

AMOCO PRODUCTION COMPANY

IBLA 74-129

Decided July 8, 1974

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M-2621 Acq. and dismissing protest against making the lands therein subject to new lease offers.

Affirmed.

Oil and Gas Leases: Rentals—Oil and Gas Leases: Termination

Where the deficiency in rental paid on or before the anniversary date of a lease was more than \$10 or 5 percent of the total due (whichever is the greater), and does not result from a billing error or from an official decision relating to the lease, an oil and gas lease terminates by operation of law. 30 U.S.C. § 188(b).

Oil and Gas Leases: Rentals—Oil and Gas Leases: Termination

Where an oil and gas lease has terminated by operation of law pursuant to 30 U.S.C. § 188(b), a Notice of Termination is sent to the lessee only if the full amount of the rental due has been paid or tendered within 20 days after the anniversary date of the lease.

Oil and Gas Leases: Rentals—Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Termination

No petition for reinstatement of an oil and gas lease terminated by operation of law,

30 U.S.C. § 188(b), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases: Rentals

An assignment of an oil and gas lease is ineffective until it is approved by the Bureau of Land Management, and until an assignment is approved, the assignor is responsible for the performance of all obligations under the lease. The fact that a proposed assignee, in anticipation of approval of his assignment, has made a partial payment of the annual rental does not confer upon such assignee any rights under the lease, or relieve the assignor of the obligation to remit the balance.

Administrative Practice—Delegation of Authority: Extent of—Evidence:  
Presumptions—Federal Employees and Officers: Generally—Officers and Employees—  
-Rules of Practice: Evidence

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

APPEARANCES: V. C. McClintock, Esq., Denver, Colorado, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Amoco Production Company (Amoco) has appealed from a decision of September 27, 1973, by the Montana State Office, Bureau of Land Management, which denied appellant's petition for reinstatement of oil and gas lease M-2621 Acq., a noncompetitive lease terminated by operation of law for failure to pay the full amount of the annual rental on or before the anniversary date of the lease. The decision also dismissed a protest by Amoco against making these lands available for leasing in September 1973 under the simultaneous filing procedure.

The record shows that the lease was issued August 1, 1967, for 1,277.93 acres in Blaine County, Montana. During 1970 and 1971, as the result of the relinquishment of a portion of the lands subject to the lease and the assignment of the entire interest in another portion of such lands, the area remaining in lease M-2621 Acq. was reduced to 320.00 acres. On January 10, 1973, the co-lessees of record, Inexco Oil Company (Inexco) and Planet Oil and Mineral Corporation (Planet), were notified by a decision of the Montana State Office that 80 acres within the leasehold had been determined to be within the known geologic structure of a producing oil and gas field (KGS), and that consequently, as provided by 43 CFR 3103.3-2(b)(1), the rental for the entire 320-acre leasehold would be increased to \$2.00 per acre, or a total of \$640.00, effective August 1, 1973, the beginning of the ensuing lease year. This decision required Planet to file a \$1,280.00 corporate surety bond. 43 CFR 3104.1(b). Inexco was maintaining a unit of coverage for acquired lands in Montana by a State-wide bond. 43 CFR 3104.6-2.

At the time of the KGS notification to Inexco and to Planet the Montana State Office had under consideration an assignment, filed September 3, 1971, by Inexco of its interest in the lease to Planet. Approval of the assignment had been delayed pending the clean-up and restoration of a drill site by an earlier lessee on the leasehold. Prior to approval of this assignment, Planet on January 26 and April 24, 1973, filed with the Montana State Office two additional assignments which would have conveyed to Amoco 75 percent of the 100-percent interest in the lease which Planet would own after approval of the assignment from Inexco.

On July 18, 1973, the Montana State Office received a rental payment of \$160.00, or 50 cents per acre, for the lease year commencing August 1, 1973. The State Office on July 23, 1973, issued a receipt for the payment to the lessee Inexco, together with a notice of underpayment for \$480.00, occasioned because of the higher rental rate from the KGS determination. The notice advised the lessees of the possibility of termination of the lease should they fail to pay the deficiency on or before August 1, 1973, the anniversary date. No further payment of rental due under the lease was received prior to the due date. On August 7, 1973, the State Office, having been apprised that clean-up and restoration of the drill site had been accomplished, approved the three assignments on file, each effective as of the first day of the month following its filing with the State Office. 43 CFR 3106.3-3.

Amoco filed its protest on September 26, 1973, after the lands formerly included within oil and gas lease M-2621 Acq. had been offered as Parcel No. 68 in the Montana Simultaneous Filing List for September 1973. With the protest appellant enclosed its check for the \$480.00 deficiency in the rental payment due August 1, 1973.

In its appeal Amoco, in support of its contention that the "Protest was timely made and should not have been dismissed \* \* \*," states that as the purchaser for value of a 75-percent interest in the lease it had made payment before the anniversary date of the entire amount which its records showed as rental due under the lease for the ensuing lease year, not having been advised that the rental had been increased as the result of inclusion of a portion of the leasehold within a KGS. Appellant asserts:

\* \* \* At no time prior to September 19, 1973, had anything come to Amoco's knowledge or attention that the annual rental was increased or that the rental paid was insufficient, although the State Office had had several opportunities prior to the anniversary date of the lease to notify Amoco of the facts necessary to advise Amoco that the annual rental payments had been increased. Promptly after Amoco discovered that lands it believed it held under the lease had been listed for simultaneous lease offers, Amoco took steps to preserve the status quo and to protect its leasehold interest. (Emphasis in original.)

Amoco also complains of the fact that none of the lessees were at any time notified of a formal determination by the State Office that the lease had been terminated, and that the decision appealed from fails to state that notice of the termination had been entered on the official records prior to the offer of lands included within the lease for a new lease, as required by 43 CFR 3108.2-1(a).

Appellant concludes by citing two cases, each styled Husky Oil Co. of Delaware, 5 IBLA 7, 79 I.D. 17 (1972), and 5 IBLA 16, 79 I.D. 21 (1972), in which this Board held that " \* \* \* the automatic termination proviso of 30 U.S.C. § 188 (1970) \* \* \* was not intended to apply to a case where the lessee had no way of knowing that the obligation had accrued \* \* \*"; and a third case, Pennzoil United, Inc., 9 IBLA 88 (1973), in which we determined that an oil and gas lease whose assignment had been approved was not terminated for failure to pay the rental on or before the anniversary date where the rental payment, submitted by the assignor seven months in advance, had been returned to him and the State Office had failed to inform the assignee of the refund.

We find that the Montana State Office acted properly in denying appellant's protest and its request for reinstatement of the subject lease.

The termination of a noncompetitive oil and gas lease for failure to pay the advance rental on or before the anniversary date of the lease is brought about not by the act or decision of any federal

agency or employee, but by operation of law pursuant to section 31(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), 1/ which provides that

\* \* \* upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. \* \* \*

The law and the implementing regulations, however, recognize an exception to the automatic termination provision under certain circumstances where payment of the rental has been tendered on or before the anniversary date but the amount of the payment is deficient. Where the deficiency is nominal, i.e., not more than \$10 or 5 percent of the total amount due, whichever is greater, or results from an error in a bill or decision rendered by an authorized officer, a Notice of Deficiency is sent to the lessee. If the balance is paid not later than the anniversary date, or 15 days from receipt of the Notice, whichever is later, the lease does not terminate. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(b). In the case at bar, where the deficiency was 75 percent of the amount due, and was not within the scope of the exceptions cited above, the lease did terminate by operation of law on August 1, 1973. 2/

Where a lease has terminated by operation of law, a Notice of Termination is sent to the lessee only if the full amount of the rental due has been paid or tendered within 20 days after the anniversary date. Such payment or tender is also one of the prerequisites to the consideration of any petition for reinstatement of the

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1/ Since the lease at issue was one of acquired lands it was subject to the Act of August 7, 1947, the Mineral Leasing Act for Acquired Lands,

30 U.S.C. §§ 351-359 (1970). Section 10 of the Act, 30 U.S.C. § 359 (1970), provides:

"The Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this chapter, which rules and regulations shall be the same as those prescribed under the mineral leasing laws to the extent that they are applicable."

The regulations governing oil and gas leasing (43 CFR Subpart 3100) were issued pursuant, inter alia, to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), and to the Mineral Leasing Act for Acquired Lands. See 43 CFR 3100.0-3(a)(1), (b).

2/ The notice of underpayment contained in the receipt issued to Inexco on July 23, 1973, was a courtesy notice not required by the law or regulations.

lease. 43 CFR 3108.2-1(c). Inasmuch as payment or tender of the balance of the rental due under lease M-2621 Acq. was not received within the 20-day period immediately following the anniversary date of the lease, the lease is not subject to reinstatement under the Act. See John Oakason, 13 IBLA 80, 82 (1973).

An assignee or sublessee of all or part of an oil or gas lease does not become the record holder of any interest therein until his assignment or sublease has been approved by the Bureau of Land Management. Section 30a of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 187a (1970), provides that until approval "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. \* \* \*" Since the assignment to Amoco was unapproved by the Montana State Office on the anniversary date of the lease, Amoco was not a record holder of title under the lease at the time the payment of the rental fell due on August 1, 1973, and hence was not responsible to the Government for the performance of any obligation thereunder. Pending approval of the assignments on file, the only lessees of record were the assignors, Inexco and Planet. See Lester C. Hotchkiss, A-27342 (August 14, 1956). The fact that Amoco, in apparent anticipation of approval of its interest in the lease, made a deficient rental payment did not relieve Inexco and Planet of their obligation timely to remit the balance due, or confer upon Amoco any rights under the lease. As a stranger to the lease at all times prior to its termination, Amoco was not required to be notified of the inclusion of a portion of the leasehold within a KGS, or of the fact that the lease payment which it had tendered was insufficient.

None of the cases cited by appellant, each of which involves lack of notification to a lessee of record, is applicable to the facts of the case at bar.

The case file shows that the termination of lease M-2621 Acq. has been noted on the records of the Montana State Office. In the absence of countervailing proof it is to be presumed that such notation was accomplished prior to the inclusion of lands in the simultaneous filing procedure for new lease offers, as prescribed by 43 CFR 3108.2-1(a) and 43 CFR 3112.1-1(a).

\* \* \* The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. \* \* \* United States v. Chemical Foundation, 272 U.S. 1, 14, 15 (1926). See 2 AM. JUR. 2d Administrative Law § 748 (1962).

Therefore, 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.

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Douglas E. Henriques  
Administrative Judge

We concur.

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Frederick Fishman  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

