

INTERIOR BOARD OF LAND APPEALS

Charlotte Hook

136 IBLA 305 (October 11, 1996)

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CHARLOTTE HOOK

IBLA 94-82 Decided October 11, 1996

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive geothermal lease offer OR 36577.

Affirmed.

1. Geothermal Leases: Consent of Agency

Acting pursuant to 43 CFR 3201.1-3, BLM properly rejected part of an offer to lease geothermal resources in lands under U.S. Forest Service administration when the Forest Service refused to consent to such leasing.

APPEARANCES: Charlotte Hook, Salem, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Charlotte Hook has appealed from an October 28, 1993, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting that part of her noncompetitive geothermal lease offer describing 280 acres of land situated in sec. 21, T. 4 N., R. 7 E., Willamette Meridian, Washington. Her offer to lease the geothermal resource was rejected for a portion of the land in sec. 21 described in her offer because the U.S. Forest Service, the agency in charge of administration of the surface of that land, did not consent to leasing in the Wind River Nursery Administrative Area, a Forest Service administrative designation for the 280-acre tract at issue.

Hook argues, in a statement of reasons filed in support of her appeal, that the Forest Service should not have refused to allow leasing the 280-acre tract here at issue because development of the geothermal resource would not substantially interfere with nursery operations. She contends that use of the 280-acre site would provide a better and less environmentally damaging location for drilling than would other lease locations, and that exclusion of the 280-acre tract from her 2,560-acre lease offer will dramatically limit her ability to develop the remaining 2,280 acres. Arguing that the excluded lands are essential to efficient exploration of a potential geothermal reservoir on the lease, she concludes that exclusion of the 280-acre tract from her lease offer may make her lease worthless.

[1] Nonetheless, it is not disputed that, as BLM found, the land sought by Hook in sec. 21 is administered by the Forest Service, an agency of the Department of Agriculture; nor is it denied that the Forest Service

has refused to consent to a lease of the geothermal resource in a portion of sec. 21. Departmental regulation 43 CFR 3201.1-3, cited by BLM in support of the decision here under review, allows leasing of lands subject to administration by the Secretary of Agriculture, "by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of [the Agriculture] Department." The quoted rule implements a provision of the Geothermal Act, 30 U.S.C. § 1014(b) (1994), providing that:

Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

This limitation upon geothermal leasing of lands administered by the Department of Agriculture has been strictly observed by the Department of the Interior. See Francana Resources, Inc., 75 IBLA 125, 126 (1983), and authority cited therein. While Hook questions whether the Forest Service has correctly weighed the relative merits of the action she proposes, she has not shown that BLM erred in finding that consent to leasing had been denied by the administering agency. When the Forest Service refused to consent to geothermal leasing of the land in sec. 21, BLM was required by Departmental regulation 43 CFR 3201.1-3 to reject the lease offer for the 280-acre tract under Forest Service administration. The arguments advanced by Hook in support of her appeal, which question the rationale underlying the refusal to consent to leasing, are therefore misdirected; they should better have been addressed to the Forest Service, in the Department of Agriculture (rather than to this Department), since they concern matters under the direct jurisdiction of the Secretary of Agriculture. After consent to leasing was denied by the Forest Service, on behalf of the Department of Agriculture, BLM, acting for the Department of the Interior, had no choice but to exclude the 280-acre tract in the nursery area from the lease issued to Hook.

Accordingly, 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

I concur:

R. W. Mullen
Administrative Judge