

INTERIOR BOARD OF LAND APPEALS

John Koldjeski

166 IBLA 128 (July 6, 2005)

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JOHN KOLDJESKI

IBLA 2004-282

Decided July 6, 2005

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease offers. CACA 46287 and 46288.

Affirmed.

1. Geothermal Leases: Applications: Generally--Geothermal Leases: Noncompetitive Leases

When BLM processes noncompetitive lease offers for geothermal resources, the determination regarding the availability of the subject lands for leasing is properly made in accordance with current public land records.

APPEARANCES: John Koldjeski, Breckenridge, Texas, pro se; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

On February 20, 2004, John Koldjeski filed two noncompetitive geothermal lease offers for lands located within sec. 31, T. 37 N., R. 1 E., Mount Diablo Meridian, Shasta County, California. The lease offers were for 0.42 and 2.7 acres of land. BLM serialized the offers as CACA 46287 and 46288, respectively. With the lease offers, Koldjeski included documentation supporting his contention that the lands on which the leases would be located are owned by the United States in fee simple, and administered by the United States Forest Service. BLM, however, rejected the lease offers because the Leasable Resources Plats showed that the lands at issue were subject to a private patent (No. 1331). (June 9, 2004, Decision at 1.)

Koldjeski timely appealed. He asserts that BLM's land records are incorrect, and that BLM should have undertaken a title search to determine the status of the lands before rejecting his lease offers. He states that he included documentation

showing that the land was in Federal ownership, but believes that the information was ignored by BLM. Koldjeski submits copies of deeds indicating that private citizens conveyed the tracts in question to the United States, along with a Forest Service letter stating that it was managing the property as Federal land.

In its Answer, BLM does not deny that its records may be incorrect. BLM states that it has begun the process of investigating the status of the lands. (Answer at 5). BLM also states that it will notify Koldjeski as to the status of the lands once it concludes its investigation. Id.

Pending the outcome of BLM's analysis, it is not for the Board to determine whether or not the land records are correct. We find that despite the remaining ambiguities regarding the land records, however, BLM correctly determined that the subject lands were not available for geothermal leasing. BLM's actions were in accord with the well established "notation rule," which states that:

[W]here public land records have been noted to show that a parcel of land is not available under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

William Dunn, 157 IBLA 347, 353 (2002). The rule also applies where the public land records show that the lands were previously patented. See MM Holdings, 121 IBLA 26, 30 (1991); B.J. Toohey, 88 IBLA 66, 77-82, 92 I.D. 317, 324-26 (1985). BLM is correct in citing the purpose of this rule:

Fairness to all members of the public dictates that, where the records are improperly noted so as to appear to effectively foreclose the initiation of rights by individuals in a specific tract of land, the Department should treat the land in question as it is noted on the records, until such time as the records are changed to correctly reflect the true status of the land.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317, 327 (1982).

Here, current records showed that the lands that would be subject to the proposed leases were patented (No. 1331) without mineral reservation to the United States. Under the notation rule BLM therefore correctly determined that the lands were unavailable for leasing and rejected Koldjeski's lease offers accordingly. It has correctly initiated the process of verifying the records, based upon the information provided by the events leading to this appeal, but may not accept a lease offer until the land records, properly noted, are available to all of the public. If BLM later

concludes from its investigation that the lands are available for leasing, it may only issue a lease after the plat is corrected and approved. See MM Holdings, 121 IBLA at 30.

What may happen if BLM finds that it must change its land records and Koldjeski submits another lease offer is not before us. BLM will notify Koldjeski as to its determination of the status of the lands at the conclusion of its investigation. BLM has stated as much. (SOR at 5).

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.

Lisa Hemmer
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge