

Editor's note: 78 I.D. 359

RIJAN OIL COMPANY

IBLA 70-422

Decided December 17, 1971

Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

The proviso added to section 31(b) of the Mineral Leasing Act by section 1 of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) (1970), to except an oil and gas lease from automatic termination in certain circumstances where timely annual rental payment is deficient, is curative in effect; therefore, where a rental payment was nominally deficient as prescribed by the Act and defined by Departmental regulations and the deficiency was paid prior to the Act, the lease is not terminated unless a new lease had been issued prior to May 12, 1970.

IBLA 70-422 : NM 623

RIJAN OIL COMPANY

: Oil and gas lease
: declared terminated

: Set aside and remanded

DECISION

This appeal by the Rijan Oil Company, Inc. is from a decision of the New Mexico land office dated November 19, 1969, 1/ which declared that appellant's oil and gas lease NM 623 terminated by operation of law because the annual lease rental for the fourth year had not been paid in full.

The lease issued effective November 1, 1966, for 148.17 acres, with an annual rental of \$74.50 at the prescribed annual rental rate of 50 cents per acre or fraction thereof. On September 24, 1969, prior to the anniversary date, appellant submitted a check for \$74.09. The land office decision was based upon the 41-cent deficiency in the rental payment, and upon its conclusion that under section 31(b) of the

1/ The appeal was addressed to the Director, Bureau of Land Management. Jurisdiction over appeals pending before the Director was transferred by the Secretary of the Interior to this Board effective July 1, 1970. Cir. 2273, 35 F.R. 10009, 10012.

Mineral Leasing Act, as amended by section 1(7) of the Act of July 29, 1954, 68 Stat. 585, a lease automatically terminates where payment of the rental in full is not timely made and there is no authority whereby a lease could be reinstated.

The appellant paid the 41 cents with its notice of appeal. It asserts that the deficiency was due to inadvertence and miscalculation and suggests that under the doctrine of de minimis non curat lex the lease should not be terminated.

At the time the land office decision was rendered, there was Departmental precedent for holding that an oil and gas lease terminates under the Act of July 29, 1954, even where a timely rental payment was only slightly deficient. Duncan Miller, A-30067 (March 12, 1964). Since that time, however, a relief act, the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) and (c) (1970), has been passed to prevent in certain circumstances the automatic termination of a lease where a timely rental payment was deficient, and to provide under certain conditions for reinstatement of oil and gas leases terminated for failure to pay rental timely. The only issue which we need consider then is the effect of this Act upon appellant's lease.

We believe, as will be discussed, that appellant's lease is saved under section 1 of the Act of May 12, 1970, unless a new lease for the land had been issued prior to May 12, 1970. That section added the following proviso to the Act of July 29, 1954:

Provided, That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to the date of this Act or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary. (30 U.S.C. § 188(b) (1970)).

This case comes within the proviso's first exception pertaining to a nominal deficiency in the payment. The 41-cent deficiency in the rental was clearly nominal. As defined in recently published regulations, 43 CFR 3108.2-1 (36 F. R. 21035, 21036, November 3, 1971), a "deficiency will be considered nominal if it is not more than \$10 or five percentum (5 percent) of the total payment due, whichever is more."

Although the payment was deficient and the land office decision was rendered prior to the passage of the Act of May 12, 1970,

it is apparent that Congress intended this proviso to apply to leases where rental payments were deficient prior to the effective date of the Act. This is evident from the language in the proviso that the "amount of the payment has been or is hereafter deficient," and further language expressed in the past tense. The Act then states that "such lease shall not automatically terminate unless (1) a new lease had been issued prior to the date of this Act." By conditioning the exception to the automatic termination upon whether a new lease had issued prior to the effective date of the Act, it is obvious that Congress clearly intended to nullify the effect of the automatic termination provision retroactively in these circumstances. The issuance of a "new lease prior to the date of this Act [May 12, 1970]" could only have been effective if an old lease had been terminated and the land in the terminated lease made available in accordance with the procedure prescribed in the regulations in effect at that time, 43 CFR 3123.9 (1969) (now renumbered 43 CFR 3112.1 (1971)).

In addition to the express language of the proviso, the legislative history of S. 1193, 91st Congress, which became the Act of May 12, 1970, shows that Congress intended that leases which would have been considered terminated under the existing law could be revived by this proviso. In recommending the inclusion of the provision which denies relief in cases where a new lease had been issued prior to the

enactment of the Act, the Acting Secretary of the Interior, in a letter of February 11, 1970, to the Chairman of the House Committee on Interior and Insular Affairs, commented:

Upon a further review of the language of section 1 of S. 1193, it appears that a problem could exist with respect to the interest of a subsequent lessee of land which had been previously automatically terminated under present law. Section 1 of S. 1193 provides that a lease shall not automatically terminate where the rental paid under a lease is either (1) nominally deficient or (2) paid in accordance with figures stated in the lease or in a bill rendered. The probable effect of this language in S. 1193 would be to reinstate a lease terminated under present law if the specified conditions were met. However, in some instances a new lease has been entered into based upon a prior termination on the existence of facts which are now set forth in (1) or (2) of section 1. The interest of a subsequent lessee should be protected against the possible revival of a prior lessee's interest if his termination resulted from what (1) and (2) of section 1 now make exceptions to automatic termination.

The Committee, reporting on the amendment recommended by the Department, described its effect in these words:

... Also in connection with this section [§ 1], the committee adopted an amendment, suggested by the Department by its letter of February 11, 1970, which prevents revival of a lease where a subsequent lease was issued prior to enactment of S. 1193. (H.R. Rep. No. 91-1005, 91st Cong., 2d Sess. 5 (1970)).

In view of this clear manifestation of Congressional intent that section 1 of the Act of May 12, 1970, has a curative effect,

appellant's lease will not be considered as having terminated providing, of course, that no lease issued for the land prior to the date of the Act. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is set aside, and the case is remanded to the Bureau of Land Management for appropriate action.

2/ Since the appellant had paid the deficiency prior to the enactment of this relief provision, there is no need for the notice of deficiency contemplated by the statute.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Newton Frishberg, Chairman

