

INCENTIVES AND ROYALTIES FOR EXISTING LEASES

Pub. L. 109-58, title II, §224(c)-(e), Aug. 8, 2005, 119 Stat. 663, 664, provided that:

“(c) NEAR-TERM PRODUCTION INCENTIVE FOR EXISTING LEASES.—

“(1) IN GENERAL.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970 [30 U.S.C. 1004(a)], the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act [Aug. 8, 2005] that does not convert to new royalty terms under subsection (e)—

“(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of enactment of this Act; or

“(B) on qualified expansion geothermal energy.

“(2) 4-YEAR APPLICATION.—Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

“(d) DEFINITION OF QUALIFIED EXPANSION GEOTHERMAL ENERGY.—In this section [amending this section and section 1019 of this title and enacting provisions set out as a note under this section], the term ‘qualified expansion geothermal energy’ means geothermal energy produced from a generation facility for which—

“(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of enactment of this Act [Aug. 8, 2005]; and

“(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility (as such average is adjusted to reflect any trend in changes in production during that period).

“(e) ROYALTY UNDER EXISTING LEASES.—

“(1) IN GENERAL.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) before the date of enactment of this Act [Aug. 8, 2005] may, within the time period specified in paragraph (2), submit to the Secretary of the Interior a request to modify the terms of the lease relating to payment of royalties to provide—

“(A) in the case of a lease that meets the requirements of subsection (b) of section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223), that royalties be based on the schedule of fees established under that section; and

“(B) in the case of any other lease, that royalties be computed on a percentage of the gross proceeds from the sale of electricity, at a royalty rate that is expected to yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before the date of enactment of this subsection.

“(2) TIMING.—A request for a modification under paragraph (1) shall be submitted to the Secretary of the Interior by the date that is not later than—

“(A) in the case of a lease for direct use, 18 months after the effective date of the schedule of fees established by the Secretary of the Interior under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

“(B) in the case of any other lease, 18 months after the effective date of the final regulation issued under subsection (a) [amending this section].

“(3) APPLICATION OF MODIFICATION.—If the lessee requests modification of a lease under paragraph (1)—

“(A) the Secretary of the Interior shall, within 180 days after the receipt of the request for modification, modify the lease to comply with—

“(i) in the case of a lease for direct use, the schedule of fees established by the Secretary under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

“(ii) in the case of any other lease, the royalty for the lease established under paragraph (1)(B); and

“(B) the modification shall apply to any use of geothermal resources to which subsection (a) [amending this section] applies that occurs after the date of the modification.

“(4) CONSULTATION.—The Secretary of the Interior shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection.”

§ 1005. Lease term and work commitment requirements

(a) In general

(1) Primary term

A geothermal lease shall be for a primary term of 10 years.

(2) Initial extension

The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the 10th year of the lease—

(A) the Secretary determined under subsection (b) of this section that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

(B) the lessee paid in annual payments accordance with subsection (c) of this section.

(3) Additional extension

The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (b) of this section that the lessee satisfied the minimum work requirements that applied to the lease for that year.

(b) Requirement to satisfy annual minimum work requirement

(1) In general

The lessee for a geothermal lease shall, for each year after the 10th year of the lease, satisfy minimum work requirements prescribed by the Secretary that apply to the lease for that year.

(2) Prescription of minimum work requirements

The Secretary shall issue regulations prescribing minimum work requirements for geothermal leases, that—

(A) establish a geothermal potential; and

(B) if a geothermal potential has been established, confirm the existence of producible geothermal resources.

(c) Payments in lieu of minimum work requirements

In lieu of the minimum work requirements set forth in subsection (b)(2) of this section, the Secretary shall by regulation establish minimum annual payments which may be made by the lessee for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource, but in no event shall the number of years exceed the duration of the extension period provided in subsection (a) of this section.

(d) Transition rules for leases issued prior to August 8, 2005

The Secretary shall by regulation establish transition rules for leases issued before August

8, 2005, including terms under which a lease that is near the end of its term on August 8, 2005, may be extended for up to 2 years—

(1) to allow achievement of production under the lease; or

(2) to allow the lease to be included in a producing unit.

(e) Geothermal lease overlying mining claim

(1) Exemption

The lessee for a geothermal lease of an area overlying an area subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency is exempt from annual work requirements established under this chapter, if development of the geothermal resource subject to the lease would interfere with the mining operations under such claim.

(2) Termination of exemption

An exemption under this paragraph expires upon the termination of the mining operations.

(f) Termination of application of requirements

Minimum work requirements prescribed under this section shall not apply to a geothermal lease after the date on which the geothermal resource is utilized under the lease in commercial quantities.

(g) Cooperative or unit plan for drilling operations; extension of term; renewal

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. If, at the end of such extended term, steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of such lease for a second term in accordance with such terms and conditions as the Secretary deems appropriate.

(h) “Produced or utilized in commercial quantities” defined

Except as otherwise provided for in this section, for purposes of this section the term “produced or utilized in commercial quantities” means the completion of a well producing geothermal steam in commercial quantities. Such term shall also include the completion of a well capable of producing geothermal steam in commercial quantities so long as the Secretary determines that diligent efforts are being made toward the utilization of the geothermal steam.

(i) Principles for location of minerals under mining laws when minerals are not associated with geothermal resources

Minerals locatable under the mining laws of the United States in lands subject to a geothermal lease issued under the provisions of this chapter which are not associated with the geothermal resources of such lands as defined in section 1001(c) of this title shall be locatable

under said mining laws in accordance with the principles of the Multiple Mineral Development Act (68 Stat. 708; found in 30 U.S.C. 521 et seq.).

(Pub. L. 91-581, § 6, Dec. 24, 1970, 84 Stat. 1568; Pub. L. 100-443, §§ 2(b), 3, Sept. 22, 1988, 102 Stat. 1766; Pub. L. 109-58, title II, §§ 231, 236(1), Aug. 8, 2005, 119 Stat. 668, 671.)

REFERENCES IN TEXT

The Multiple Mineral Development Act, referred to in subsec. (i), is act Aug. 13, 1954, ch. 730, 68 Stat. 708, as amended, which is classified principally to chapter 12 (§ 521 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 521 of this title and Tables.

CODIFICATION

August 8, 2005, referred to in introductory provisions of subsec. (d), was in the original “the date of the enactment of this subsection” and “the date of enactment of this subsection”, which was translated as meaning the date of enactment of Pub. L. 109-58, which substantially amended this section, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109-58 inserted section catchline, added subsecs. (a) to (f), redesignated former subsecs. (c), (d), and (f) as (g), (h), and (i), respectively, substituted “geothermal resources” for “geothermal steam and associated geothermal resources” in subsec. (i), and struck out former subsecs. (a), (b), (e), and (g) to (j), which related to primary and continuation terms, renewals, conversions to mineral leases, five-year extensions, bona fide effort requirement for extensions, payments in lieu of commercial quantities production, and significant expenditure, respectively.

1988—Subsec. (d). Pub. L. 100-443, § 2(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “For purposes of subsection (a) of this section, production or utilization of geothermal steam in commercial quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than fifteen years from the date of commencement of the primary term of the lease.”

Subsecs. (g) to (j). Pub. L. 100-443, § 3, added subsecs. (g) to (j).

CONSISTENCY PROVISION

Pub. L. 100-443, § 9, Sept. 22, 1988, 102 Stat. 1771, provided that: “To the extent that any provision in this Act [see Short Title of 1988 Amendment note set out under section 1001 of this title] is inconsistent with the provisions of section 115(2) of title I of section 101(h) of Public Law 99-591 (100 Stat. 3341-264 through 100 Stat. 3341-266) [set out below], this Act shall be deemed to supersede the provisions of such section.”

EXTENSION OF LEASE; LISTING, MONITORING AND PROTECTION OF SIGNIFICANT THERMAL FEATURES IN NATIONAL PARK SYSTEM; FACTORS CONSIDERED IN ISSUING OR DENYING LEASES; EFFECT ON OTHER PROVISIONS

Pub. L. 99-500, § 101(h) [title I, § 115], Oct. 18, 1986, 100 Stat. 1783-242, 1783-264, and Pub. L. 99-591, § 101(h) [title I, § 115], Oct. 30, 1986, 100 Stat. 3341-242, 3341-264, as amended by Pub. L. 106-510, § 3(a)(2), (b)(2), Nov. 13, 2000, 114 Stat. 2363, provided that:

“(1) The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal [Steam] Act of 1970 (Public Law 91-581, 84 Stat. 1566, 30 U.S.C. 1001-1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

“(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

“(b) substantial investment in the development of or for the benefit of the lease has been made; and

“(c) the lease would otherwise expire prior to December 31, 1988.

“(2)(a) The Secretary of the Interior (hereinafter in this section referred to as ‘the Secretary’ shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section [Oct. 18, 1986] a proposed list of significant thermal features within the following units of the National Park System:

“Mount Rainier National Park;
 “Lassen Volcanic National Park;
 “Yellowstone National Park;
 “Bering Land Bridge National Preserve;
 “Gates of the Arctic National Park and Preserve;
 “Yukon-Charley Rivers National Preserve;
 “Katmai National Park;
 “Aniakchak National Monument and Preserve;
 “Wrangell-St. Elias National Park and Preserve;
 “Glacier Bay National Park and Preserve;
 “Denali National Park and Preserve;
 “Lake Clark National Park and Preserve;
 “Hot Springs National Park;
 “Sequoia National Park;
 “Hawai‘i Volcanoes National Park;
 “Lake Mead National Recreation Area;
 “Big Bend National Park;
 “Olympic National Park;
 “Grand Teton National Park;
 “John D. Rockefeller, Jr. Memorial Parkway;
 “Haleakalā National Park; and
 “Crater Lake National Park.

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefor and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

“(1) size, extent, and uniqueness;

“(2) scientific and geologic significance;

“(3) the extent to which such features remain in a natural, undisturbed condition; and

“(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Public Law 91-581, 84 Stat. 1566), as amended [30 U.S.C. 1001 et seq.], until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

“(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

“(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If

the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary’s determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

“(d) With respect to all geothermal leases issued after the date of enactment of this section [Oct. 18, 1986] the Secretary shall include stipulations in leases necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the lands subject to the lease is reasonably likely to adversely affect such significant features. Such stipulations shall include, but are not limited to:

“(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

“(2) requiring the lessee to report annually to the Secretary on its activities;

“(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

“(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminated.

“(e) The Secretary of Agriculture shall consider the effects on significant thermal features of those units of the National Park System identified in subsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

“(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, as provided for in Public Law 98-473 (98 Stat. 1837) [see Tables for classification] and Public Law 99-190 (99 Stat. 1267) [see Tables for classification].

“(g) Except as provided herein, nothing contained in this section shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, or any other provision of law.

“(h) The provisions of this section shall remain in effect until Congress determines otherwise.”

§ 1006. Acreage limitations

A geothermal lease shall embrace a reasonably compact area of not more than 5,120 acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 51,200 acres, including leases acquired under the provisions of section 1003 of this title.