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Mr. Cecil L. Smith
President
Federal Gulf Coporation
1500 RepublicanBank Tower
Dallas, Tezas 75201

Dear Mr. Smith:

Thank you for your recent letter concerning the status of the following issues before the Board of Land and Natural Resources: 1) the proposed designation of the Kilauea Southwest Rift Geothermal Resource Subzone (GRS), 2) the pending request for a contested case hearing on the subzone proposal, and 3) your application for a State Geothermal Resource Mining Lease.

A preliminary determination by our Department of the Attorney General has indicated that although recent court decisions affirmed the Board's subzone designation of the Kilauea Middle East Rift as a GRS, including the issuance of a Conservation District Use Permit authorizing such geothermal development activity, that ruling was a site-specific decision which cannot be directly applied to other areas such as the proposed Kilauea Southwest Rift GRS.

Therefore, it appears that the pending request for contested case hearing on the matter of infringement of petitioner's right to religious practice within the area of the proposed Kilauea Southwest Rift GRS, cannot be denied and removed from further action by the Board solely on the basis of recent court decisions.

Additionally, in spite of the statutory amendment eliminating contested case hearings from the subzoning process, it must be recognized that the request for such hearing was submitted prior to the adoption of the amendment. Therefore, without the discharge of the pending request for contested case hearing, the Board cannot reasonably designate the area as a subzone without first addressing the issue of contested case hearing.

Since our last correspondence, the 1990 Legislature passed a bill (S.B. 3285) permitting the drilling of exploratory wells outside of designated geothermal resource subzones. The drilling of these exploratory wells are limited to scientific purposes or to determine the economic viability of a geothermal resource.

Subject to final approval of the bill by the Governor and the promulgation of administrative rules, the new law will permit exploration activity outside of designated subzone areas regardless of land use classification, provided that all other applicable state and county permits are secured.

In view of the above, the Department has decided to recommend the withdrawal of the current proposal designating approximately 8,090 acres of the Kilauea Southwest Rift as a Geothermal Resource Subzone. The withdrawal of the proposed subzone, if approved by the Board, will also eliminate any further action on the pending request for contested case hearing.

Without the prerequisite designation of a subzone, any application for a geothermal resource mining lease is premature and will not be considered at this time. As such, your application for a State mining lease received by the Department on February 12, 1990 cannot be accepted until such time as the area is properly designated and allows for such geothermal development activity.

However, in view of the recent legislative amendment described above, such decision by the Board to withdraw the subzone proposal will not in any way prevent the conduct of exploration activities in the area. Should such future exploration result in additional evidence supporting potential development of a resource, a re-evaluation by our Department may be warranted at that time.

Notwithstanding such decision by the Board, any property owner, State mining lease applicant, geothermal mining lessee, or person with an interest in real property, may initiate an application for designation of any area with geothermal potential as a geothermal resource subzone. The procedure for such landowner initiated subzone designation is provided by statute and is set forth in our Department's administrative rules, section 13-184-5.

In summary, subject to approval by the Board, the original subzone proposal to designate the Kilauea Southwest Rift as a GRS will be officially withdrawn. Notification of such decision will be given to all interested parties and shall state that as a result of such decision, no further action will be taken on the pending request for contested case hearing.

The Department shall continue to hold your preliminary application for a State mining lease on file until such time that the application can be processed. Should you have any questions concerning the above, please contact Manabu Tagomori, Deputy Director, at (808) 548-7533.

Very truly yours,

WILLIAM W. PATY