



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

COMMISSIONER'S OFFICE

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April 5, 2016

CERTIFIED MAIL
RETURN SERVICE REQUESTED

Bart Armfield
Chief Operating Officer
Brooks Range Petroleum Corporation
510 L Street, Suite 601
Anchorage, AK 99501

Re: Tofkat Unit-Notice of Automatic Termination

Dear Mr. Armfield:

Effective March 31, 2011, the State of Alaska, Department of Natural Resources (DNR), Division of Oil and Gas Division (Division), approved Brooks Range Petroleum Corporation (BRPC) application to form the 9,130.79 acre Tofkat Unit (TU).

Article 14.2 of the Tofkat Unit Agreement defines the unit term and termination:

14.2. Subject to the terms and conditions of the Approved Unit Plan, this Agreement automatically terminates five years from the Effective Date in accordance with 11 AAC 83.336.

11 AAC 83.336(a) provides that a unit agreement automatically terminates five years from its effective date unless certain conditions are met. More specifically, a unit agreement will be extended if (1) there is a "unit well" certified capable of producing hydrocarbons in paying quantities, or hydrocarbons can be produced in paying quantities and unit operations are being conducted in accordance with an approved plan, or if production ceases but diligent operations are being conducted to restore production; or (2) exploration operations have been conducted in accordance with an approved plan, and the Commissioner issues a written "public interest" decision extending the unit term. As discussed below, none these conditions exists for extending the five-year automatic unit termination.

No certified unit well exists in the TU. BRPC has not demonstrated that hydrocarbons can be produced from the TU in paying quantities.

Nor has BRPC conducted exploration operations under an approved unit plan. In its Initial Plan of Exploration (POE), BRPC committed to drill, evaluate, and test two wells in Kuparuk formation, the Tofkat #2 and #2A, and then complete, suspend, or abandon the well by May 31, 2013. BRPC did not conduct any of this work. Thus, BRPC has not met its drilling commitment and has not conducted the exploration operations in accordance with the approved POE.

The failure to meet drilling commitments was a default of the unit agreement, which includes the POE. 11 AAC 83.374(a). In a July 25, 2013 decision, former Commissioner Balash notified BRPC of its default for failure to meet its POE work commitments and provided BRPC with an

opportunity to cure by meeting the same work commitments by May 31, 2014. Again, BRPC did not comply with the commitments.

On July 18, 2014, Commissioner Balash notified BRPC of its failure to cure and invited BRPC to submit comments on an appropriate remedy for failure to cure. BRPC submitted a written response on August 18, 2014. BRPC also sought reconsideration of the Notice of Default and requested a hearing on reconsideration. Commissioner Balash granted reconsideration on August 21, 2014 and on October 2, 2014 Commissioner Mark Myers held a hearing on the Notice of Default and remedies for failure to cure default. In its written submissions and oral presentations in connection with the hearing, BRPC argued that it was prevented from meeting the drilling commitments by force majeure because it was unable to secure a surface agreement from Kuukpik Corporation and therefore North Slope Borough denied its permit to drill.

After consideration of Article 20.1 of the TU Agreement and the Alaska Supreme Court decision of *Alaskan Crude Corporation v. State, Department of Natural Resources*, 261 P.3d 412 (Alaska 2011), which articulated the definition of “force majeure,” on January 27, 2016, the Commissioner affirmed the Notice of Default decision. In the letter, BRPC was provided with a procedural notice in which it had 30 days to appeal the Commissioner’s affirmance decision to the Superior Court. BRPC did not file an appeal, and accordingly the Commissioner’s January 27, 2016 decision is Final.

The TU Agreement has expired. Because there is no certified well, no hydrocarbon production in paying quantities, no approved plan of exploration in effect, nor any drilling activity within the unit area, the unit automatically terminates under 11 AAC 83.336. The TU expiration is effective March 31, 2016.

An eligible person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any request for reconsideration must be received within 20 calendar days after the date of “issuance” of this decision, as defined in 11 AAC 02.040(c) and (d), and may be mailed or delivered to Marty Rutherford, Acting Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. This decision takes effect immediately. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. If the commissioner does not act on a request for reconsideration within 30 days after issuance of this decision, the request for reconsideration is considered denied and this decision becomes a final administrative order and decision on the 31st day after issuance for the purposes of an appeal to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

Sincerely,



Marty Rutherford
Acting Commissioner

cc: DOL