

INTERIOR BOARD OF LAND APPEALS

Dale Burgett

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DALE BURGETT

IBLA 93-433

Decided July 15, 1996

Appeal from a decision of the Las Cruces, New Mexico, District Office, Bureau of Land Management, denying protest of decision requiring posting of \$50,000 bond for geothermal lease operations. NM NM 34790.

Affirmed.

1. Geothermal Leases: Bonds

A BLM decision requiring submission of a bond by the designated operator of a geothermal lease will be upheld when the operator disputes the amount of the bond but fails to establish error in BLM's determination of the bond amount.

APPEARANCES: Dale Burgett, Animas, New Mexico, pro se; Gayle E. Manges, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Dale Burgett, president of Burgett Investment, Inc. (referred to collectively as Burgett), has appealed from an April 30, 1993, decision of the Las Cruces, New Mexico, District Office, Bureau of Land Management (BLM), denying his protest of a March 9, 1993, notice of noncompliance requiring the posting of a \$50,000 bond for his operations on geothermal resources lease No. NM NM 34790. <sup>1/</sup>

BLM issued geothermal resources lease No. NM NM 34790 to Amax Exploration, Inc. (Amax), effective February 1, 1979, authorizing the production of geothermal steam and related resources from the reserved mineral interest in approximately 2,500.96 acres of land in T. 25 S., R. 19 W., and T. 25 S., R. 20 W., New Mexico Principal Meridian (NMPM), Hidalgo County, New Mexico. On February 9, 1979, Amax designated Burgett Investment, Inc., as the operator of 400 acres within the lease described as the S<sup>1/2</sup> N<sup>1/2</sup>, SE<sup>1/4</sup>, and E<sup>1/2</sup> SW<sup>1/4</sup>, sec. 7, T. 25 S., R. 19 W., NMPM, Hidalgo

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<sup>1/</sup> By order dated July 1, 1993, the Board granted in part Burgett's request for a stay of BLM's Apr. 30, 1993, decision, conditioned upon his posting a surety or personal bond in the amount of \$30,000 no later than Sept. 1, 1993. Burgett submitted the required bond on that date.

County, New Mexico. The designation of operator document, which was acknowledged and accepted by BLM on March 5, 1979, specified that the operator's authority was limited by the terms and conditions set out in a December 14, 1978, agreement between the two parties. <sup>2/</sup> According to an April 6, 1979, U.S. Geological Survey (USGS) memorandum, the lease became productive shortly after Burgett began operations, when one of the five wells drilled into the geothermal resource was completed and equipped for production. The USGS memorandum noted that water from the completed well was being used to heat one greenhouse in which Burgett was growing roses for commercial purposes.

Burgett's operation, Burgett Geothermal Greenhouses, Inc., has grown considerably since 1979 as additional wells have been drilled and new greenhouses have been constructed. As of July 1993, Burgett operated the largest geothermal greenhouse complex in the United States with seven greenhouses aggregating over 1,000,000 square feet in area. <sup>3/</sup> Information provided by Burgett indicates that five geothermal wells supply the heat needed for greenhouse operations.

In a notice of noncompliance dated March 9, 1993, BLM advised Burgett that he was operating on a Federal geothermal lease without a bond contrary to the requirements of 43 CFR Subpart 3206. BLM directed Burgett to submit a \$50,000 bond within 30 days of receipt of the notice or his operation would be subject to shutdown, suspension, or lease revocation.

By letter dated March 31, 1993, in response to a verbal request, BLM provided Burgett with the methodology used to compute his bond for conducting a geothermal operation on the lease. After noting that no current plan of operations for the facility had been submitted, BLM indicated that, based on its 1988 records, 11 of the 22 wells drilled in sec. 7, T. 25 S., R. 19 W., NMPM, Hidalgo County, New Mexico, had been identified as Burgett geothermal wells, and that several more wells apparently had been drilled in that area since 1988 without its knowledge. BLM surmised that approximately 15 wells ranging from 95 to 550 feet deep, containing casing from 8.625 to 18 inches wide, existed on Burgett's facility. Utilizing this information, BLM contacted a local drilling contractor, Mike Guffey of Guffey Drilling, for an estimate of the cost of plugging and abandoning the wells should Burgett be unable to perform this task. Guffey advised that, because there might be several production zones in each well, plugging the hot wells would require pumping 15 ppg cement into each hole from the bottom to the top, and that his estimate of \$3,500 per well included charges for mobilization, pump removal, materials, and 125-200 cubic feet

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<sup>2/</sup> Although, as a result of various assignments, Lightning Dock Geothermal, Inc., now holds record title to the lease, Burgett has remained the operator of the 400-acre tract since Feb. 9, 1979.

