

UNION TEXAS EXPLORATION CO.

IBLA 83-88

Decided May 31, 1984

Appeal from decision of Utah State Office, Bureau of Land Management, holding competitive geothermal resources lease for cancellation. U-32258.

Affirmed as modified.

1. Geothermal Leases: Cancellation -- Geothermal Leases: Competitive Leases -- Geothermal Leases: Termination

BLM may properly hold for cancellation a competitive geothermal resources lease, issued pursuant to sec. 3 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1982), for failure to engage in exploration operations meeting minimum per acre expenditure requirements or to pay an additional rental after the fifth year of the primary lease term, in accordance with 43 CFR 3203.5. The lessee must pay the increased rental in arrears and will have 30 days following receipt of notice of cancellation either to correct the violation or, if the lessee elects to engage in exploration operations and is unable to meet the expenditure requirements within 30 days, to commence such operations in good faith within that time period and thereafter to proceed diligently to meet such requirements, or may elect to continue payment of the rental at the increased rate.

APPEARANCES: Edward B. Dunn, Division Landman, Union Texas Petroleum, Denver, Colorado, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE ARNESS

Union Texas Exploration Company (Union Texas) has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 30, 1982, holding its competitive geothermal resources lease, U-32258, for cancellation.

Effective May 1, 1976, BLM issued a geothermal resources lease to Southern Union Production Company (Southern) for 1,924.58 acres of land in Iron County, Utah, pursuant to section 3 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1982). By decision dated August 1, 1977, BLM recognized a change in the name of the lessee from Southern to Supron Energy Corporation (Supron). In a memorandum to the State Director, BLM, dated October 13, 1978, the Area Geothermal Supervisor, Conservation Division, Geological Survey (Survey), stated that Southern had reported no diligent exploration expenditures from May 1, 1976, to April 30, 1977, pursuant to 30 CFR 270.77 (1982). In a letter to Hydro-Search, Inc. (Hydro-Search), Supron's agent, dated November 9, 1978, the Area Geothermal Supervisor stated that Hydro-Search had reported no expenditures for the period May 1, 1977, to April 30, 1978. The record also contains the annual reports submitted by Supron for the lease years 1979, 1980, and 1981, which uniformly state: "There were no field operations on the above leases [including U-32258] during this reporting period." Finally, in a reply to a BLM request, dated June 10, 1982, the Acting Deputy Conservation Manager, Minerals Management Service (MMS) (formerly the Conservation Division, Survey), stated that no diligent exploration expenditures had been reported "to date" for lease U-32258.

In its July 1982 decision, BLM, relying on the MMS report, held geothermal resources lease U-32258 for cancellation because "no qualifying expenditures had been made on this lease," in accordance with 43 CFR 3203.5. BLM, in accordance with 43 CFR 3244.3, allowed appellant 30 days from receipt of the decision "to comply with the diligent exploration expenditure requirements or to appeal." If no action was taken, BLM stated, "the case will be closed on the records of this office."

In its statement of reasons for appeal, appellant states it is the successor in interest of lease U-32258 through "acquisition" of all Supron's leasehold interests 1/ and that it was "in the process of sorting through leases for special requirements" at the time it received notice of termination of the lease. Appellant also states that it "discovered that a Farmout request from Amax Exploration Inc., was in the process of being formalized for the exploration and development of the above and other leases." Appellant requests a 6-month extension of time to comply with diligent exploration expenditure requirements. 2/

[1] The applicable regulation, 43 CFR 3203.5 (1982), provided, at the time appellant's lease was issued, that: "Each geothermal lease will include provisions for the diligent exploration 3/ of the leased resources until

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1/ The record contains a copy of an affidavit by the Assistant Secretary, Union Texas, dated Apr. 28, 1982, which states that "[o]n April 28, 1982, Supron merged with Union Texas."

2/ On May 11, 1982, appellant filed an assignment of 50 percent of its record title interest in lease U-32258 to Florida Exploration Company, dated Apr. 29, 1982.

3/ "Diligent exploration" was defined as "exploration operations (subsequent to the issuance of the lease) on, or related to the leased lands, including, but not limited to, operations such as geochemical surveys, heat flow measurements, core drilling, or drilling of a test well." 43 CFR 3203.5 (1982). Such operations must also be "approved by the Supervisor." Id.

there is production in commercial quantities applicable to the lands subject to the lease, and failure to perform such exploration may subject the lease to termination." In addition, 43 CFR 3203.5 (1982) set certain minimum annual expenditures which "must" be spent "after the fifth year of the primary lease term," in order for exploration operations "to qualify as diligent exploration for a year." <sup>4/</sup>

Section 13 of the "Geothermal Resources Lease" (Form 3200-21 (May 1974)) issued to appellant, provides that:

In the manner required by the regulations, the Lessee shall diligently explore the leased lands for geothermal resources until there is production in commercial quantities applicable to this lease. After the fifth year of the primary term the Lessee shall make at least the minimum expenditures required to qualify the operations on the leased lands as diligent exploration under the regulations.

Moreover, 43 CFR 3244.3 (1982) provides, in relevant part, that:

A lease may be canceled by the authorized officer for any violation of these regulations, the regulations in 30 CFR Part 270, or the lease terms, 30 days after receipt by the lessee of notice from the authorized officer of the violation, unless (a) the violation has been corrected, or (b) the violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction.

Appellant does not assert that it, or its predecessor in interest, Supron, was not required to make certain minimum annual expenditures after the

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<sup>4/</sup> Such annual expenditures must be "equal to at least two times the sum of (a) the minimum annual rental required by statute, and (b) the amount of rental for that year in excess of the fifth year's rental, but in no event shall the required expenditures exceed twice the rental for the 10th year." 43 CFR 3203.5 (1982).

fifth year of the primary lease term, i.e., after April 30, 1981, or that expenditures were actually made for the lease year, running from May 1, 1981, to April 30, 1982. Rather, appellant requests a 6-month extension of time to comply with diligent exploration expenditure requirements.

43 CFR 3244.3 does not provide for mandatory cancellation of a geothermal resources lease for a violation of the regulations in 43 CFR Part 3200 or the lease terms. Rather, the regulation provides that a lease "may" be canceled for such a violation. 43 CFR 3244.3. Effective May 20, 1983, 43 CFR 3203.5 was amended in certain respects by notice published in the Federal Register. See 48 FR 17042 (Apr. 20, 1983). The amended rule, 43 CFR 3203.5, preserves the requirement of minimum annual expenditures after the fifth year of the primary lease term, set at per acre figures. In addition, the regulation now provides that a lessee may opt to pay an additional rental in lieu of performing the minimum required diligent exploration. Finally, the regulation states: "Failure to either pay the additional rental or complete the minimum required diligent exploration by the end of a lease year shall subject the lease to cancellation." (Emphasis added.) 43 CFR 3203.5 (48 FR 17045 (Apr. 20, 1983)). BLM may therefore hold a geothermal resources lease for cancellation where the minimum qualifying expenditures are not made after the fifth year of the primary lease term. Accordingly, we find that BLM properly held appellant's lease for cancellation for that reason.

Ordinarily, where BLM has made a final adverse adjudication based upon a finding of a statutory or regulatory violation, but provides a period of time for the correction of such violation, the filing of an appeal will not serve to extend the period for compliance. See Carl Gerard, 70 IBLA 343 (1983).

Were it otherwise, the adversely affected party would be encouraged without risk of loss to appeal rather than to comply within the period allowed. However, this case is governed by 30 U.S.C. § 1011 (1982), which provides:

Leases may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said period to correct such violation and thereafter to proceed diligently to correct such violation. Lessee shall be entitled to a hearing on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice. The period for correction of violation or commencement to correct such violation of regulations or of lease terms, as aforesaid, shall be extended to thirty days after the Secretary's decision after such hearing if the Secretary shall find that a violation exists. [Emphasis added.]

Since the fact a violation has occurred is undisputed, no evidentiary hearing is needed. However, the statute provides the lessee may request a hearing either "on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice." Although the lessee did not expressly request a "hearing" within that period on the issue of the lease termination, it did file this appeal, with explanations and arguments why the lease should not be terminated. The Board finds this amounts to a request for hearing within the purpose and intent of the statute in the circumstances of this case.

Therefore, while we conclude that BLM properly held appellant's lease for cancellation, we find the statute requires the period for correction of the violation be extended for 30 days after the date of this decision. Moreover, we hold that by and since the amendment of 43 CFR 3203.5 on

April 20, 1983, appellant has incurred a liability for increased rental by reason of election not to correct the violation or to acquiesce in the cancellation.

Accordingly, appellant will have 30 days from the date of this decision within which to pay the increased rental, with interest, from April 20, 1983, and either to engage in exploration operations meeting the minimum per acre expenditure requirements of the current version of 43 CFR 3203.5 or, alternatively, to make a declared determination to continue to pay the increased rental.

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 as modified.

Franklin D. Arness  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

