

OIL RESOURCES, INC.

IBLA 76-675 Decided February 7, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-13666.

Affirmed.

1. Oil and Gas Leases: Extensions–Oil and Gas Leases: Rentals–Oil and Gas Leases: Termination

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1970) on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1970), he cannot obtain the extension.

2. Oil and Gas Leases: Extensions–Oil and Gas Leases: Reinstatement

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C.

§ 188(d) (1970) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226-1(d) (1970) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1970).

3. Oil and Gas Leases: Competitive Leases—Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Termination

The provisions of 30 U.S.C. §§ 188(b) and (c), and decisions of the Board discussing those provisions, are generally applicable to both competitive and noncompetitive oil and gas leases on which there is no well capable of producing oil or gas in paying quantities.

4. Oil and Gas Leases: Cancellation—Oil and Gas Leases: Termination – Words and Phrases

Cancellation" and "Termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. § 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

5. Oil and Gas Leases: Reinstatement

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental timely may not be reinstated under 30 U.S.C. § 188(c) (1970) unless, among other things, payment has been tendered at the proper office within 20 days of the date due.

APPEARANCES: James A. Murphy, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Oil Resources, Inc., appeals from the May 21, 1976, decision of the Utah State Office, Bureau of Land Management (BLM), denying its petition for reinstatement of its oil and gas lease U-13666. BLM denied the petition because appellant did not exercise reasonable diligence in failing to submit rental on or before the anniversary date of the lease, April 1, 1976, and also did not submit the payment within 20 days thereafter as required by 30 U.S.C. § 188(c) (1970).

Appellant's lease was issued competitively on April 1, 1971, for a primary term of 5 years ending March 31, 1976. An oil and gas lease "on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years." 30 U.S.C. § 226(e) (1970). The regulations governing these drilling extensions are set out at 43 CFR 3107.2.

By memorandum dated April 2, 1976, the United States Geological Survey (Survey) informed BLM that appellant was conducting actual drilling operations on the lease but that it could not yet determine

whether appellant had met the requirements for extension specified in 43 CFR 3107.2-2. Survey then informed BLM on April 26, 1976, that the drilling requirements of 43 CFR 3107.2-2 had been met by appellant and that Survey had no objection to granting appellant an extension under 43 CFR 3107.2-3. However, by letter dated May 5, 1976, BLM notified appellant that because it had not paid the rental on or before the anniversary date, April 1, 1976, the lease had automatically terminated by operation of law.

Appellant filed the petition for reinstatement and tendered the rental payment on May 14, 1976. In the petition, appellant stated that it had completed the well on the lease, that the well was awaiting hook-up to a gathering system and that more than \$100,000 had been expended. Appellant further stated that the "non-payment of rentals occurred through inadvertance [sic]." Appellant now presents several arguments alleging error in the BLM decision denying its petition. First, it argues that the language of 30 U.S.C. § 226(e) (1970) authorizing extensions is mandatory and therefore an extension cannot be denied for failure to pay rental. Second, appellant argues that there is no requirement in the statutes or the regulations that a lessee must submit rental prior to the expiration of the lease in order to obtain an extension.

Third, appellant argues that the decision cited by BLM as authority for denying the petition, Merilyn K. Buxton, 24 IBLA 269 (1976), is not applicable to competitive leases. Fourth, appellant argues that even if 30 U.S.C. § 188 (1970) were applicable to its lease, § 188(d) would allow reinstatement at the discretion of the Secretary of the Interior. Finally, appellant argues that because the lease contains valuable deposits of oil and gas, it may only be canceled by judicial proceedings as provided in 43 CFR 3108.3.

Appellant's arguments misconstrue the relevant amendments to the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et. seq.* (1970), passed by Congress since 1960. By failing to pay its rental timely, appellant has placed itself in a position where it can obtain no relief under existing law. For the following reasons, we must affirm the decision of the BLM State Office.

[1, 2] Several of appellant's arguments are concerned with the interaction of the extension by drilling provisions and the rental provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 *et seq.* (1970). Appellant's position would give the extension provisions a precedence over the rental provisions which is neither warranted by the language of the statutes nor indicated by the legislative history.

An oil and gas lessee such as appellant qualifies for an extension of his lease by complying with the requirements of 30 U.S.C. § 226(e) (1970). However, in order for anyone to exercise rights granted by the mineral leasing laws, the lease involved must be maintained in good standing in accordance with the provisions of those laws and with the terms of the lease. For example, neither communitization agreements nor assignments should be approved if the particular lease has terminated for failure to pay rental timely before BLM can issue such approval. See e.g., C. J. Iverson, 21 IBLA 312, 323, 82 I.D. 386, 391 (1970[sic. 1975]), appeal dismissed with prejudice, Iverson v. Frizzell, Civil No. 75-106 (D. Mont., September 9, 1976); Clarence Zuspann, 18 IBLA 1, 4-5 (1974). Appellant's argument that the language of 30 U.S.C. § 226(e) (1970) is mandatory ignores this basic concept.

The mineral leasing laws require that rental must be paid "for each year of the lease" (30 U.S.C. § 226(d) (1970)) "on or before the anniversary date." (30 U.S.C. § 188(b) (1970)). This requirement is repeated in "Schedule B" to appellant's lease. Section 1 of appellant's lease does state that the lease is for a period of five (5) years. However, an oil and gas lease may be extended beyond its primary term by compliance with various provisions of law, some of which are described in section 1 of appellant's lease. The requirement to pay rental set out in "Schedule B" does not limit the payments to any specific number. Rather it

is simply a declaration that rental must be paid for each lease year. See Texas Eastern Transmission Corp., 14 IBLA 361, 365 (1974).

Without submission of a rental payment for the sixth lease year, or what would be the first year of the extended term, the lease expires by its terms and the lessee is in the position of a trespasser if he continues his drilling operations past the expiration date. A key element in demonstrating the diligent prosecution of actual drilling operations necessary to qualify for an extension is drilling activity after the expiration date of the lease. Charles M. Goad, 25 IBLA 130 (1976). A lessee continuing his drilling operations without paying the rental would be able to abandon his operations at any time prior to receiving an extension, having assumed no obligations with regard to the lease. Such a situation is contrary to the whole structure of the mineral leasing laws requiring advance rentals on oil and gas leases.

That Congress was cognizant of, and approved, an application of the termination provision to leases eligible for a 2-year extension where diligent drilling operations were being conducted on the expiration date of the lease is evident from an examination of the language and legislative history of the amendments to the Mineral Leasing Act of 1920 passed since 1960.

The extension by drilling

provision, presently codified as 30 U.S.C. § 226(e) (1970), was enacted as part of the Act of September 2, 1960, 74 Stat. 781. Also included in that Act was a similar extension by drilling provision, codified as 30 U.S.C. § 226-1(d) (1970), for leases in effect on the enactment date.

In 1962, Congress amended 30 U.S.C. § 188 (1954), which had required the termination of a lease for failure to pay rental timely, by enacting general reinstatement provisions applicable only to leases which had terminated prior to the enactment of the amendments. The Act of October 15, 1962, 76 Stat. 943, 30 U.S.C. § 188(c) (1964). In those amendments, Congress also gave the Secretary special discretionary authority to reinstate an oil and gas lease on which "drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 4(d) of the Act of September 2, 1960 (74 Stat. 790)." Act of October 15, 1962, 76 Stat. 943, 30 U.S.C. § 188(d) (1970). Since section 4(d), now codified as 30 U.S.C. § 226-1(d) (1970), applies only to oil and gas leases issued before September 2, 1960, discretionary reinstatement under 30 U.S.C. § 188(d) applies only to leases issued before

that date and therefore does not apply to appellant's lease, which was issued in 1971. 1/

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Senate Report No. 87-2165, which accompanied the amendments, contained this comment on the granting of the 2-year extension under 30 U.S.C. § 226-1(d) where diligent drilling operations were being conducted at the end of the lease term. 2/

*** However, the Department of the Interior has held that this extension is also subject to the provision of the act of July 29, 1954, in that, if the rental for the next lease year is not paid prior to the expiration date, the lease terminates automatically, notwithstanding the diligent drilling operations being conducted.

1962 U.S. Code Cong. & Adm. News 3236, 3238. Clearly, Congress would not have authorized special reinstatement of such leases under 30 U.S.C. § 188(d) (1970) if it was not in agreement with

1/ The language of 30 U.S.C. § 188(d) (1970) is slightly different from the quoted language of the law passed by Congress and set out at 76 Stat. 943. The version set out at 30 U.S.C. § 188(d) refers to "section 226-1 of this title" rather than merely to "section 4(d)" or 30 U.S.C. § 226-1(d). However, the entire section 4 of the Act of September 2, 1960, 74 Stat. 789-90, codified as 30 U.S.C. § 226-1 (1970), is concerned only with oil and gas leases issued prior to the enactment of the Act, September 2, 1960.

2/ As stated above, extensions granted under 30 U.S.C. § 226(e) (1970) are applicable only to oil and gas leases issued after September 2, 1960. In 1962, when Senate Report No. 87-2165 was written, no oil and gas leases were eligible for extensions under 30 U.S.C. § 226(e) (1970) because the primary term of any relevant competitive lease was 5 years and of any relevant noncompetitive lease was 10 years.

the Department that failure to pay rental on or before the anniversary date of the first year of the extended term resulted in the termination of the lease.

Congress, in 1970, again amended 30 U.S.C. § 188 (1964) to allow reinstatement, under certain conditions, of any lease which had been or would thereafter be terminated automatically by operation of law for failure to pay rental timely. The Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970). These amendments and the related committee reports (e.g., 1970 U.S. Code Cong. & Adm. News 3002) contain no indication that Congress considered erroneous the Department's position that a lease, qualified for an extension by drilling, will terminate for failure to pay rental timely.

To summarize the above discussion of Congressional action, we find that: (1) In 1962, Congress was aware that the Department considered a lessee obligated to submit rental for the first year of an anticipated extended term or his lease would terminate under 30 U.S.C. § 188 (1954), now, as amended, 30 U.S.C. § 188(b) (1970); (2) Congress concurred in this position by providing special reinstatement relief to lessees holding leases issued prior to September 2, 1960; and (3) In 1970 Congress again, by its silence,

declined to overrule the Department in this matter, or to provide special relief for post-1960 leases eligible for extension under 30 U.S.C. § 226(e) (1970), but which have terminated for failure to pay rental timely.

We find, therefore, that appellant was required to pay rental for the lease year beginning April 1, 1976, the first year of its anticipated extended term, on or before the anniversary date of the lease, April 1, 1976. Since appellant did not do so, its lease terminated automatically by operation of law as provided by 30 U.S.C. § 188(b) (1970). Unless appellant can show that it is entitled to reinstatement of its lease under 30 U.S.C. § 188(c) (1970), it cannot obtain an extension under 30 U.S.C. § 226(e) (1970).

[3] Appellant's argument that there is a distinction between noncompetitive oil and gas leases and competitive ones with regard to termination for failure to pay rental timely under 30 U.S.C. § 188(b) (1970) and reinstatement of terminated leases under 30 U.S.C. § 188(c) (1970) is incorrect. The only oil and gas leases excepted from those provisions are leases containing a "well capable of producing oil or gas in paying quantities." 30 U.S.C. § 188(b) (1970). Since appellant did not have such a well on its lease on April 1, 1976, when it failed to pay the rental timely, but was only conducting drilling operations, the provisions of 30 U.S.C. §§ 188(b)

and (c) are applicable to its lease. See Texas Eastern Transmission Corp., supra, at 363-64. Moreover, any decision of the Board discussing those provisions, such as Merilyn K. Buxton, Supra, is generally applicable to both competitive and noncompetitive oil and gas leases, regardless of the type of lease involved in the particular decision.

[4] Appellant also argues that a lease known to contain valuable deposits of oil or gas may be canceled only through judicial proceedings. This argument confuses the separate and distinct concepts of "cancellation" and "termination." Appellant's lease has not been canceled. In order to cancel a lease, the Department must take specific action, including, in some instances, judicial proceedings. E.g., 30 U.S.C. §§ 184(h)(1); 188(a); 188(b) (1970). Rather, appellant, by failing to pay its rental timely, has caused its lease to become subject to the directive of Congress set out in 30 U.S.C. § 188(b) (1970) that in such a situation "the lease shall automatically terminate by operation of law." The Department takes no action to cause such a termination; it is triggered solely by the failure of the lessee to pay its rental timely. See C. J. Iverson, supra at 314, 82 I.D. at 389.

[5] Finally, appellant has not argued that it is entitled to reinstatement of its lease under the only applicable statute,

30 U.S.C. § 188(c) (1970). The BLM State Office decision correctly ruled that appellant is not entitled to such reinstatement. A lease, terminated for failure to pay rental timely, is eligible for reinstatement only if the rental is tendered at the proper office within 20 days of the date due, 30 U.S.C. § 188(c) (1970). The fact that appellant did not submit its rental until May 13, 1976, well past the 20-day period beginning April 1, 1976, prevents consideration of the possibility of reinstating appellant's lease. A. E. White, 28 IBLA 91 (1976); Marilyn K. Buxton, *supra*; Texas Eastern Transmission Corp., *supra* at 367. As Congress noted when it amended § 188 to allow reinstatement:

It is recognized that this 20-day limitation on reinstatements means that a small percentage of terminated leases, otherwise deserving, may not be reinstated under this legislation. However, in balancing the advantage of a more liberal relief provision against the committee's desire to reduce the incentive for "intentional" mistakes, the latter course was chosen. In the event truly deserving cases arise that cannot meet the 20-day provision recourse to private relief legislation may be necessary.

H.R. Rep. No. 91-1005, 1970 U.S. Code Cong. & Adm. News 3005.

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.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