<sup>3/</sup> Two additional greenhouses apparently were completed in late 1993 bringing the total area of the greenhouses to almost 1.4 million square feet.

of cement. BLM also cautioned that 30 percent silica flour would have to be added to the cement to retard shrinkage. BLM computed the bond amount by multiplying \$3,500 per well by the 15 wells it believed were drilled on the 400-acre tract and rounded down the resulting \$52,500 to \$50,000.

Burgett protested the \$50,000 bond requirement on April 15, 1993, arguing that the amount was excessive and unfair since the other operator on the lease had only been asked to post a \$10,000 bond. He also challenged various points raised in BLM's March 31, 1993, letter, asserting that BLM had been informed and was aware of his operation; that there were not 22 wells on the lease; that BLM had full knowledge of his operations from the commencement of greenhouse construction and well drilling, noting that all wells had been permitted by the State Engineer's Office; that some of the wells had been drilled in 1948, before enactment of the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1025 (1994); that the only well drilled to a depth greater than 275 feet was not a production well and would be plugged; that an 8-inch pipe had been cemented into the one well with 18-inch pipe so none of the wells currently had 18-inch casing; that Oasis Drilling Company (Oasis) had calculated the cost of plugging the wells at \$789 per well as verified in an attached written quotation; and that, because only water bearing, broken formations existed at depth greater than 100 feet below the surface, all the wells could be plugged for \$20,000. Burgett acknowledged that a bond was required and suggested a \$20,000 bond.

In its April 30, 1993, decision, BLM denied Burgett's protest. BLM explained that the required bond amount was derived from the most recent count of capped, open, or producing geothermal wells located around the perimeter of or within Burgett's greenhouse operation, and that the 16 enumerated wells did not include irrigation wells or the other operator's wells. BLM concluded that the \$50,000 bond was not excessive, citing the number of geothermal wells and the estimated cost of abandoning as justification for the amount demanded.

In his statement of reasons (SOR) for appeal, Burgett expands on his objections to BLM's bond computation methodology. He again disputes BLM's claim that BLM had not been informed of wells drilled on the property, reiterating that a permit was obtained from the State Engineer's Office for every well and that BLM knows how the operation has been run since its inception. Acknowledging that some of the wells on the lease are heat exchangers, Burgett avers that most of the wells are observation wells, and that only five wells are currently production wells. Burgett proposes to plug an unspecified number of non-producing wells, but maintains that BLM has been unwilling to either visit his operation to clarify which wells fall within its jurisdiction or explore the possibility of resolving the plugging issue.

Burgett attacks the bond amount by challenging Guffey's qualifications and his knowledge of the geothermal conditions in the Animas Valley. Burgett insists that the written quotation submitted by Oasis, a company that has been drilling in the Animas Valley for over 20 years,

with knowledge of the geothermal formations in the area, rather than the undocumented estimate provided by Guffey, should be used as the basis for calculating the bond amount. Burgett avers that the fact that the other operator on the lease has only been required to post a \$10,000 bond further demonstrates the excessiveness of his \$50,000 bond, especially given his desire to plug the unused wells (several of which, he notes, were drilled in the 1940's before the enactment of the Geothermal Steam Act of 1970). While Burgett acknowledges that a bond is required under the Act, he insists that the amount sought by BLM vastly exceeds any liability BLM might be forced to assume and would curtail development of shallow geothermal sources such as the one underlying his greenhouses. Thus, he asks that BLM's \$50,000 bond demand be rescinded. <sup>4/</sup>

In response, BLM argues that the size of Burgett's enterprise and the history of his operations as of record with BLM, USGS, and the Minerals Management Service mandate a substantial bond in excess of the \$10,000 regulatory minimum. BLM asserts that, as the designated operator, Burgett is bound by the lease terms and conditions and applicable regulations and is responsible for all operations on the 400-acre tract he controls, including the proper abandonment of all wells on that land. Administration of the lease has been difficult for the various government agencies charged with that responsibility, BLM avers, because Burgett has failed to submit the required plan of operations for the lease <sup>5/</sup> and has never filed an application for permit to drill (APD) a well with USGS or BLM, even though, at all relevant times, geothermal has clearly been a reserved Federal resource for which APD's must be filed with BLM, not the State Engineer, prior to drilling. BLM adds that Burgett has also neglected to adequately report production from the lease and properly pay royalties on that production.

BLM notes that the regulations require that a bond of not less than \$10,000 be filed by an operator such as Burgett prior to the commencement of drilling operations on lands subject to a Federal geothermal lease and that this bond is conditioned on the operator's compliance with all the terms and conditions of the lease. BLM insists that its estimated cost of plugging the hot wells is far more reasonable than Burgett's in light of the past history of his operation, the large number of holes on the land under his control, and his failure to obtain APD's before drilling wells or to submit a plan of operations. BLM cites a July 28, 1993, memorandum from the District Manager, attached to its response, as supporting the validity of its bond amount calculation.

In this memorandum, the District Manager states that, although Burgett has refused to tell BLM how many geothermal wells have been drilled on his portion of the lease, inspections conducted in February

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<sup>4/</sup> The other issues raised in Burgett's SOR do not relate to the specific decision under appeal and, therefore, will not be addressed in this opinion.

<sup>5/</sup> We note that in Sept. 1993, after this appeal was filed, Burgett filed a plan of operations and a plan of utilization for his venture.

and April 1993 indicate that at least 16 geothermal wells exist on the property. He explains that the cost per well stems from a conversation with Guffey whose business was established in 1952 and that Guffey grounded his estimate on his experience drilling and plugging wells in the southern portion of New Mexico and in and around the Animas Valley. As a result of Burgett's failure to supply BLM with data concerning his wells, the District Manager advises that the estimation of plugging cost assumes an average well depth of 250 feet, an 8-inch casing, pump removal, drill rig set-up, cleanout, flushing, and finally placement through tubing or drill pipe of 40 percent silica flour cement from the bottom of the well back to the surface. Given the requirement to protect the high temperature Federal resource, the District Manager opines that Burgett's estimate is extremely low. In sum, the District Manager maintains that verbal estimates of perceived potential liability, advice supplied by the California State Office, BLM, regarding limiting Federal geothermal liability, and Burgett's long history of noncompliance all support the \$50,000 bond demand.

The District Manager also responds to other issues raised by Burgett, explaining that BLM will not authorize the plugging of the unneeded geothermal wells on Burgett's portion of the lease until Burgett submits a current plan of operations and utilization that details the location and condition of each well in order to insure that the geothermal liability to the Federal government will be reduced. The bond required from the other operator on the lease was calculated using the same standards applied to Burgett, the District Manager submits, and the difference in the bond amount stems from the fact that the other operator has only three geothermal wells, ranging in depth from 90 to 210 feet. The District Manager acknowledges that in the late 1970's Burgett acquired three wells drilled in the late 1940's and early 1950's to produce geothermal fluids to heat his greenhouse operation, but disagrees with Burgett's suggestion that his use of those wells does not fall within the ambit of the Geothermal Steam Act of 1970, asserting that Burgett assumed responsibility for the operation of those wells, especially since he re-entered, placing casing in and extending the depths of some of the wells. In short, BLM argues that the record amply justifies a bond of \$50,000.

[1] The Geothermal Steam Act of 1970, as amended, 30 U.S.C. § 1002 (1994), authorizes the Secretary of the Interior to issue leases for development and utilization of geothermal steam and associated geothermal resources in, inter alia, conveyed lands subject to a reservation to the United States of the geothermal steam and associated geothermal resources. 6/ The Act further grants the Secretary the power to prescribe

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6/ The surface of the lease at issue was patented by the United States under the Stockraising Homestead Act, 43 U.S.C. § 299 (1994), which reserved coal and other minerals in the lands to the United States. Geothermal resources underlying the patented lands fall within this mineral reservation. United States v. Union Oil Co. of California, 549 F.2d 1271 (9th Cir.) cert. denied, 434 U.S. 930 (1977), rehearing denied, 435 U.S. 911 (1978).

appropriate rules and regulations, including provisions for "the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources." 30 U.S.C. § 1023(f) (1994).

