



PRESCO ENERGY, INC.

183 IBLA 154

Decided January 18, 2013



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PRESCO ENERGY, INC.

IBLA 2012-88

Decided January 18, 2013

Appeal from a December 22, 2011, decision of the Nevada State Office, Bureau of Land Management, denying a request for extension of terminated Geothermal Lease received after the end of the lease's primary term. NVN-75230.

Affirmed as modified.

1. Geothermal Leases: Extensions

Under 43 C.F.R. §§ 3207.10(b)(1), 3207.11, a geothermal lease is eligible for a “work requirement” extension at the end of the primary 10-year term, provided the lessee has satisfied the requirements set forth in 43 C.F.R. § 3207.11(a) or (b). Departmental regulation 43 C.F.R. § 3207.11(c), requires that detailed documentation demonstrating compliance must be submitted to BLM “[p]rior to the end of the 10th year of the primary term.”

2. Geothermal Leases: Extensions

Under 43 C.F.R. § 3207.14, a geothermal lease, whether or not the lease is committed to a unit, is eligible for a “drilling extension” at the end of the primary 10-year term when the lessee has commenced drilling a test or production well on the lease and is diligently drilling to a depth that BLM determines is adequate.

3. Geothermal Leases: Extensions--Geothermal Leases: Unit and Cooperative Agreements

To extend the primary term of a geothermal lease committed to a unit and extend the lease term to coincide with the term of the unit, the unit operator must request a lease extension at least 60 days before the lease expires showing that unit development has been diligently pursued. 43 C.F.R. § 3207.17.

APPEARANCES: William E. Sparks, Esq., Bret Sumner, Esq., Drake Hill, Esq., Denver, Colorado, for Appellant; Elizabeth A. Gobeski, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Presco Energy, Inc. (Presco) appeals from a December 22, 2011, decision of the Nevada State Office, Bureau of Land Management (BLM), denying a request for extension of terminated Geothermal Lease NVN-75230 (the Lease) received after the end of the lease's primary term. Because we find that the Lease was properly declared terminated for a reason not articulated by BLM in its decision, we will modify the decision and affirm it as modified.

Background

Following a competitive lease sale held on September 27, 2001, pursuant to the Geothermal Steam Act of 1970 (GSA), *as amended*, 30 U.S.C. §§ 1001-1028 (2006), BLM issued the Lease, effective December 1, 2001. The Lease, covering a tract of land in Pershing County, Nevada, was issued for a primary term of 10 years, expiring at the end of November 30, 2011. On June 1, 2009, BLM approved inclusion of the Lease in the Humboldt House Geothermal Development Unit (the Unit),¹ NVN058323X, with Presco designated as Unit operator. The lease encompasses 1,666.12 acres in the 11,593.41-acre Unit. Presco controls 91% of the acreage within the Unit.²

In March 2011 Presco submitted plans for drilling Well 44-28 (Test Well) in Lease NVN-48027, another lease in the Unit. BLM reviewed this exploratory project and approved it on June 10, 2011. Statement of Reasons (SOR), Ex. 2 at ¶ 10. Presco spudded the Test Well on July 1, 2011 and completed and shut in the well on August 20, 2011, due to down-hole problems. *Id.* at ¶ 11.

¹ The Humboldt Unit formerly was known as the Rye Patch Geothermal Unit. The Unit name was changed at Presco's request and BLM approved the change in a letter dated June 1, 2009. SOR at 1.

² With passage of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (Aug. 8, 2005), the Department offered lessees with geothermal leases issued before August 8, 2005, the option of subjecting those leases either to the prior regulations or to the new regulations implementing the new legislation. 43 C.F.R. § 3200.7. Presco elected to convert the Lease to regulation under the new rules promulgated in 2007, and the Lease was converted effective December 1, 2008. Decision at 1. The Lease's effective and termination dates remained the same. *Id.*

On November 18, 2011, Presco submitted Sundry Notices to conduct further testing, completion, well-head design, and a site plan for the Test Well. SOR, Ex. 6. BLM commenced environmental analysis of Presco's proposal on November 20, 2011, and Presco provided additional well data for that analysis on November 30, 2011, the last day of the 10-year term for Lease NVN-75230. *Id.*, Ex. 2 at ¶ 23. BLM states, and Presco does not disagree, that, by the end of the last day of the primary term, Presco had not applied for an initial extension of the Lease term. Answer at 2.

