LAYMAN ENERGY ASSOCIATES, INC.

IBLA 2015-226  Decided July 9, 2018

Appeal from a decision issued by the California State Office, Bureau of Land Management, rejecting applications for non-competitive leases of geothermal resources. CACA 042993, CACA 042994, CACA 042995.

Affirmed.

1. Geothermal Leases: Discretion to Lease

BLM's authority for leasing geothermal resources comes from the Geothermal Steam Act of 1970. Whether to grant or deny an application for a geothermal lease is a decision committed to BLM's discretion. This Board will uphold a BLM decision not to lease lands for geothermal resource development when the record shows the decision to be a reasoned analysis of the factors involved based upon consideration of public interest and when no sufficient reason to disturb the decision is demonstrated.

2. Administrative Procedure: Burden of Proof

Rules of Practice: Appeals: Burden of Proof

When challenging a discretionary BLM decision, an appellant's burden is to show that BLM based its decision on a material error of law or fact, or that the decision otherwise lacks a rational basis. A decision lacks a rational basis when it is not supported by a record showing BLM gave due consideration to all relevant factors and based its decision on a rational connection between facts found and the choice made. An appellant does not satisfy its burden by simply disagreeing with BLM's analysis or conclusion.
APPEARANCES: Erik B. Layman, San Luis Obispo, California, pro se; Kevin Tanaka, Esq., Office of the Solicitor, Pacific Southwest Region, United States Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Layman Energy Associates (LEA) appeals from a July 21, 2015, decision issued by the Deputy State Director, California State Office, Bureau of Land Management (BLM). In that decision, the Deputy State Director rejected portions of LEA's three applications for non-competitive leases for geothermal resources underlying lands within the El Centro Naval Air Facility Ranges, located in El Centro, California.

SUMMARY

Under the El Centro Naval Air Facility Ranges Withdrawal Act of 1996 (1996 Act), certain Federal lands in California are withdrawn and reserved for defense-related purposes by the Department of the Navy (the Navy). That statute, and a memorandum of understanding among BLM, Bureau of Reclamation (BOR), and the Navy provides that BLM may authorize geothermal development in areas designated as Range Safety Zone (RSZ) B – areas where Navy pilots train – only after coordination with the Navy. Here, BLM denied LEA's applications for geothermal leases in RSZ B areas, based on the Navy's concerns that such development would conflict with the Navy's use of the area, posing significant safety risks. LEA alleges, among other things, that BLM's decision is in error because geothermal development can safely co-exist with the Navy's operations. But the Navy's safety concerns – and BLM's reliance on those concerns in rejecting LEA's applications – reflects a reasoned analysis that is supported by the record, and LEA fails to demonstrate any error in BLM's decision. We therefore affirm BLM's decision.

BACKGROUND

A. The El Centro Naval Air Facility Ranges Withdrawal Act of 1996 and the 1997 Memorandum of Understanding

At issue in this appeal are three non-competitive lease applications to develop geothermal resources in Imperial County, California, filed by LEA. The applications encompass lands withdrawn for military purposes under the 1996 Act. The 1996 Act withdrew certain public lands "from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing or geothermal leasing laws

or the mineral materials sales law.\textsuperscript{2} The lands were reserved for the use by the Secretary of the Navy for defense-related purposes.\textsuperscript{3} Under the statute, the Secretary of the Interior may issue authorizations for non-military uses of the withdrawn lands, but "only with the concurrence of the Secretary of the Navy," and in accordance with a cooperative agreement entered into by the BLM, BOR, and the Navy.\textsuperscript{4}

In 1997, BLM, BOR, and the Navy executed a memorandum of understanding (MOU) setting forth each entity's responsibilities for managing the Federal lands subject to the 1996 Act.\textsuperscript{5} The MOU designates the lands withdrawn for military purposes as Range Safety Zone (RSZ) A, B, or C.\textsuperscript{6} The applications filed by LEA encompass lands in areas designated as RSZ A and RSZ B.

The areas designated as RSZ A are "[r]equired surface impact target areas, which are areas of extreme hazard and subject to possible impact from dropped ordnance. Operations conducted in these areas pose a great potential threat to ground surface activities, and are highly susceptible to aircraft crash."\textsuperscript{7} Consistent with the 1996 Act, the MOU specifies that BLM can authorize geothermal development and extraction on lands in RSZ A areas only with the Navy's concurrence.\textsuperscript{8}

The areas designated as RSZ B are "areas subject to significant overflight conditions where jet aircraft are operating in an armed mode."\textsuperscript{9} Within RSZ B areas, "aircraft are flying at low levels and traveling at speeds in excess of 500 knots, which severely limits the range of permissible ground surface activities. . . . Special attention must be given toward eliminating ground activities which could be of a distracting or disorienting nature."\textsuperscript{10} On lands in RSZ B areas, BLM "retain[s] overall management responsibilities, while recognizing that certain land uses may be incompatible with military use and requirements . . . ."\textsuperscript{11} The MOU specifically identifies energy resource extraction and development as a "potentially incompatible use" in RSZ B areas, and

\begin{itemize}
\item \textsuperscript{2} Id. § 2922(a), 110 Stat. 2813.
\item \textsuperscript{3} Id. § 2922(b), 110 Stat. 2813.
\item \textsuperscript{4} Id. § 2924(c), 110 Stat. 2815.
\item \textsuperscript{5} MOU Between Department of the Navy and Bureau of Reclamation and BLM With Regard to the Defense Related Use of Federal Lands in Conjunction with El Centro Naval Air Facility Ranges Withdrawal (Feb. 5, 1997) (MOU).
\item \textsuperscript{6} MOU, Art. IV.1, 2, and 3.
\item \textsuperscript{7} Id., Art. IV.1.
\item \textsuperscript{8} Id., Art. VI.A, Art. VII.E.2, 5.
\item \textsuperscript{9} Id., Art. IV.2.
\item \textsuperscript{10} Id.
\item \textsuperscript{11} Id., Art. VI.B.
\end{itemize}
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directs that BLM may authorize this use only after “coordination with the Commanding Officer on a case-by-case basis.”

B. Communications Between BLM and the Department of the Navy About LEA’s Applications

LEA filed its three applications to develop geothermal resources on public lands in 2001. The lands included in the applications are withdrawn under the 1996 Act; approximately 58 percent of the lands are located in RSZ A areas, and approximately 42 percent of the lands are located in RSZ B areas.

The record shows that the Department of the Interior and the Navy communicated about the applications between 2001 and 2006. In a letter dated May 11, 2001, BLM informed the Navy about one of LEA’s applications, CACA 49223, and asked for the Navy’s “consent to lease, and any special leasing stipulations required . . . .” In October 2005, the Navy requested that BLM deny all three applications. The following year, BLM informed the Navy that LEA’s three applications remained pending and, referring to the Navy’s October 2005 letter, asked the Navy to identify specifically “those lands within the lease applications where the US Navy is requesting BLM exclude such lands from geothermal lease processing.” The Navy responded to BLM’s request, stating that it did not consent to leasing on lands in RSZ A areas, but that it did not object to leasing on lands in RSZ B areas. After receiving the Navy’s response, the Department of the Interior’s Assistant Secretary for Land and Minerals Management confirmed that BLM would not issue any lease to LEA for the development of geothermal resources on lands in areas designated as RSZ A. He further stated that BLM “will

12 Id., Art. VI.B.b.
13 BLM Decision, Applications Rejected in Part in Range Safety Zone B (Jul. 21, 2015), at 1 (Decision).
14 Letter from Leroy M. Mohorich, BLM, to the Department of the Navy, Western Division (May 11, 2001).
15 Letter from Wayne Arny, Deputy Assistant Secretary, Installations and Facilities, Navy, to Chad Calvert, Deputy Assistant Secretary–Land and Minerals Management, Department of the Interior (Oct. 20, 2005).
16 Letter from Sean E. Hagerty, BLM, to Steven C. Bjornstad, Navy (Apr. 14, 2006).
17 Letter from Wayne Arny, Deputy Assistant Secretary, Installations and Facilities, Navy, to Chad Calvert, Deputy Assistant Secretary–Land and Minerals Management, Department of the Interior (May 1, 2006).
18 Letter from Chad Calvert, Deputy Assistant Secretary–Land and Minerals Management, Department of the Interior, to Wayne Arny, Deputy Assistant Secretary, Installations and Facilities, Navy (Jul. 25, 2006).
reject all future geothermal applications or interests pertaining to such lands until advised otherwise by the Navy in writing." But based on the Navy's non-objection to leasing in areas designated as RSZ B, the Deputy Assistant Secretary stated that BLM would consider leasing those lands "for pending applications."

There were no further communications between BLM and the Navy, and BLM took no action on LEA's applications, until 2015. In a letter dated January 16, 2015, BLM again notified the Navy about LEA's pending applications and asked for the Navy's consent to issue geothermal leases on the lands covered by the applications. The Navy responded, stating that it did not consent to granting LEA's lease applications because the leases overlap restricted use airspace of Range-2510, and "[g]eothermal work has a very high potential to adversely impact" the training that occurs in that area. The Navy later clarified that its position was that "the whole of the three leases should be denied, as they are all located entirely within the restricted use airspace of Range-2510." The Navy acknowledged that in 2006 it had not objected to leasing in areas designated as RSZ B, but explained that "[t]his is no longer the case" and that since 2006, "new technology and subsequent changes to air operations have elevated the national defense importance of R-2510 as this training range is now the most used air to ground training range on both coasts."

C. BLM's Decisions Rejecting LEA's Applications

On July 21, 2015, BLM issued two separate decisions, one denying LEA's applications for lands within areas designated as RSZ A, and one denying LEA's applications for lands within areas designated as RSZ B.

In the latter decision, BLM explained that under the 1997 MOU, energy resource development is a potentially incompatible land use within areas designated as RSZ B, and may be authorized only after coordination with the Navy. BLM further stated that after consulting with the Navy, it was rejecting LEA's applications based on the potential conflict with existing use of the area by the Navy. BLM stated:

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19 Id.
20 Id.
21 Letter from James V. Scrivner, BLM, to W.C. Doster, Navy (Jan. 16, 2015).
23 E-mail from Steve Chung, Navy, to Sean Hagerty, BLM (Mar. 22, 2015).
24 Id.
25 Id. at 1.
26 Id. at 2.
This area is used for training purposes, teaching student pilots the techniques of night flight operations using night vision techniques. As stated by the Navy, the presence of ambient light from a geothermal development when night operations occur will degrade night vision training, thus impacting pilot safety. Further, any degradation to training will decrease capacity of the range, which currently is the most used air to ground training range for the Navy. Currently Range R-2510 is experiencing approximately 3100 sorties a year.

Additional safety concerns center around the safety of the development and operation of a prospective geothermal resource. The student pilots using this range are exposed for the first time on weapons delivery. Even with optimal delivery parameters it is possible for ordnance to impact the target area and then skip down range. This could pose a threat to personnel and infrastructure in the vicinity of a prospective geothermal development.\(^{[27]}\)

LEA timely appealed BLM's decision regarding lands in areas designated as RSZ B; it does not appeal BLM's decision rejecting its applications for lands in areas designated as RSZ A. LEA filed its statement of reasons (SOR), BLM filed an Answer, and LEA filed a Reply. We now resolve the appeal.

DISCUSSION

A. Standard of Review and Burden of Proof

[1] BLM's authority for leasing geothermal resources comes from the Geothermal Steam Act of 1970.\(^{[28]}\) Whether to grant or deny an application for a geothermal lease is a discretionary decision.\(^{[29]}\) This Board has explained that it will uphold a BLM decision not to lease lands for geothermal resource development "when the record shows the decision to be a reasoned analysis of the factors involved based upon consideration of public interest and when no sufficient reason to disturb the decision is demonstrated."\(^{[30]}\)

\(^{[27]}\) Id.


\(^{[29]}\) Id. § 1002 ("The Secretary of the Interior may issue leases for the development and utilization of geothermal resources . . . ."); Earth Power Resources, Inc., 181 IBLA 94, 109 (2011); Evans-Barton, LTD, 175 IBLA 29, 34 (2008); Fidelity Trust Building, Inc., 129 IBLA 57, 60 (1994).

\(^{[30]}\) Earth Power Resources, Inc., 181 IBLA at 109 (quoting Earth Power Corp., 55 IBLA 249, 255 (1981)); Eason Oil Company, 24 IBLA 221, 224 (1976) ("A decision to refrain from
[2] In challenging a discretionary decision, an appellant’s burden on appeal is to show that BLM based its decision on a material error of law or fact, or that the decision otherwise lacks a rational basis. A decision lacks a rational basis when it is not supported by a record showing that BLM gave due consideration to all relevant factors and based its decision on a rational connection between facts found and the choice made. An appellant does not satisfy its burden by simply disagreeing with BLM’s analysis or conclusion.

B. BLM’s Decision to Reject LEA’s Applications has a Rational Basis that is Supported by the Record

As explained below, we find that BLM’s decision rejecting LEA’s applications reflects a reasoned analysis based on the directives of the 1996 Act and the 1997 MOU, and on the Navy’s articulated reasons for requesting that BLM reject LEA’s applications.

The 1996 Act requires that the Navy concur in BLM authorizations for uses of withdrawn lands, and under the terms of the 1997 MOU implementing that Act, BLM must also consult and coordinate with the Navy regarding authorizations on lands in areas designated as RSZ B. In accordance with the statute and the MOU, BLM sought the Navy’s input and consent on LEA’s geothermal lease applications.

In its January 26 and March 22, 2015 communications to BLM, the Navy provided a detailed explanation for why its use of lands within areas designated as RSZ B is not compatible with lessee operations under geothermal leases. In those communications, the Navy explained the importance of R-2510 to its mission and how its use of R-2510 would conflict with the proposed geothermal development that “lies directly under Range R-2510.” For example, the Navy explained:

R-2510 is restricted airspace from the surface to 15,000 feet above mean sea level. This allows military aircrew to train throughout the airspace,

leasing a given tract of land for geothermal resources which is based on considerations of public interest and which is necessary and appropriate to fulfill such public interest constitutes neither an arbitrary nor a capricious exercise of the Secretary’s discretion and will generally be upheld.”.

31 Hi-Country Estates Phase II Homeowners’ Association, 190 IBLA 123, 126 (2017).
32 Id. at 126-27; Hawkwood Energy Agent Corp., 189 IBLA 164, 167-68 (2017) (citing Roy G. Barton, 188 IBLA 331, 335 (2016); Stanley Energy, Inc., 179 IBLA 8, 13 (2010)).
33 Hi-Country Estates Phase II Homeowners’ Association, 190 IBLA at 127; Hawkwood Energy Agent Corp., 189 IBLA at 168.
which includes allowing fixed-wing and rotary-wing aircraft to operate at low altitudes to maintain critical combat skills. Geothermal work has a very high potential to adversely impact the use of night vision devices and laser designators which are part of this training.\textsuperscript{35}

The Navy further stated that:

\textit{[n]ight bombing is an integral part of real-world Fleet operations and is introduced to new pilots at the Fleet Replacement Squadrons. R-2510 provides the only lighted range within a practical distance of [Naval Air Facility] El Centro. Geothermal development within R-2510 will degrade the night vision of students practicing this critical mission.}\textsuperscript{36}

In addition to geothermal development posing a safety hazard to its own personnel, the Navy explained that the people and infrastructure associated with such development could be placed at risk from the Navy’s operations. For example, “[m]ultiple jet aircraft at low altitude and high power settings will subject the persons on the ground to periodic intense noise events,” and “inaudient ordnance release” from aircraft could occur.\textsuperscript{37}

In its decision rejecting LEA’s applications, BLM relied on the Navy’s statements of concerns about safety and the incompatibility of military training on lands within areas designated as RSZ B and geothermal development. BLM explained in its decision that, in accordance with the 1997 MOU, it consulted with the Commanding Officer at the El Centro Naval Air Facility and other Navy personnel.\textsuperscript{38} BLM stated that the Navy uses the area, Range-2510, to teach student pilots the techniques of night flight operations, and that ambient light from a geothermal development “will degrade night vision training, thus impacting pilot safety.”\textsuperscript{39} BLM further stated that there is an additional safety concern to personnel and infrastructure associated with a prospective geothermal development from ordnance: “The student pilots using this range are exposed for the first time on weapons delivery. Even with optimal delivery parameters it is possible for ordnance to impact the target area and then skip down range.”\textsuperscript{40}

\textsuperscript{35}\textit{Id.}
\textsuperscript{36}\textit{Id.} at 1-2; E-mail from Steve Chung, Navy, to Sean Hagerty, BLM (Mar. 22, 2015) at 2.
\textsuperscript{37}E-mail from Steve Chung, Navy, to Sean Hagerty, BLM (Mar. 22, 2015) at 2.
\textsuperscript{38}Decision at 2.
\textsuperscript{39}\textit{Id.}
\textsuperscript{40}\textit{Id.}
We find that BLM’s reliance on the Navy’s safety concerns in rejecting LEA’s applications reflects a “reasoned analysis of the factors involved based upon consideration of public interest,” and properly reflects the constraints placed on BLM’s discretion by the 1996 Act. The information provided by the Navy fully explained the reasons for its conclusion that the safety of its military personnel, and others, would be at risk if BLM leased lands within areas designated as RSZ B for geothermal development. BLM’s decision to reject LEA’s applications based on the Navy’s concerns complied with the 1996 Act and the 1997 MOU, and constituted a permissible exercise of its discretion.

