

AMETEX CORP.

IBLA 89-548

Decided November 25, 1991

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying relinquishment for Federal coal leases NM 732 and NM SF 048323.

Affirmed.

1. Coal Leases and Permits: Relinquishment--Coal Leases and Permits: Rentals

A request for relinquishment of a coal lease is properly denied pursuant to Departmental regulation 43 CFR 3452.1-3 where the record shows that payment of \$3,753.60 for outstanding accrued rental and interest had not been paid when the request was filed.

2. Coal Leases and Permits: Relinquishment--Coal Leases and Permits: Rentals--Laches

That BLM did not take action on a request for relinquishment of a coal lease until 2 years after it was filed, during which time late payment charges accrued, does not relieve the lessee of the obligation to pay late payment charges.

APPEARANCES: Jean L. Roller, President, Ametex Corporation, Carlsbad, California.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ametex Corporation (Ametex) has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 12, 1989, denying requests for relinquishment of Federal coal leases NM 732 and NM SF 048323. BLM denied relinquishment because outstanding rental had accrued and not been paid on these leases and under 43 CFR 3452.1-3 no relinquishment shall be approved unless all obligations under the lease have been met by the lessee.

Coal lease NM SF 048323 was originally issued on July 19, 1929, and subsequently assigned to Ametex, effective February 1, 1978. The lease, as assigned, includes 120 acres situated in sec. 35, T. 19 N., R. 2 W., New Mexico Principal Meridian, Sandoval County, New Mexico. Coal lease NM 732 was originally entered into on February 1, 1967, and subsequently

assigned to Ametex, effective February 1, 1978. The lease includes 160 acres located in sec. 4, T. 19 N., R. 1 W., New Mexico Principal Meridian, Sandoval County, New Mexico.

On December 29, 1986, Ametex filed a notice of relinquishment for coal leases NM 732 and NM SF 048323. In the decision denying relinquishment BLM cited 43 CFR 3452.1-3, which provides that no relinquishment shall be approved until the authorized officer determines that relinquishment will not impair the public interest, that accrued rentals and royalties have been paid, and that all obligations of the lessee under the regulations and terms of the lease have been met. The decision stated that on September 19, 1988, Ametex was informed that payment of \$3,753.60 for outstanding rental and interest had not been received on Bill for Collection A337123. Accordingly, BLM denied relinquishment because the requirements of 43 CFR 3452.1-3 had not been met.

In its statement of reasons, Ametex asserts that it first contacted BLM concerning the relinquishment in 1986, when the leases were current and there were no accrued penalties. Ametex states that 2 years later, BLM gave notice that the leases "must not only be paid for but repaired." According to Ametex these leases "have never been touched * * * are not desirous * * * and * * * have not been part of the overall planning of the corporation for the past two years." Ametex argues that the responsibility for these leases and rental payments lies with BLM because of "the paper work which was not generated in a timely fashion by your agency." (Emphasis in original.) Ametex asserts that BLM's "lack of timeliness (by statute)" and BLM's failure to respond to the Ametex request for over two years placed an undue burden on Ametex.

[1] The applicable statutory authority for relinquishment of a coal lease is section 30 of the Mineral Leasing Act, 30 U.S.C. § 187 (1988), which provides that: "The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease." ^{1/} Departmental regulation 43 CFR 3452.1-3, promulgated to implement the Act, states:

The effective date of the lease relinquishment shall, upon approval by an authorized officer, be the date on which the

^{1/} In Section 2(a)(2)(A) of the Mineral Leasing Act of 1920, M-36951, 92 I.D. 537, 557-58 (Feb. 12, 1985), the Solicitor opined that the relinquishment provision found in section 30 of the Act, 30 U.S.C. § 187 (1988), vests Secretarial discretion exercised by rule or adjudication to carry out the purposes of the Act. The opinion finds, citing H.R. Rep. No. 398, 66th Cong., 2d Sess. 18 (1919), that the purpose of the Act was to "promote the prospecting and development of the mineral deposits of the public domain with due protection to the public interest." The Solicitor observed that requiring proper accounting for rents is a reason affecting the public interest on which acceptance of a relinquishment may be conditioned.

lessee filed the lease relinquishment. No relinquishment shall be approved until the authorized officer determines that the relinquishment will not impair the public interest, that the accrued rentals and royalties have been paid and that all obligations of the lessee under the regulations and terms of the lease have been met.

Bill for Collection A 337123 specifies that Ametex owed \$640 in back rentals from 1983 through 1986 for lease NM 732 and \$2,040 in back rentals from 1981 through 1986 for lease NM SF 048323. By letter dated September 19, 1988, BLM informed Ametex that payment had not been received on Bill for Collection A 337123 and that it was past due. BLM stated that the amount of Ametex's indebtedness as of August 6, 1987, totaled \$3,753.60 for the leases. ^{2/} Ametex was also informed that the assessment of interest and penalty charges would continue to accrue until the debt was liquidated.

Ametex contends that when it filed the request for relinquishment, both leases "were current and up to date and had no accrued penalties." Ametex seems to say that accrual of rental and penalties was due to BLM's failure to take immediate action on the request for relinquishment. This argument is without merit. First, Ametex owed rental on lease NM 732 from 1983 and rental on NM SF 048323 since 1981, several years before the request for relinquishment was filed in December 1986. Thus, the leases were not "current." Back rental for 4 years on NM 732 and 6 years on NM SF 48323 was due at the time Ametex sought relinquishment.

Also, Bill for Collection A 337123 included delinquent rentals through 1986. No rentals accrued after December 1986, when Ametex filed the request for relinquishment. In Garland Coal & Mining Co., 52 IBLA 60, 71-72, 88 I.D. 24, 30 (1981), the Board referred to Relinquishment of a Coal Lease, M-36511 (June 17, 1958), in which the Associate Solicitor found that "[t]he general practice has been to accept a relinquishment upon payment of rentals accrued prior to the filing date." See also Southwest Salt Co., 2 IBLA 81, 78 I.D. 82 (1971).

[2] Interest and penalties did continue to accrue, as BLM informed Ametex by letter dated September 19, 1988. Under 30 CFR 218.202(a) (formerly codified at 30 CFR 218.200(a) (1986)), failure to make timely payment of rental due on a Federal coal lease will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. See Cyprus Western Coal Co., 103 IBLA 278 (1988). Late payment charges are assessed on any late payment from the date the payment was due until the date on which the payment is received in the appropriate MMS accounting office. 30 CFR 218.202(b). The fact that BLM did not take action on the request for relinquishment until 2 years after the request was

^{2/} This amount included principal (\$2,680), interest at 9 percent per year (\$635.16), administration handling charges (\$15), and administrative penalty at 6 percent per year (\$423.44).

filed, during which time late payment charges accrued, does not relieve the lessee of its obligation to pay late payment charges. Even assuming that BLM was tardy, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duty. Amoco Production Co., 78 IBLA 93 (1983).

That Ametex now considers the leases to be undesirable and unnecessary for its operations is an argument that is irrelevant to the question whether it owes the payments shown to be due. Also, Ametex's reference to BLM's "lack of timeliness (by statute)" fails to state a reason for appeal. Not only has Ametex failed to identify the statute to which it refers by this statement, it fails to specify in what manner BLM's action was contrary to it. The Board cannot indulge in speculation about this matter. See Shama Minerals, 119 IBLA 152, 155 (1991). The fact remains that Ametex had not paid the overdue rentals and BLM properly rejected the request for relinquishment in accordance with 43 CFR 3452.1-3 as a consequence.

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.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge