

Appeal from a decision of the Colorado State Office, Bureau of Land Management, notifying a lessee that his geothermal lease had terminated automatically by operation of law and establishing conditions for reinstatement. COC-30775.

Affirmed.

1. Geothermal Leases: Reinstatement--Geothermal Leases: Rentals--  
Geothermal Leases: Termination

When a lessee failed to timely pay annual rental due on a geothermal lease on which there was no well capable of producing geothermal resources in commercial quantities, the lease terminated by operation of law, and BLM properly limited the right of the lessee to seek reinstatement to a 30-day period following notice of termination.

APPEARANCES: George M. Wilkinson, Aspen, Colorado, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

George M. Wilkinson has appealed from a March 25, 1992, decision of the Colorado State Office, Bureau of Land Management (BLM), notifying him that geothermal lease COC-30775 had terminated automatically by operation of law for failure to pay annual rental due on or before the September 1, 1991, lease anniversary date, and establishing a 30-day time limit within which to petition for reinstatement of the lease. Although the appeal was also filed on behalf of the Fidelity Trust Building, Inc., there is no evidence that it has any interest in the subject lease, and Wilkinson is recognized as the sole party-in-interest on appeal.

Because the subject lands are in the White River National Forest, their geothermal leasing required consent from the Forest Service, U.S. Department of Agriculture. See 30 U.S.C. § 1014(b) (1988); 43 CFR 3201.1-3. An application by Wilkinson for geothermal lease made on October 1, 1980, was therefore reviewed by the Forest Service and BLM. On July 26, 1988, the Forest Service consented to leasing, subject to certain stipulations. BLM then issued a 10-year lease to Wilkinson effective September 1, 1988, pursuant

to the Geothermal Steam Act of 1970, as amended, 30 U.S.C. §§ 1001-1025 (1988). The lease covered 272 acres of land in sec. 18, T. 11 S., R. 84 W., sixth principal meridian, Pitkin County, Colorado. A contention by Wilkinson that the lease encompasses 364 acres (statement of reasons (SOR) at 3), therefore, has no foundation in the record. Although, in an amended application filed on January 17, 1983, he sought to lease all unpatented lands in sec. 18 (totalling 364.9 acres), the Forest Service refused to consent to lease 92.9 acres of the land applied for in the Maroon Bells/ Snowmass Wilderness Area, and as a result the lease signed by Wilkinson and BLM excluded the wilderness area and was for 272 acres.

After issuance of the lease, Wilkinson paid annual rental due on or before the September 1 anniversary date for the second and third lease years. He also overpaid rental due for the third lease year by \$173. There is no evidence that this money was ever refunded, nor is there any record of payment of annual rental for the fourth lease year, which was due on or before September 1, 1991. The March 1992 BLM decision notified Wilkinson of the fact that his lease had terminated automatically by operation of law for failure to pay the annual rental due on or before the September 1, 1991, lease anniversary date; the decision then established conditions under which Wilkinson might exercise his right to file a petition for reinstatement of the terminated lease. He was informed that he might qualify for reinstatement by showing that his failure to pay timely was either justifiable or not due to a lack of reasonable diligence, provided that all back rental was paid with the petition. The decision found that reinstatement also depended upon whether reinstatement was "in the best public interest," that is, whether the Forest Service (after withdrawing consent to leasing generally in the White River National Forest on October 26, 1988, pending further review) would again consent to leasing. Wilkinson was allowed 30 days from receipt of the decision to petition for reinstatement and to pay back rental owed, failing which no petition would be considered. A timely appeal was filed.

On appeal, Wilkinson does not deny that he failed to pay annual rental due on or before the September 1, 1991, lease anniversary date. He argues instead that BLM could not cancel his lease because, during the first 5 years of the life of the lease, he complied with diligent exploration requirements imposed by 43 CFR 3203.5. See SOR at 4, 7. He states that, since 1983, he has spent over \$125,000 to prepare and submit a notice of intent to conduct exploration and drilling operations and a plan of operations, obtain necessary permits for such activity from local, state, and Federal authorities, contract for exploration and drilling work, secure needed financing, and to explore for geothermal resources underlying the subject land. See SOR at 3, 4-8.

[1] The geothermal lease here at issue did not terminate, as arguments advanced on appeal assume, as a result of the March 1992 decision or any other action by BLM; instead, the lease terminated by operation of law. This means that, when Wilkinson failed to pay the annual rental due on or before September 1, 1991 (as required by 30 U.S.C. § 1004(c) (1988), 43 CFR 3205.3-2(a), and section 1 of his lease agreement), the lease then terminated. Section 5(c) of the Geothermal Steam Act of 1970, 30 U.S.C.

§ 1004(c) (1988), provides that "failure to pay rental on or before the anniversary date shall terminate the lease by operation of law." To bring the statute into play, it is required only that the lease must not have a well capable of producing geothermal resources in commercial quantities. See id. There is no evidence that the Wilkinson lease contained such a well, and he does not contend that it did. Consequently, his argument that before BLM terminated his lease he should have been allowed 90 days to pay the annual rental due (see SOR at 3), must be rejected because it rests on a mistaken assumption about how the lease terminated. With one exception, there is nothing in the statute or implementing regulations that permits BLM to extend the time for payment of rental after the anniversary date so as to avoid lease termination.

The exception occurs when a lessee has paid on or before the anniversary date, but the payment was nominally deficient. See 30 U.S.C. § 1004(c) (1980); 43 CFR 3244.2-2(a). The lessee is then permitted 15 days from receipt of notice to pay the deficiency. But in this case, even construing the overpayment of \$173 made by appellant in 1990 as a partial payment for the fourth lease year that was made on or before September 1, 1991, the deficiency was not nominal, because it was more than \$10 or 1 percent of the total due (\$2.72). See 43 CFR 3244.2-2(a). The exception is not available in this case. See 30 U.S.C. § 1004(c) (1988); 43 CFR 3244.2-2(a); W. H. Hunt, 55 IBLA 14, 15 (1981).

Similarly misplaced are arguments made by Wilkinson concerning diligent exploration resulting in the expenditure of certain minimum amounts each year: There is nothing in the Geothermal Steam Act of 1970 or implementing regulations that prevents a lease from terminating by operation of law for failure to pay annual rental if the lessee has engaged in diligent exploration within the meaning of 43 CFR 3203.5 (establishing levels of expenditure required for leases after the fifth year). Even assuming that Wilkinson conducted diligent exploration before September 1, 1991, sufficient to satisfy regulatory requirements for the sixth and subsequent lease years (BLM contends otherwise), nothing in the statute or its implementing regulations prevented his lease from terminating automatically by operation of law when he failed to timely pay rental due, and we reject the contention that diligent exploration is a relevant consideration in this appeal.

Section 5(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1004(c) (1988) and 43 CFR 3244.2-2(b), provide for reinstatement of a geothermal lease terminated by operation of law for failure to timely pay annual rental. To be entitled to reinstatement, the lessee must submit a petition for reinstatement, establishing that his failure to pay was either justifiable or not due to a lack of reasonable diligence (as those criteria are defined in Departmental regulations and opinions), and pay all rental due. See 30 U.S.C. § 1004(c) (1988); 43 CFR 3244.2-2(b)(1); Leonard Lundgren, 53 IBLA 149, 151-52 (1981). The March 1992 decision required Wilkinson to submit a petition for reinstatement and pay back rental due within 30 days of receipt of the decision if reinstatement were to be considered. BLM is entitled to set reasonable deadlines for compliance with legitimate requirements and to provide penalties for failure to comply.

See Mary Nan Spear, 101 IBLA 13, 16 (1988), and cases cited. The 30-day period that was here provided by BLM is comparable to the 60-day deadline established by Departmental regulation for oil and gas leases. See 43 CFR 3108.2-2(a)(3); failure to submit a timely petition in those cases forecloses the possibility of reinstatement. See James Darby, 92 IBLA 231, 233 (1986). The March 1992 BLM decision was received by appellant on March 30, 1992. Time for compliance with the stated terms for seeking reinstatement of the subject lease has long since passed.

There is no evidence that a petition for reinstatement accompanied by back rental was ever filed with BLM in this case, but on appeal Wilkinson asks the Board of Land Appeals to find that his lease was improperly cancelled and to reinstate it (SOR at 9). This cannot be accepted as a proper petition for reinstatement since, regardless whether it was timely presented to BLM, it offers no evidence to show qualification for reinstatement, nor was it accompanied by payment of rental owed. The petition is therefore denied. See Caroline L. Hunt, 43 IBLA 314, 316 n.3 (1979). Nor can we take action on Wilkinson's notice of intent to drill or his plan of operations (Exhs. B and E to SOR), since neither was the subject of the March 1992 BLM decision that is before us for review. See SOR at 6.

It is therefore concluded that the BLM decision here under review properly found that geothermal lease COC-30775 terminated automatically by operation of law when Wilkinson failed to pay the annual rental due on or before the September 1, 1991, lease anniversary date, subject to his right to seek reinstatement of the lease. The lease is no longer subject to reinstatement, however, because a timely petition for such relief accompanied by payment of back rental was not filed.

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.

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Franklin D. Arness  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge