INEXCO OIL COMPANY

IBLA 74-180 Decided June 14, 1974

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas lease NM 12389, terminated by operation of law for failure to pay annual rental on or before lease anniversary date.

Reversed.

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

> Where appellant mailed rental payment for oil and gas lease in sufficient time for it to arrive in proper BLM office on or before due date, considering distance involved and normal delays attendant upon collection, transmittal, and delivery of mail, appellant came within ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR § 3108.2-1(c) for reinstatement of lease when failure to timely pay rental is "not due to a lack of reasonable diligence on the part of the lessee."

Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

> Where appellant mailed oil and gas lease rental payment, due on November 1, from Houston, Texas, on October 30 to Santa Fe, New Mexico Office, late payment was not due to a lack of reasonable diligence on appellant's part.

APPEARANCES: Jason W. Kellahin, Esq., Santa Fe, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appellant mailed its yearly rental payment for its oil and gas lease on October 30, 1973. Payment was due at the Bureau of

Land Management State Office in Santa Fe, New Mexico, on or before the anniversary date of the lease, November 1. Appellant's payment arrived one day late, on November 2, 1973, so the lease automatically terminated by operation of law under 30 U.S.C. § 188(b) (1970). The State Office denied appellant's request for reinstatement of the lease. This appeal ensued.

Appellant contends that the failure to timely pay was not due to a lack of reasonable diligence on its part. We find this argument meritorious. Appellant mailed its payment on October 30 from Houston, Texas, to the State Office in Santa Fe. Having considered the distance involved and the normal delays attendant upon collection, transmittal, and delivery of mail, this Board is of the opinion that appellant did mail its payment in sufficient time for it to have arrived in the State Office on or before the due date, but that for unexplained reasons the payment was delivered late. Therefore, we conclude that appellant's case comes within the ambit of provisions in 3 U.S.C. § 188(c) (1970) and 43 CFR § 3108.2-1(c) for reinstatement where failure to timely pay is "not due to a lack of reasonable diligence on the part of the lessee." R. G. Price, 8 IBLA 290 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State Office decision is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge