

APACHE ORO COMPANY

IBLA 73-419, 73-429

Decided December 10, 1973

Appeal from two decisions of the Arizona State Office, Bureau of Land Management, denying renewal of Lake Mead Mineral Leases A-1166, A-1167, A-1197, A-1200, A-1198 and A-1199.

Affirmed.

Act of October 8, 1964--Public Lands: Leases
and Permits

A five-year Lake Mead mineral lease is subject to renewal for successive five-year terms if it is a lease in good standing.

Act of October 8, 1964--Public Lands: Leases
and Permits

Where the holder of a Lake Mead mineral lease does not mine and produce minerals within the time required by the lease, the lease is not in good standing unless the failure to do so is occasioned by strikes, the elements, or casualties not attributed to the holder.

APPEARANCES: Warren M. Mallory, President of Apache Oro Company, for appellant.

OPINION BY MRS. THOMPSON

Apache Oro Company (hereinafter "appellant") appeals from two decisions of the Arizona State Office, Bureau of Land Management (BLM), denying renewal of Lake Mead mineral leases issued by the BLM under the authority of the Act of October 8, 1964, 78 Stat. 1039-40, 16 U.S.C. § 460n-3 (1970). 1/ The decisions denying the

1/ The appeal in 73-419 from a decision dated May 23, 1973, involves Lake Mead mineral leases A-1166, A-1167, A-1197, and A-1200. The appeal in 73-429 from a decision dated June 12, 1973, involves Lake Mead mineral leases A-1198 and A-1199.

renewal requests were made on the identical grounds that appellant did not comply with section 2(a) of the lease which provides:

Sec. 2. The lessee in consideration of the lease of the rights and privileges aforesaid hereby agrees:

(a) To commence mining within six (6) months from the date hereof. To mine and dispose of the minerals with reasonable diligence, and, beginning with the second year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributed to the lessee or unless operations are suspended under the authority of the Secretary of the Interior, to mine and produce each year minerals from the leased area, to yield a royalty to the United States of not less than one dollar (\$1) per acre or to pay such a minimum royalty if the value of production be insufficient for that purpose.

This conclusion that appellant had not complied with this section was based on a recommendation by the Lake Mead Recreation Area, the agency having jurisdiction over the lands involved, that the leases should not be renewed because appellant was not mining and producing minerals. There is no factual dispute in this regard.

Appellant admits not having mined or disposed of any minerals, but maintains it has "complied with both the terms and intent of the leases." However, its only assertion of meeting the above-quoted term of the leases is that its original plan of operations was interrupted by "unknown elements of geology and unforeseen conditions not attributed to Apache Oro Company."

Appellant explains that at the time the lease was issued, it believed the leased areas contained only small placer gold deposits which it intended to mine with a small recovery operation. Subsequently, geophysical, geochemical and geological surveys in connection with the leased lands and other properties indicated the possible presence of much larger deposits of placer gold and other minerals than previously believed, and suggested a different type of mining operation. In response to this information, Apache postponed its planned mining operations and engaged in additional exploration in the leased areas. It desires to continue its exploration if the lease is renewed.

Lake Mead mineral leases are subject to renewal for additional periods of five years each. Regulation 43 CFR 3566.4-5 says:

Leases will be issued for a period of 5 years and any lease in good standing will be subject to renewal for successive 5-year terms on such reasonable terms as may be prescribed by the Secretary of the Interior * * *.

The only question presented by this appeal is whether appellant's leases are eligible for renewal--are they leases in good standing?

There is no showing that operations under the lease were suspended under authority of the Secretary or that any suspension was requested by the lessee. In the absence of such a suspension, the lease requires the lessee to commence mining within six months of the date of the lease. He was also to mine and produce minerals beginning with the second year of the lease, see section 2(a), *supra*, "except when operations are interrupted by strikes, the elements, or casualties not attributed to the lessee * * *." Unless the reasons for appellant's failure to mine and produce minerals are attributable to one of these three occurrences, the leases are not leases in good standing.

Each of the section 2(a) categories involves unforeseeable, unavoidable occurrences beyond the control of the lessee. The only factor allegedly preventing appellant from mining or producing minerals, "elements of geology," resulted from its own business judgment. Appellant allegedly was originally mistaken as to the quantity of minerals on the leased area; this does not excuse compliance with the terms of the lease. *Cf. Andrew W. Miscovich*, 6 IBLA 265, 266 (1972). "Elements" for the purposes of this lease means factors such as tornadoes, hurricanes, floods, earthquakes and the like, not "elements" such as absence or presence of gold, silver, copper or other minerals.

Appellant's failure to mine did not result from a strike, interference of the elements, or a casualty, but from its lack of planning and preparation, and its leases are not in good standing. Renewal of them was properly denied.

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.

Joan B. Thompson, Member

We concur:

Frederick Fishman, Member

Joseph W. Goss, Member