We now turn to whether LEA’s arguments in support of its appeal demonstrate error in BLM’s decision. We conclude they do not.

C. LEA Does Not Meet its Burden to Show Error in BLM’s Decision

In its appeal, LEA makes three arguments supporting its position that BLM erred in rejecting its applications. First, LEA argues that the Navy’s stated rationale for not wanting geothermal development in areas designated as RSZ B – safety concerns – is contradicted by other evidence. Second, LEA argues that BLM’s nine-year delay in acting on LEA’s applications was “unconscionable.” And third, LEA argues that BLM’s authorization of off-highway vehicle (OHV) use in RSZ A and RSZ B areas shows that geothermal resource development in those areas would not pose a safety risk to the Navy’s operations.

1. LEA Does Not Show in Error in BLM’s Decision Based on LEA’s Assertions that Geothermal Development Would Not Pose a Safety Risk

LEA alleges first that the Navy’s stated concerns about adverse impacts to the safety of its pilots are disingenuous because between 2003 and 2011 the Navy itself conducted geothermal exploration and drilling in areas covered by LEA’s applications. According to LEA, “the main focus” of the Navy’s activities was in RSZ A, but it also conducted exploration activities in RSZ B. LEA states that even though the Navy

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42 SOR at 2 (citing Letter from Wayne Arny, Deputy Assistant Secretary, Installations and Facilities, Navy, to Chad Calvert, Deputy Assistant Secretary–Land and Minerals Management, Department of the Interior (May 1, 2006) (“The Navy is currently evaluating the results of geological and geophysical surveys to assess the suitability of the site as a future geothermal resource . . . .”).
43 Id. at 2-3.
ultimately determined "that a commercial geothermal resource was not likely to be present on RSZ A," the Navy's own data indicate that there is a high potential for geothermal energy development on lands within areas designated as RSZ B. LEA asserts: "If the Navy's military operations were able to accommodate the Navy's own geothermal exploration and development program in RSZ A, then surely the Navy should be able to accommodate similar actions planned by LEA in RSZ B which has lower priority for military operations." LEA attaches to its SOR maps of the Navy's drill sites and published temperature profiles for three Navy deep temperature gradient holes, which LEA states demonstrate "there is high probability that an exploitable, moderate-temperature geothermal resource" exists "within the area of LEA's lease applications in RSZ B." LEA therefore alleges that the Navy previously consented to leasing in areas designated as RSZ B, but changed its position in 2015, not because of safety concerns, but because "the evidence suggests" that the Navy had "no financial incentive . . . to seek reasonable means to harmonize geothermal and military operations."

As noted above, the Navy acknowledged that it consented to leasing in RSZ B areas in 2006, but explained why, in 2015, it had a different position. The Navy stated that since 2006,

new technology and subsequent changes to air operations have elevated the national defense importance of R-2510 as this training range is now the most used air to ground training range on both coasts. For example, in a one-year period from June 2009 through May 2010, CNATRA trained 316 advanced strike student pilots on 7 NAF El Centro detachments, completing 4720 total sorties of which approximately 3100 sorties occurred at R-2510.

The fact that the Navy's use of R-2510 changed between 2006 and 2015 does not demonstrate that the Navy's concerns in 2015 about the safety risks posed by geothermal development lack a rational basis. LEA provides no evidence to refute the Navy's

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44 Id. at 3.
45 Id. at 4 ("Existing geothermal resource data and temperature profiles from the Navy drillholes indicate that there is a high probability than an exploitable, moderate-temperature geothermal resource is localized along the NE range front fault zone of Superstition Mountain, centered within the area of LEA's lease application in RSZ B.").
46 Id.
47 Id.; see id. at 6-8 (Attachments with Supporting Discussion) and Attachments.
48 Id. at 3; see id. ("Because BLM has the authority to administer geothermal development on RSZ B, the Navy would not receive any royalty payments from the sale of electricity produced by geothermal resources located on RSZ B.").
49 E-mail from Steve Chung, Navy, to Sean Hagerty, BLM (Mar. 22, 2015) at 1.
analysis that geothermal development would pose an increased safety threat to its mission and activities on lands in areas designated as RSZ B. LEA asserts that the Navy's decision is based on its lack of a financial incentive to allow geothermal development within RSZ B areas, but its argument amounts to speculation concerning the Navy's motives. Moreover, the information and data LEA provides related to the geothermal resources in RSZ B areas does not rebut the Navy's concerns about safety. The Navy's explanation of the safety issues presented by geothermal development in areas designated as RSZ B is reasonable, as is BLM's reliance on that explanation. LEA's assertions to the contrary are insufficient to demonstrate error in BLM's decision.

2. LEA Does Not Show in Error in BLM's Decision Based on BLM's Delay in Acting on LEA's Applications

LEA next takes issue with BLM's delay in acting on its applications. LEA states that BLM's failure to act on its applications between 2006, "after receiving the endorsement from the Navy" to lease on lands within areas designated as RSZ B, and 2015 is "unconscionable and potentially unscrupulous." LEA alleges that BLM improperly and "abruptly" rejected its application only six months after the Navy informed BLM that its position was that the three lease applications should be denied in their entirety.

BLM concedes that it did not act on the applications until 2015. In its January 16, 2015, letter to the Navy, BLM acknowledged that the applications were part of a "backlog" of applications, stating: "These three non-competitive lease applications predate the Energy Policy Act of 2005 (PL 109-58), which placed a priority on resolving the backlog of outstanding applications of this type."

But BLM's delay was not unlawful and does not demonstrate any error in BLM's decision denying LEA's applications. There is no legal requirement that BLM act on a geothermal lease application within any time frame. As BLM notes, the Energy Policy Act of 2005 directed the Secretary to prioritize the "timely completion of administrative actions . . . necessary to process geothermal leasing applications" pending at the time the statute was enacted. But in that statute Congress did not require the Secretary to process geothermal lease applications by any given date. Nor is there any requirement in the Geothermal Steam Act or BLM's implementing regulations, at 43 C.F.R. Part 3200, that BLM act on a geothermal lease application within any specific time frame. Both the

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50 Id.
51 Id.
52 Letter from James V. Scrivner, BLM, to W.C. Doster, Navy (Jan. 16, 2015).
53 109 P.L. 58, § 222(d)(1), 119 Stat. 594, 661 (2005); Answer at 10 n.4.
54 Answer at 10 n.4.
statute and the regulations specify that BLM's action on any lease application is discretionary.55

Moreover, this Board has held that for oil and gas lease applications, “the Secretary is under no duty to issue or reject leases within a certain period of time and failure to process leases for several years is not unlawful.”56 While the applications at issue in LEA’s appeal are geothermal lease applications rather than oil and gas lease applications, the same reasoning is applicable. This is because just as is the case under the Geothermal Steam Act, the Mineral Leasing Act, which governs oil and gas leasing, provides the Secretary with broad discretion to issue oil and gas leases, specifying that the Secretary “may” lease lands containing oil or gas deposits.57

LEA argues that the delay that occurred here is not the same as “several years.”58 LEA states that it filed its applications in 2001 and BLM did not issue its decision until 2015: “By any standard 14 years is more than several years, and is clearly an excessive period of time for BLM to process a lease.”59 The length of a delay, however, does not change the analysis or conclusion since the law does not require BLM to act on a lease application within any particular timeframe. Our precedent reflects this standard. For example, we have held that BLM did not act unlawfully when an oil and gas lease remained pending for 14 years before BLM acted on it.60 And we have held that even if BLM’s delay in acting on an oil and gas lease was “excessive and unreasonable,” an appellant still cannot show error in BLM’s decision on this basis.61

55 30 U.S.C. § 1002 (stating that the Secretary “may issue leases”); see 43 C.F.R. § 3201.10(a) (stating that BLM “may issue leases” on lands available for geothermal leasing).
57 30 U.S.C. § 226(a) (2012); see Roy G. Barton, 188 IBLA 331, 334 (2016) (“Under the MLA, BLM has discretion to issue, or not to issue, a lease for any given parcel of Federal land available for oil and gas leasing.”).
58 Reply at 4.
59 Id.
60 Estate of Duncan Miller, 94 IBLA 135, 136 (1986) (“While it [is] unfortunate that the lease offer was lost and thus remained pending before the Department for such an extended period, we are unable to accept appellant’s argument that, because the delay in the issuance of the lease was BLM’s fault, the lease should now issue.”).
61 Marc W. Richman, 86 IBLA 143, 144-45 (1985).
Because there is no requirement that BLM act within a particular time frame on a pending geothermal lease application, LEA has not met its burden to show that BLM's delay in acting on the applications constitutes error.

3. LEA Does Not Show Error in BLM’s Decision Based on BLM’s Authorization of OHV Use in RSZ A and RSZ B Areas

LEA’s final argument is that BLM erred in denying its applications because BLM has authorized OHV use throughout lands within areas designated as RSZ A and B, “including extensive night-time use by vehicles with specialized high-powered running lights.” According to LEA, this ongoing OHV activity “demonstrates that the Navy’s operations can reasonably coexist with a high level of vehicle use, even when such vehicles operate at night along unpredictable pathways with high-powered running lights.” LEA reasons that “[o]nce installed and operating, geothermal facilities in RSZ B would be well-known, static and highly predictable features of the landscape, and thus should pose less of a concern to military operations than roving OHV vehicles operating in random fashion.”

LEA is correct that OHV use is allowed on lands within areas designated as RSZ A and B. Such use is consistent with, and governed by, the 1997 MOU, which places numerous restrictions on OHV use. But BLM’s authorization of OHV use consistent with the terms of the MOU does not demonstrate error in BLM’s decision to reject LEA’s geothermal lease applications based on the Navy’s concerns about the impacts of geothermal operations on safety. OHV use is distinguishable from geothermal exploration and development. As BLM notes, OHV use, “especially competitive events, is temporary and sporadic.” This is in contrast to the long-term commitment of lands and resources that necessarily occurs when BLM authorizes geothermal exploration and development. There is simply no basis for LEA’s assertions that the presence and operation of geothermal facilities would be comparable to OHV use in terms of impacts to the Navy’s operations.

62 SOR at 5; Reply at 5 (“BLM and the Navy allow unrestricted OHV use in the Superstition Mountain Off Highway Vehicle (OHV) Open Area, which is entirely contained within RSZ B.”).
63 SOR at 5; Reply at 5.
64 Id.
65 Answer at 12.
66 Id. (“OHV recreation and geothermal operations are very different activities and pose very different risks to the Navy’s operations and mission, as well as to the public, given the Navy’s operations.”).
In addition, the fact that OHV use occurs in the RSZ A and B areas does not undermine or call into question the Navy’s rational for not wanting BLM to grant LEA’s geothermal lease applications. As we explained above, the Navy fully articulated its concerns about geothermal development in these areas, stating that the R-2510 restricted use airspace has become “the most used air to ground training range on both coasts,” and that “[g]eothermal work has a very high potential to adversely impact” the training that occurs in that area. The Navy further explained that geothermal development poses safety concerns because student pilots learning “weapons delivery” may result in ordnance “skip[ping] down range,” which could “pose a threat to personnel and infrastructure” near a geothermal development. LEA’s arguments about OHV use do not show that the Navy’s rationale, or BLM’s reliance on that rationale in rejecting LEA’s applications, was in any way erroneous. LEA’s arguments amount to disagreement with BLM’s decision, and this is insufficient to demonstrate error.

CONCLUSION

We conclude that BLM’s decision appropriately relied on the Navy’s articulated concerns that geothermal development would pose a safety risk to its military operations, and that LEA has not demonstrated any error in BLM’s decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, we affirm BLM’s July 21, 2015, decision.

Amy B. Sosin
Administrative Judge

I concur:

James F. Roberts
Acting Chief Administrative Judge

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67 E-mail from Steve Chung, Navy, to Sean Hagerty, BLM (Mar. 22, 2015).
69 Id.
70 Hi-Country Estates Phase II Homeowners’ Association, 190 IBLA at 127; Hawkwood Energy Agent Corp., 189 IBLA at 168.
71 43 C.F.R. § 4.1.