It also is undisputed that Presco first requested an extension of the Lease by a letter sent to BLM by e-mail dated December 5, 2011 (Extension Request).³ Presco reported that the Unit includes seven other Federal leases besides NVN-75230, three with effective dates in 1988, which had been extended under the new regulations. Presco stated: "Although we failed to provide this documentation prior to the end of the primary term (December 1, 2011), we believe there is ample justification for extension of NVN-075230 under several provisions of 43 CFR 3207, including 'Sec. 14: Drilling Extension' . . . 'Sec. 15: Production Extension' . . . [and] 'Sec. 17: Diligent Development.'" Extension Request at 1-2.

BLM's decision denied the request for extension on the basis that Presco had not complied with Departmental rules governing lease extension. BLM indicated that Presco had not submitted the requisite information demonstrating evidence of its work prior to the end of the primary term,⁴ nor evidence that it completed a well that is producing or is capable of producing in commercial quantities, as required under the Production Extension rule at 43 C.F.R. § 3207.15. Decision at 1. Finally, BLM addressed 30 U.S.C. § 1005(g), which provides that

Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for five years and so long thereafter, but not more than thirty-five years, as geothermal steam is produced or utilized in commercial quantities.

BLM explains it had no authority to grant Presco a drilling extension under this provision because "actual drilling operations" were not "being prosecuted" at the end

³ Presco's letter request was dated Dec. 1, 2011, after expiration of the Lease's primary term. However, as explained by BLM, there is no evidence in the record that delivery was attempted until Dec. 5, 2011. Answer at 2 n.2.

⁴ The decision mistakenly cited the rule at 43 C.F.R. § 3207.12, applicable to subsequent extensions of lease terms, rather than the Work Requirements Extension rule at 43 C.F.R. § 3207.11, applicable to extensions of primary terms.

of the lease's primary term since the Test Well was shut-in on August 22, 2011, and no drilling was being conducted anywhere within the Unit at the time of lease expiration. *Id.*

Discussion

Presco's Reasons for Appeal

Presco first relies on the statutory minimum work requirements rule authorizing a 5-year extension for a geothermal lease as long as the lessee meets "minimum work requirements." SOR at 9 (citing 30 U.S.C. § 1005(a)-(b) (2006); 43 C.F.R. §§ 3207.10, 3207.11). Presco argues that the statute does not require submission of an extension request prior to the termination of the lease, but only that the requisite work be completed during the primary term. *Id.* at 22.

Presco next contends that BLM must extend the primary term of the Lease because "actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time" SOR at 8 (quoting GSA, 30 U.S.C. § 1005(g) (2006)). Presco also asserts that the implementing GSA regulation, 43 C.F.R. § 3207.14, likewise obligates BLM to extend the Lease since the rule requires that the lessee "commenced drilling a well before the end of [the final lease] year" and is "diligently drilling to a target that BLM determines is adequate" SOR at 9. Presco avers that it "met both of these requirements at the end of the primary term when it completed the [Test Well] to a depth of 3,275 feet and was in the process of obtaining BLM permission to test, complete and equip the Well for future operations and eventual production." *Id.* at 2; *see also* Presco Reply at 6-14. Noting that the regulations in 43 C.F.R. Subpart 3207 do not provide definitions related to extending geothermal leases, Presco argues for application of the oil and gas lease extension rules by analogy, which define "actual drilling operations" as "not only the physical drilling of a well, but also the testing, completing or equipping of such well for production," and reliance on Board precedent relating to oil and gas leasing. SOR at 16 (citing 43 C.F.R. § 3100.0-5(g)); Presco Reply at 6-14; *Shell Oil Company*, 36 IBLA 253, 255 (1978) and *Burton W. Hancock*, 31 IBLA 18, 19 (1977).

Presco claims it satisfied the statutory and regulatory requirement for a drilling extension by commencing actual drilling operations on the Test Well prior to the end of the primary term for Lease NVN-75023. It also provides a long narrative describing its budget and plans regarding the Test Well developed under its grant awarded October 2009 by the Department of Energy under its Geothermal Technologies Program FOA 109 grant program. SOR at 3-5.

Presco avers that actual drilling operations within the Unit had commenced and that the company was diligently engaged in preparing for production phases. It considers BLM's contention that actual physical drilling must be taking place on the last day of the primary term too narrow a construction of "the test Congress established under 30 U.S.C. § 1005(g) designed to allow those who have diligently invested in geothermal resources to continue their efforts," and inconsistent with the regulations and Board precedent. Presco Reply at 14.

BLM's Response

BLM responds that Presco failed to qualify for the work requirements or payment in lieu of work requirement option when it failed to submit the necessary documentation before the end of the primary term of the Lease, as required by duly-promulgated regulations, and that, "unless the requirements have been met, the lease expires by operation of law the moment the initial 10-year period ends." Answer at 4-6 (citing 43 C.F.R. §§ 3207.10(b), 3207.11(c)).

BLM rebuffs Presco's argument that the Lease qualifies for a drilling extension under 30 U.S.C. § 1005(g) and implementing regulations at 43 C.F.R. § 3207.14 because, although the Test Well had been drilled for purposes of testing the geothermal reservoir in the unit, there was no diligent drilling *at the time of lease expiration* and, therefore, appellant failed to satisfy the second requirement. Answer at 7-8. BLM does not reject Presco's argument that, in the absence of a statutory or regulatory definition of "actual drilling operations" in the context of geothermal leasing, it is reasonable to look to the oil and gas rule at 43 C.F.R. § 3100.0-5(g) (defining "actual drilling operations" to include "not only the physical drilling of a well, but the testing, completing or equipping of such well for production") for guidance on the proper construction of that term. However, even assuming its applicability, BLM debunks the value of this argument in the present appeal, since Presco was not engaged in any of the other activities identified in 43 C.F.R. § 3100.0-5(g) on the day the Lease expired. *Id.* at 8 (citing *Getty Oil Co.*, 27 IBLA 269, 272 (1976)). BLM argues strenuously that "the regulation uses the present-tense physical verb 'are drilling' and relates it [to] the time frame of 'at the end of the 10th year.'" *Id.* at 9 (quoting 43 C.F.R. § 3207.14(a)). BLM also cites the preamble to the proposed and final rules as support for its interpretation as to timing.⁵ Presco, BLM claims, was merely making plans and seeking permits to drill at the time of lease expiration and the statute and regulations do not provide that activities such as those satisfy the diligent drilling requirement. *Id.* "Had Congress intended for 'diligent efforts' towards actual drilling operations to be sufficient to secure a drilling

⁵ 71 Fed. Reg. 41542, 41548-49 (July 21, 2006); 72 Fed. Reg. 24368 (May 2, 2007) (the drilling extension requirements are met "only if" the lessee "was drilling over the end of a year subsequent to the 10th year.").

extension, it obviously was aware of language to convey that intent,” since Congress used that term with respect to geothermal production extensions. *Id.* at 10. BLM posits that “Congress apparently intended a difference between the phrases ‘actual drilling operations . . . are being diligently prosecuted’ (drilling extensions [in 30 U.S.C. § 1005(g)]) and ‘diligent efforts are being made’ (production extensions [in 30 U.S.C. § 1005(h)]). *Id.* at 9-10; *see also id.* at 13-14.

For BLM, Presco’s failure to apply for applicable extensions or to timely apply for a permit to drill in order to be operating on the day the lease expired shows a lack of diligence. Presco’s “suggestion that it could not have obtained a permit earlier because it first needed to secure DOE approvals in order to obtain funding do not excuse its failure to act sooner to secure *BLM* authorization.” Answer at 14 (citing *Ruby Drilling Co.*, 119 IBLA 210, 214 (1991) (oil and gas lease decisions finding that “[i]nsufficient funds will not excuse a lessee’s failure to timely perform drilling obligations.”).