The regulations in 43 CFR Subpart 3206 delineate geothermal lease bonds obligations. Under 43 CFR 3206.1-1(a), a surety or personal bond conditioned upon compliance with the terms and conditions of the entire leasehold must be submitted by the lessee, operating rights owner (sublessee), or operator prior to the commencement of drilling operations. Such a lease bond

may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not less than \$10,000 for each lease conditioned upon compliance with all of the terms of the lease. \* \* \*

The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee and surety consent is provided.

43 CFR 3206.2. In this case, although the current lessee and all previous lessees have provided the required bonds, Burgett has never been covered by any of those bonds. <sup>7/</sup>

Burgett concedes that BLM properly required a bond. He objects, however, to the amount of the bond, claiming that the \$50,000 demanded is excessive. An individual challenging the amount of a bond required by BLM must show error in BLM's decision. See P & K Co., 135 IBLA 166, 168 (1996) (coal lease); United States Fuel Co., 109 IBLA 398, 402 (1989) (coal lease); Dallas Oil Co., 93 IBLA 218, 220 (1986) (oil and gas lease); Forest Gray, 88 IBLA 64 (1985) (oil and gas lease); see also Daryl Richardson, 125 IBLA 132, 136 (1993) (right-of-way). We find that Burgett has failed to demonstrate that a \$50,000 bond is unreasonable.

Burgett maintains that BLM's liability would be minimal should he fail to properly plug and abandon the unused geothermal wells on his portion of the lease. He disputes the estimate of the cost of plugging a geothermal well used by BLM, asserting that the lower quotation provided by Oasis more

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<sup>7/</sup> Prior to bidding on the lease, Amax had posted a \$150,000 nationwide geothermal resources lease bond. BLM initially considered the designation of Burgett as the operator to be an assignment of operating rights, requiring the posting of a \$10,000 bond. However, after Amax submitted a rider to its nationwide bond adding Burgett as a co-principal, BLM reconsidered its position and rejected the bond rider, concluding in a June 29, 1979, letter that Burgett owned no record title or operating rights in the lease, but was simply acting under a designation of operator for the sole purpose of conducting geothermal operations for greenhouse use on the 400-acre tract.

accurately reflects the cost of plugging one of his geothermal wells. The Oasis estimate, however, does not describe the materials to be used or the work to be performed, thus precluding an evaluation of whether the proposed plugging would conform to BLM requirements. The vagueness of the information submitted, therefore, renders it insufficient to undermine the validity of plugging costs utilized by BLM in its bond calculations.

The strongest argument for the \$50,000 bond is Burgett's refusal to file the required plans, applications, and reports and his refusal to enumerate and identify geothermal wells currently on the lease. Burgett never submitted an APD to BLM prior to drilling a geothermal well, and has failed to provide BLM with specific information about the wells drilled on the property or the required monthly production reports for the producing wells. These deficiencies have prevented BLM from more definitively estimating its potential liability for Burgett's activities on the lease and from authoritatively assessing the amount necessary to insure Burgett's full compliance with the terms and conditions of the geothermal lease, the ultimate goal of the bonding requirement. <sup>8/</sup> See 30 U.S.C. § 1023(f) (1994); see also Franklin Oil Co., 129 IBLA 94, 96 (1994) (oil and gas lease); Pardee Petroleum Corp., 98 IBLA 20, 22 (1987) (oil and gas lease); Forest Gray, 88 IBLA at 65 (oil and gas lease). Given these circumstances, we find no error in BLM's bond assessment and affirm its decision. <sup>9/</sup>

To the extent not specifically addressed herein, Burgett's additional arguments have been considered and rejected.

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.

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Will A. Irwin  
Administrative Judge

I concur.

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R. W. Mullen  
Administrative Judge

<sup>8/</sup> We note that the record is replete with examples of Burgett's noncompliance with the terms and conditions of the lease and the regulations.

<sup>9/</sup> If Burgett were to submit the plans and reports required by the regulations for each of the wells on the 400-acre tract and more complete estimates of the costs of plugging them, it would be reasonable for BLM to consider whether a reduced bond would be adequate.