

OIL RESOURCES INC.

IBLA 73-432

Decided November 16, 1973

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M-15125, terminated by operation of law for failure to pay the full annual rental on or prior to the anniversary date.

Affirmed.

Administrative Practice! ! Administrative Procedure:  
Decisions! ! Rules of Practice: Appeals: Failure to Appeal

A Bureau of Land Management decision declaring an oil and gas lease to be within a known geologic structure becomes final when no appeal is taken within the time permitted by the Department's rules of practice, and cannot be challenged in a later appeal from a decision denying reinstatement of an oil and gas lease for failure to pay the full, revised annual rental computed on the basis that the leased land is within a known geologic structure.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the full advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Richard C. Hoefle, Vice President of Oil Resources Inc., for the appellant.

OPINION BY MR. RITVO

Oil Resources Inc., appeals from a decision of the Montana State Office, Bureau of Land Management, dated May 25, 1973, refusing to grant reinstatement of appellant's oil and gas lease M 15125, terminated by operation of law for failure to pay the full annual rental on or before the anniversary date.

The circumstances surrounding this case were succinctly stated in the State Office letter decision as follows:

\* \* \* The original lease as issued embraced 520 acres with Oil Resources Incorporated acquiring record title December 1, 1971. By decision dated September 18, 1972, you were advised 80 acres of the total area was within a known geologic structure. The decision further recited that beginning with the lease year of May 1, 1973, rental would be \$ 2.00 per acre for the full 520 acres. This notice was in excess of seven months prior to the anniversary date of May 1, 1973.

The decision was receipted for by J. Dixon on September 19, 1972. No appeal was taken within the time allowed and the decision therefore became final.

On May 1, 1973, you tendered rental in the amount of \$380.00. This payment was accompanied by a copy of a Notice of Payment advising the full amount owing was \$ 1,040.00 and not \$ 380.00. With the payment was also a letter from your office advising the payment was calculated on the basis of \$ 2.00 per acre for 80 acres and 50 on 440 acres, and that this payment action was in accordance with a conversation between Chief Geologist, Robert Meek, and Mr. Elmer Schell of U.S.G.S. in Casper, Wyoming. The file contains a memorandum dated May 2, 1973, from Mr. Schell, which indicates your course of action was not one which he suggested you pursue. 1/

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1/ In the memorandum to the Bureau of Land Management, Schell stated that on May 1, 1973, he received a telephone call from Meek who inquired about a revocation of the "known geologic structure" classification. When Meek was informed that this was not possible, he then asked about segregation of the 80 acres classified as KGS land. Schell directed Meek to the regulations in Title 43 of the Code of Federal Regulations for possible procedures on assignments, but he did not suggest that the present payments could be segregated.

Although full payment has been made within the 20 days, 2/ you have not furnished evidence or facts to substantiate that such late pay (sic) was either justifiable or not due to a lack of reasonable diligence.

Accordingly, oil and gas lease M 15125 has terminated as provided by law.

On appeal, Oil Resources Inc., raises two arguments both related to the determination that part of the lease was in a known geologic structure: (1) The United States Geological Survey was in error in determining that the 80 acre section within the leased area was within known geologic structure and that as a result a rental of only \$ 260 was due; and (2) assuming that the Geological Survey determination was proper, the late payment made within 20 days from the anniversary date was either justifiable or not due to a lack of reasonable diligence given appellant's reasonable and present belief that the Geological Survey's determination was in error, as demonstrated by two unsuccessful wells appellant drilled on land adjoining M-15125.

With respect to appellant's first argument, it is sufficient to note that appellant failed to appeal, within the 30 day period allowed, the Bureau of Land Management's September 18, 1972, decision declaring the area to be within a known geologic structure. 43 CFR 4.411. The Bureau's decision became final when no appeal was taken within the time permitted by the Department's rules of practice and the appellant is barred from challenging that decision in its present appeal from a decision denying reinstatement of its oil and gas lease for failure to pay the full revised annual rental computed on the basis that the leased land is within a known geologic structure. See Leonard Bown, 12 IBLA 192, 194 (1973); Roy Jones, 10 IBLA 112, 114 (1973).

As for its second argument, appellant states in its brief in support of appeal that due to the alleged erroneous determination made by the Geological Survey, appellant's late payment of the rental was "justifiable" and reinstatement should be granted. The applicable statute reads as follows:

(c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the

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2/ On May 27, 1973, appellant submitted a check for \$ 660 to cover the balance due in the lease.

Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease \* \* \*. 30 U.S.C. § 188(c).

Appellant points out that it drilled a well on land adjoining lease M 15125 which was found to be a dry hole on December 20, 1971. Appellant then argues that it did not contest the decision of September 18, 1972, because it was seriously considering drilling another well on the land which might establish a known geologic structure of a producing oil and gas field. The September decision would then have been a correct determination. A second well was drilled and found to be a dry hole on January 21, 1973. A re! perforation of the first well on January 25, 1973, was also unsuccessful.

Appellant contends that its attempt to drill these wells shows its faith and justifies its late payment. Insofar as this argument is merely an attempt to raise again the correctness of the Geological Survey's determination, it is too late. Insofar as it is offered as a justification for the late payment, it is hard to see how an activity completed on January 25, 1973, justifies late payment in May or shows reasonable diligence.

Even assuming, without deciding, that the appellant has demonstrated that the Geological Survey's determination was in error its rental obligation has been fixed and it has shown no justification for reasonable diligence in waiting until the anniversary date to attempt to have the rental recomputed in whole or in part.

The Board does not find appellant's second argument persuasive. Under the circumstances of this case, we find that the failure to pay the full rental payment timely was not justifiable. See Norman K. Husted, 12 IBLA 341 (1973); Monturah Company, 10 IBLA 347 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Member

We concur:

Joan B. Thompson  
Member

Douglas E. Henriques  
Member