Analysis

As noted, the GSA is implemented by rules found in 43 C.F.R. Part 3200.⁶

⁶ The geothermal leasing regulations addressing lease terms and extensions are set forth in 43 C.F.R. Subpart 3207. These rules implementing the GSA provide various mechanisms for obtaining initial extensions of the lease term:

- (1) Work Requirements Extension: 43 C.F.R. §§ 3207.10(b), 3207.11(a)-(c) - under 43 C.F.R. § 3207.11(a), lessees must expend \$40 per acre on certain development activities approved by BLM, or, under paragraph (b), make a payment in lieu of work. Paragraph (b) also exempts from work requirements a lessee who submits documentation showing it has produced or utilized geothermal resources in commercial quantities. Documentation demonstrating compliance with (a) or (b) must be submitted to BLM “[p]rior to the end of the 10th year of the primary term.” 43 C.F.R. §§ 3207.11(c); *see* 30 U.S.C. § 1005(a)-(b) (2006);
- (2) Drilling Extension: 43 C.F.R. §§ 3207.14 - requires that lessees “[a]re diligently drilling” to a BLM-determined target; *see* 30 U.S.C. § 1005(g) (2006) (applies when “actual drilling operation . . . are being diligently prosecuted”);
- (3) Production Extension: 43 C.F.R. §§ 3207.15 - authorized if lessee is producing “in commercial quantities” or “making diligent efforts towards utilization of the resource.”) (not relied on by Presco here); *see* 30 U.S.C. § 1005(g)-(h) (2006);
- (4) Unit Development Extension: 43 C.F.R. §§ 3207.17 - if a lease is committed to a unit with a lesser term than the unit’s, BLM may extend the lease to match the unit term if the lessee requests such extension “at least 60 days before the lease expires showing that unit development has been diligently pursued.” *See* 30 U.S.C. § 1005(g) (2006)).

Required Work Extension – 43 C.F.R. §§ 3207.10(b)(1), 3207.11

[1] The rules at 43 C.F.R. §§ 3207.10(b)(1), 3207.11 establish that BLM will extend the 10-year primary term for an additional 5 years if the lessee satisfies certain requirements by the end of the 10th year of the primary term. Paragraph (a) of 43 C.F.R. § 3207.11 identifies the work required to be performed and paragraph (b) provides lessees the option, instead, of making a payment equivalent to the required work expenditure. A lessee is exempted from these requirements, which extend the lease, with documentation of production or utilization on the lease in commercial quantities. Detailed documentation demonstrating compliance with 43 C.F.R. §§ 3207.11(a) or (b) must be submitted to BLM “[p]rior to the end of the 10th year of the primary term” to meet the requirements for an initial extension under 43 C.F.R. § 3207.10(b)(1) and 3207.11.

Departmental regulations explicitly caution that BLM “must approve the type of work done and the expenditures claimed in your report before [BLM] can credit them toward your requirements” (43 C.F.R. § 3207.11(c)), and that, if the lessee “do[es] not perform development activities, make payments, or document production or utilization as required by this section, [the] lease will expire at the end of the 10-year primary term.” 43 C.F.R. § 3207.11(d). Additionally, the rules clearly provide for ensuring that the lease does not terminate prior to BLM’s determination of compliance under the Work Requirement Extension rule, further emphasizing both the lessee’s responsibility to apply for an extension and suspension prior to the end of the primary term and the consequences for failure to satisfy the elements necessary to prevent lease termination and to obtain an initial extension. Addressing a lessee seeking an extension under 43 C.F.R. §§ 3207.10 (b)(1) and 3207.11, the rule states:

If you complied with paragraph (c) of this section, but BLM has not determined by the end of the 10th year whether you have complied with the requirements of paragraph (a) or (b) of this section, upon request we will suspend your lease effective immediately before its expiration in order to determine your compliance. If we determine that you have complied, we will lift the suspension and grant the first 5-year extension of the primary term effective on the first day of the month following our determination of compliance. If we determine that you have not complied, we will terminate the suspension and your lease will expire upon the date of the termination of the suspension.

43 C.F.R. § 3207.11(e).

Presco admitted and the record confirms that it did not timely request an extension under 43 C.F.R. § 3207.11 and submit the documentation necessary to obtain BLM’s approval for an initial extension under the Work Requirements

Extension rule. Request at 1; SOR at 5. On appeal, Presco does not claim to have satisfied the regulatory requirements outlined above; it urges us to ignore them as inconsistent with the statute at 30 U.S.C. § 1005(a), which authorizes BLM to issue minimum work requirement extensions and does not specify deadlines. SOR at 22; Presco Reply at 14-15. Congress gave the Department authority to implement the GSA by duly-promulgating regulations (30 U.S.C. § 1023 (2006)). It has done so, and, while this Board has no authority to ignore them, it is “vested with the authority to determine in the context of deciding an appeal whether or not a regulation as applied to an appellant is consistent with its statutory basis.” *Bookcliff Rattlers Motorcycle Club*, 171 IBLA 6, 16 (2006); *see also* (*Debra Smith (On Reconsideration)*), 180 IBLA 107, 115 (2010); *American Gilsonite Co.*, 111 IBLA 1, 25 (1989) (citing *General Services Administration v. Benson*, 415 F.2d 878, 880 (9th Cir. 1969)). Presco has not shown that BLM’s application of its Work Requirements Extension rule to require Presco to have filed the necessary documentation prior to termination of the Lease term was inconsistent with the statute. BLM has no authority under the statute to reinstate an expired lease. When Presco submitted its request on December 5, 2011, the Lease had already terminated by operation of law. Unlike the authority to reinstate a lease that terminates due to lack of payment, the GSA does not authorize BLM to reinstate an expired lease under these circumstances. *See Geo-Energy Partners-1983 Ltd.*, 170 IBLA 99, 100 (2006). There was thus no longer any leasehold to extend.

Presco has not preponderated in showing that BLM erred when it determined the company failed to qualify for a Work Requirement Extension. We find that, under the plain language of the regulation, Presco did not qualify for the Work Requirements Extension. Presco did not timely file the necessary documentation for this extension, and, therefore, BLM granted neither an extension nor a suspension for the Lease by the end of the primary period.

Drilling Extension – 43 C.F.R. § 3207.14

[2] The rule at section 3207.14 establishes that BLM will extend a lease for 5 years under a Drilling Extension where the lessee has “[c]ommenced drilling a well . . . for the purposes of testing or producing a geothermal reservoir” and continues “diligently drilling to a target that BLM determines is adequate, based on the local geology and type of development [proposed].” 43 C.F.R. § 3207.14(a)(2)-(3). Presco claims BLM erred in not determining it satisfied the requirements for obtaining a Drilling Extension, but here too, Presco claims it qualifies for an extension under the regulation and the statute, but does not attempt to show that it complied with the plain language of the rule, which informs lessees they must show that drilling commenced before the end of the primary term and that, “at the end of the 10th year” (43 C.F.R. § 3207.14(a)), they “[a]re diligently drilling to a target that BLM determines is adequate, based on the local geology and type of development you

propose.”⁷ 43 C.F.R. § 3207.14(a)(3). Instead, Presco asserts that it effected full compliance with all applicable law when it commenced drilling on the Test Well prior to the end of the primary term since, under 30 U.S.C. § 1005(g), “[a]ny lease for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term” is entitled to a 5-year extension. Presco does not address directly the rest of 30 U.S.C. § 1005(g), which requires not only that drilling operations were commenced prior to the end of the primary term, but also that such operations “are being diligently prosecuted at that time.” More fundamentally, both Presco and BLM have conflated aspects of the regulatory framework.

Even though the Lease is committed to a unit, in order to qualify for an extension of the primary term of the Lease under the geothermal Drilling Extension rule at 43 C.F.R. § 3207.14, Presco was required to demonstrate that it met all elements of the rule with respect to drilling operations *on the Lease*. See 71 Fed. Reg. 41542, 41548 (July 21, 2006) (Preamble to the Proposed Rule discussing proposed rule at 43 C.F.R. § 3207.14) (“We concluded that the language in the statute supports applying the 5-year drilling . . . extension[] to regular leases, as well as to leases under cooperative or unit agreements.”). Presco has never averred that it commenced drilling operations on the Lease prior to the end of its primary term, and the record discloses none. Without this showing, issues involving the definition and timing of diligent prosecution of drilling operations are irrelevant and need not be examined.

Presco argues that its activities on the Test Well before it was shut-in qualified as the requisite drilling operations and BLM seems to concur, focusing only on the lack of on-going drilling operations on the Test Well, on the last day of the Lease’s primary term. Answer at 17 (“Thus, it is not enough that actual drilling operations were commenced before the lease expired. The statute, in its plain terms, also requires that actual drilling operations are being diligently prosecuted at the time the primary term ends.”). However, the Test Well is situated on lands embraced by Lease NVN-48027, another lease in the Unit, not the Lease at issue, NVN-75230. Presco failed to allege, much less demonstrate, that it satisfied the first condition of 43 C.F.R. § 3207.14 – *i.e.*, that it “[c]ommenced drilling a well . . . for the purposes of testing or producing a geothermal reservoir” on the Lease.

Unit Development Extension – 43 C.F.R. § 3207.17

⁷ The administrative record shows no evidence that BLM determined the drilling target was “adequate” under 43 C.F.R. § 3207.14(a). BLM states that “[s]uch a determination was not necessary because Appellant was not diligently drilling at the time the primary term of the lease ended.” Answer at 8 n.4.

[3] In order for Presco to obtain a drilling extension for the Lease at the end of its primary term by relying on the drilling operations that had commenced *on another lease in the unit*, such as the Test Well on lease NVN-48027, it was necessary for Presco to satisfy the requirements of 43 C.F.R. § 3207.17, which asks: “How is the term of my lease affected by commitment to a unit?” The regulation answers that question as follows:

(a) If your lease is committed to a unit agreement and its term would expire before the unit term would, BLM may extend your lease to match the term of the unit. We will do this if unit development has been diligently pursued while your lease is committed to the unit.

(b) To extend the term of a lease committed to a unit, the unit operator must send BLM a request for lease extension at least 60 days before the lease expires showing that unit development has been diligently pursued. BLM may require additional information.^[8]

Under 43 C.F.R. § 3207.17, in order to qualify for an extension that would have extended the term of the Lease to coincide with the term of the unit, Presco was required to send BLM a request for such extension at least 60 days before the lease terminated on November 30, 2011, showing that unit development had been diligently pursued. Presco failed to submit such a request at least 60 days prior to the end of the Lease’s primary term. When Presco submitted its request on December 5, 2011, the Lease had already terminated by operation of law. Here, as in the context of the Work Requirements Extension rule at 43 C.F.R. §§ 3207.10(b)(1), 3207.11, BLM had no authority to reinstate the terminated Lease; the GSA does not authorize BLM to reinstate an expired lease under these circumstances. *See Geo-Energy Partners-1983 Ltd.*, 170 IBLA at 100. Since there was no longer any leasehold to extend, BLM properly denied Presco’s Lease extension request, filed less than 60 days prior to the end of the Lease’s primary term, as required by 43 C.F.R. § 3207.17.⁹

⁸ The Preamble to the final rule explains:

Paragraph (a) of this section is virtually identical to the previous regulation at section 3208.10(a)(4), with a slight change in wording to remove any implication that the holder of the expiring lease must be the one to have diligently pursued unit development In the final rule we amended the paragraph (b) to make it clear that BLM may require the operator to submit additional information prior to approving the application.

72 Fed. Reg. 24358, 24369 (May 2, 2007).

⁹ Even if there were no regulation establishing a time period for submitting an extension request, it has long been established that BLM has no authority to extend

(continued...)

In the decision, BLM determined that Presco did not qualify for a lease under the unit extension provision of the GSA at 30 U.S.C. § 1005(g), which provides authority for extending a lease under an approved unit when “actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time.” BLM reasoned that, because the Test Well was shut-in at the end of the Lease’s primary term, Presco had not satisfied the statutory requirement for diligent prosecution at the end of the lease term. As discussed above, Presco failed to file the extension request at least 60 days prior to the end of the Lease’s primary term. Because it is on this basis that we find Presco failed to satisfy the implementing regulation, 43 C.F.R. § 3207.17, we do not reach the issue of whether Presco met the statutory and regulatory requirements for diligent prosecution of drilling operations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified on the basis of 43 C.F.R. §§ 3207.10(b)(1), 3207.11, 3207.14, and, 3207.17, as discussed above.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
T. Britt Price
Administrative Judge

⁹ (...continued)

or take any action for a lease that has expired. See *Jones-O’Brien, Inc.*, 85 I.D. 89, 91-95 (1978), and authorities cited therein. We note that under 30 U.S.C. § 1005 (2006), an onshore oil and gas lease is not automatically extended; it is extended if the Secretary determines that the lessee has satisfied the minimum work requirement. As the Acting Secretary stated in *Jones-O’Brien*: “An application filed before the lease expires, can be viewed as preserving the right of the Department to act on the application. If a suspension application is not filed prior to the lease expiration, the lease ends totally and there is nothing in existence for the Department to suspend.” 85 I.D. at 94-95; see also Solicitor’s Opinion M-37019, *Revival of Offshore Oil and Gas Leases* (Jan. 19, 2009) at 8-9.