 1 W., New Mexico Principal Meridian, Dona Ana County, New Mexico. This noncompetitive lease offer was filed pursuant to the Geothermal Steam Act of 1970, as amended, 30 U.S.C. §§ 1001-1027 (1994).

Prior to adjudication of this lease application, certain preliminary matters were addressed by BLM and the applicant. The land in this lease application, sec. 34, had previously been subject to geothermal resources lease NMNM-25557. Before that lease terminated, one geothermal well, Hunt No. 25-34, was drilled on sec. 34. Prior to adjudication of appellant's lease application, BLM advised by letter dated November 25, 1992, that the lease applicant would be required to assume liability for plugging

and abandoning this pre-existing well as a condition of lease issuance. In a letter to BLM dated March 18, 1993, Harry N. Bailey responded to BLM on behalf of applicant stating that:

[I]n order to justify proceeding further with this lease and obligate a very substantial up front investment, in addition to assuming the possible \$100,000 liability that comes with the Hunt well, there must be a willingness on the part of the BLM to make government owned Sec. 2, [T. 21 S., R. 1 W. available] to us via sale, trade or long term (99 year) lease.

It appears that Bailey has been seeking to acquire title to sec. 2 since 1977 when he filed an application for exchange of lands with BLM. This proposal was rejected by decision of BLM and the decision was affirmed by this Board on appeal. Harry N. Bailey, 79 IBLA 362 (1984).

Against this background, BLM proceeded to adjudicate appellant's application to lease sec. 34. It appears from the record that the lands in appellant's lease application were patented with a reservation of minerals. New Mexico State University (NMSU) owns the surface of sec. 34, T. 20 S., R. 1 W., which is part of its "College Ranch." BLM administers the reserved Federal leasable minerals including geothermal resources. Pursuant to a cooperative agreement between BLM and NMSU dated March 14, 1977, BLM agreed to notify NMSU of proposed actions "requested by mineral development companies within the boundaries of College Ranch." Further, the agreement provides that NMSU will respond to BLM concerning any special considerations or stipulations they request in connection with the action.

By letter dated February 19, 1993, BLM notified NMSU of appellant's lease offer and requested NMSU's concurrence and comments. Subsequently, NMSU responded by letter dated April 29, 1993, expressing concerns regarding the impact of geothermal leasing and geothermal resource development on surface resources in sec. 34. NMSU was particularly concerned about increased traffic damaging surface resources and interference with university research activities on that land, "interference with livestock grazing and distribution on the west side of College Ranch," loss of research areas, and the potential for loss of ground water and damage to archeological sites. NMSU conceded that some of these concerns might be adequately addressed in a plan of operations, but "[i]f these concerns are not adequately answered by BLM or Mr. Bailey, then these concerns may become objections" (Letter, Apr. 29, 1993). NMSU asked for more details of impacts of proposed development including surface structures associated with development, traffic impacts, impacts of geothermal resource pipelines, and measures to protect the mission of College Ranch.

By letter to appellant dated May 20, 1993, BLM instructed Bailey to provide a plan for development of the geothermal resources, addressing NMSU's concerns, as follows:

If you wish to continue with your offer to lease the geothermal resources in Section 34, then your plan of development

must address the concerns listed in the surface owner letter (NMSU) of April 29, 1993.

(BLM Letter, May 20, 1993, at 2). BLM also acknowledged appellant's concern about liability for plugging the Hunt 25-34 well and reminded appellant that because sec. 2, T. 21 S., R. 1 W., New Mexico Principal Meridian, was in a Known Geothermal Resource Area (KGRA), BLM could not transfer it out of public ownership, but could lease it competitively, with necessary surface uses to be authorized under separate permit, pursuant to 43 CFR 3200.0-6.

