

2. Pit River Tribe v. U.S. Bureau of Land Management, 939 F.3d 962 (9th Cir. 2019)

The Pit River Tribe and other environmental organizations (collectively, Pit River)¹ filed suit against the Bureau of Land Management and the Department of the Interior (collectively, BLM) alleging BLM's improper continuances of "unproven" geothermal leases under the Geothermal Steam Act (GSA)² and violations of other environmental statutes.³ The United States District Court for the Eastern District of California granted Pit River's motion for summary judgment, holding BLM was not warranted in extending the unproven leases, vacating the decision of the Agency, and remanding the issue of the continuance to BLM for further consideration.⁴ BLM appealed. The Ninth Circuit reviewed the holding of the district court de novo and affirmed.

Congress enacted the GSA in 1970 to promote development and regulate the harvesting of geothermal resources on federal land. Prior to the GSA, the Mineral Leasing Act (MLA)⁵ provided the statutory scheme for regulating the extraction of resources under the theory of unitization instead of under the common law practice of the "rule of capture." Unitization considers an entire oil or gas field as one "unit," regardless of the surface boundaries or number of leases on the land. Unitization allows drilling on a single lease to constitute drilling into the unit as a whole, which in turn allows many leases within the unit to remain inactive. This scheme, adopted in the MLA, allows lessors to extend their leases, both productive and non-productive, to preserve access to the unit. Congress adopted unitization in § 1017 of the GSA, allowing leases to be managed as units with a provision requiring the Secretary of the Interior to review the leases within the unit every five years and remove any lease viewed as not necessary.⁶ However, § 1005(a) of the GSA lists a "primary lease" as limited to ten years unless the lease either produces or is proven capable of producing geothermal steam at commercial quantities, at which point the lease may be extended for up to forty years.⁷ For non-productive leases, § 1005(c) of the GSA allows for one to two five-year extensions in the event that drilling operations began prior to the expiration of the primary lease and are being diligently pursued.⁸ Every provision in the GSA limits the duration of any lease to not more than fifty years.

Three years after Congress enacted the GSA, BLM promulgated regulations authorizing geothermal leaseholders to enter into unit agreements. BLM entered into an agreement with a lessor at the Glass Mountain Unit establishing a "unit area" and a "participating area." The unit area established the Glass Mountain Unit, while the participating area included any part of the unit deemed to be productive. The terms of the agreement dictated that any area not included in the participating area needs to be removed from the agreement and the unit area. In 1989, the lessor requested an extension on their lease, one of which produced geothermal steam and twenty-four of which sat "unproven," meaning the lease was not productive but the lessor had not finished exploratory drilling. In accordance with the GSA, the BLM extended the productive lease for forty years and the twenty-four unproven leases for an additional five years, pursuant to § 1005(c). In 1998, after agency delay and a change in BLM's interpretation of § 1005(a), BLM adopted the unitization theory and extended all leases in the participating area, comprised of the single productive lease and the twenty-four unproven leases, for up to forty years pursuant to § 1005(a). Pit River filed suit in 2013.

First, the Ninth Circuit addressed whether it maintained jurisdiction to hear the appeal. The court reviewed the standard needed to satisfy the final judgment rule and found that 1) the district court's grant of summary judgement was final, 2) the district court's decision will restrain BLM on

¹ Other respondents included the Native Coalition for Medicine Lake Highlands Defense, Mount Shasta Bioregional Ecology Center, Save Medicine Lake Coalition, and Medicine Lake Citizens for Quality Environment.

² Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001–1028 (2012).

³ Pit River also alleged violations of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370h (2012), and the National Historic Preservation Act, 54 U.S.C. §§ 300101–307108 (2012), but the district court, having vacated BLM's decision to extend the leases, held the additional claims were moot.

⁴ Pit River Tribe v. U.S. Bureau of Land Mgmt, No. 2:04-cv-00956-JAM-AC 2017 WL395479 (E.D. Cal. Jan. 27, 2017).

⁵ Mineral Leasing Act of 1920, 30 U.S.C. §§ 221i–236a (1964).

⁶ 30 U.S.C. § 1017.

⁷ *Id.* at § 1005(a).

⁸ *Id.* at § 1005(c).

remand and require them to apply a potentially erroneous standard, and 3) review of the district court's decision now prevents BLM from being unable to appeal the result of its own decision. Because the issue met those three criteria, the court had jurisdiction to hear the appeal.

Next, the court addressed whether § 1005(a) of the GSA authorizes continuation of geothermal leases, and in what manner the statute authorizes those continuations. Pit River argued the section only authorizes forty-year extensions on a lease-by-lease basis. BLM countered that the section should be interpreted as allowing forty-year continuations on a unit-wide basis due to the overall scheme of the GSA and the backdrop set by the MLA. The court looked to the text of § 1005(a) and disposed of the five arguments advanced by BLM in favor of its position.

First, BLM asserted that because geothermal steam reservoirs are functionally the same as underground pools of oil and gas, Congress intended the MLA unitization approach to apply. The court disagreed, finding no support for BLM's assertion in the record and refusing to give the framework of the MLA more weight than the plain language of the GSA. Second, BLM argued that the MLA provides an important historical context, therefore Congress had the unitization principle in mind when creating the GSA and intended unitization to apply equally to the GSA. The court dismissed this suggestion, holding instead that Congress made clear that geothermal recovery is sufficiently different from oil and gas and therefore requires its own statutory scheme to manage the new technology and developing market. BLM next attempted to assert that the separation of § 1005(a) (the primary lease term extension provision) from § 1005(c) (all other lease term extensions) was simply a stylistic preference of Congress and carried no legal significance, even though the MLA contained all lease extensions in one provision. Further, BLM asserted that § 1017 of the GSA, which authorizes unitization, broadly incorporates the unitization framework of the MLA to the GSA. The court firmly rejected BLM's assertions, holding that Congress expressly intended to separate the lease extension provisions to eliminate the unitization principle and that the difference in time limits on lease terms is sufficient to negate the idea that § 1017 generally incorporates the MLA framework into the GSA. Next, BLM argued that the language of § 1005(g)(1),⁹ allowing a unit-wide extension of unproductive leases for five years, pulls unitization into § 1005(a) because § 1005(g)(1) extensions are unavailable if a lease has received a § 1005(a) extension and therefore, the provisions must be equal and unitization must apply to both. The court rejected BLM's argument because it incorrectly equated shorter, unit-wide extensions for unproductive leases with longer term extensions of productive leases. Finally, BLM asserted that the legislative history of § 1005(a) indicates Congressional intent that a "comparable provision," namely § 1017, allows all leases in a unit to benefit in the event any one is productive during a primary lease term. Again, the court strongly rejected this suggestion, reading the legislative history to suggest that Congress simply intended to differentiate the short-term extensions made on a unit-wide basis from the long term extensions made on a lease-by-lease basis, not that § 1017 dictate the terms for all lease extensions.

Finding that BLM failed to meet its burden of persuading the court to stray from the plain language of the statutory text, the court concluded that the meaning of the GSA § 1005(a) is unambiguous and requires the continuation of nonproductive leases on a lease-by-lease basis. Therefore, the court affirmed the district court's grant of summary judgment in Pit River's favor.

⁹ *Id.* at § 1005(g)(1).