In July 1993, appellant met with BLM and again wrote BLM urging the development of sec. 2. He did not respond to the May 20, 1993, request for specific development information. On August 18, 1993, BLM wrote appellant a letter reiterating its position that it would not transfer sec. 2 out of public ownership as it was in a KGRA, but that it could lease the tract competitively. BLM stated that it would evaluate appellant's existing lease application when it received a plan of development. BLM stated that it planned "to reject the lease offer unless you can provide the necessary information to complete the application" (Aug. 18, 1993, Letter at 1).

The subsequent BLM decision dated September 28, 1993, addressed to Harry N. Bailey on behalf of the lease applicant, stated:

By letter dated August 18, 1993, you were notified that the plan of development necessary to evaluate geothermal lease application NMNM 89512 had not been received, and if not received within 30 days, the application would be rejected.

To date, the plan of development has not been received. Therefore, we have no alternative but to reject geothermal lease application NMNM 89512.

(Decision at 1).

Bailey filed an appeal and petitioned for a stay of the BLM decision. By order dated November 30, 1993, the Board granted a stay of the BLM decision pending review of appellant's statement of reasons for appeal. In the statement of reasons for appeal, appellant continues to ignore the basis for the BLM decision rejecting the lease application and to address the lands in sec. 2 which are not the subject of a pending application:

Our problem with this lease as it stands now is that we are required to post bond guaranteeing that we will fulfill all of these abandonment obligations when the lease is terminated. This liability added to the thousands of dollars needed to bring in the essential fresh water from our wells in Sec. 10, or from our recently authorized well sites in Sec. 9, together with the cost of site preparation, roads and utilities essential to any viable master plan, would not create an attractive investment unless sufficient surface area is available. This, in turn, depends on

BLM willingness, or ability to deviate from the current restrictions on disposal or long term leasing of Sec. 2. With these obstacles removed we would have a good chance to succeed.

(Statement of Reasons at 2). Appellant acknowledged the BLM request for more specific development plan information, but declined to forward more information:

Also we were advised that unless we submitted a detailed plan for the surface use of Sec. 34 to the NMSU the lease [application] would be terminated. We had already submitted to the NMSU a map showing our simple plan, (Exhibit 8) to put a pump on the existing well head, (See picture, (Exhibit 9)), and by lines on the map showing the location of water lines to the heat exchanger. This was deemed inadequate by NMSU who wanted more details. (See exhibit 10) We will be glad to submit a more elaborate description of this system, perhaps with the help of [an] outside NMSU consultant which had been offered. However, at this time we see no point in putting others thru this exercise until the parties have arrived at a basic and mutually acceptable agreement for use of Sec. 2, without which we could not afford the lease as now written with the high liability of the Sec 34 well abandonment cost. [Emphasis added.]

(Statement of Reasons at 3).

An answer has been filed on behalf of BLM arguing that BLM properly rejected appellant's lease application in the exercise of the Secretary's discretion whether to issue a lease since appellant had not responded to the surface owner's concerns as required by BLM. It is also pointed out that, to the extent appellant is seeking to lease lands not described in the application, i.e., sec. 2, it has raised matters outside the scope of the BLM decision adjudicating the lease application.

[1] The regulations governing geothermal leasing of lands patented subject to a reservation of geothermal resources authorize leasing subject to such terms and conditions as may be required to insure adequate protection of the patented lands and any improvements thereon. 43 CFR 3201.1-5. This is what BLM sought to accomplish in its notices to appellant. Although appellant has devoted considerable discussion on appeal to its desire to obtain rights to the public lands in sec. 2, no showing of error has been made with respect to the BLM adjudication of appellant's geothermal lease application for sec. 34. The matters raised regarding use of other public lands are outside the scope of this appeal from the BLM decision rejecting appellant's geothermal lease application. It is well settled that a statement of reasons which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is properly dismissed. Ronald K. Barr, Sr., 65 IBLA 359, 360 (1982); Geneva Barry, 54 IBLA 48 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the stay of the BLM decision appealed from is vacated and the appeal is dismissed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

