

I. W. LOVELADY, LESSEE
LIBERTY OIL & GAS CORP., APPELLANT

IBLA 82-617

Decided May 19, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas lease NM 24999.

Motion to dismiss denied; decision affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

2. Oil and Gas Leases: Reinstatement

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, *i.e.*, due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

APPEARANCES: S. E. Thames, Jr., Esq., Livonia, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The New Mexico State Office, Bureau of Land Management (BLM), issued noncompetitive oil and gas lease NM 24999, effective October 1, 1975, to Orland K. Unruh, whose drawing entry card was given priority for parcel 583 (New Mexico) consisting of 2,247.89 acres in T. 17 S., R. 17 E., New Mexico

principal meridian, Chaves County, New Mexico. Effective August 1, 1976, the record title to lease NM 24999 was assigned to I. W. Lovelady. By decision of May 22, 1980, BLM approved assignment of 80 percent of the operating rights in lease NM 24999 from Lovelady to Liberty Oil & Gas Corporation (Liberty).

Rental for the lease year commencing October 1, 1981, was not received until October 5, 1981. Notice of lease termination was served on the lessee, I. W. Lovelady, November 3, 1981. A petition for reinstatement of the lease, submitted by Liberty, was denied by BLM decision of February 1, 1982. From this decision, Liberty has appealed.

The Department counsel has moved for summary dismissal of the appeal on the ground that Liberty has no record interest in the lease or has been authorized to represent Lovelady in the proceeding.

In Kirkpatrick Oil & Gas Co., 8 IBLA 108 (1972), this Board held that an operator, holding an approved assignment of operating rights, may appeal from a decision that an oil and gas lease expired by operation of law, even though the operator was not listed as a party in the decision appealed from. So in this case, Liberty is holding an interest in lease NM 24999, approved by BLM, and may be recognized as a proper appellant under 43 CFR 4.410. The motion of the Department counsel is denied.

Appellant restates the reasons set forth in its petition for reinstatement of the lease, that the rental payment for lease NM 24999 was deposited in the United States mails October 1, 1981, and thereby payment was effectively made on the anniversary date of the lease.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the annual rental payment is not received in the proper office of BLM on or before the anniversary date. 30 U.S.C. § 188(b) (1976). Appellant asserts the payment should be deemed timely because it was mailed on the anniversary date. Contrary to appellant's belief, the applicable regulations, which govern here, make abundantly clear that filing is accomplished only when a document or payment is delivered to and received by the proper BLM office. Depositing a document or payment in the United States mail does not constitute filing. 43 CFR 1821.2-2(f). Furthermore, the regulations also make it clear that the rental payment must actually be received in the proper BLM office on or before the anniversary date of the lease. 43 CFR 3108.2-1(a).

[2] A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Late payment may be justifiable if it is attributable to causes beyond the lessee's control. See Annie Mae Buckley, 44 IBLA 99 (1979); Daniel Ashley Jenks, 36 IBLA 268 (1978). Reasonable diligence generally requires sending the payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mails, where such are used for delivery of the rental payment. 43 CFR 3108.2-1(c)(2). Mailing the rental payment from

Livonia, Louisiana, on the same day it was due in Santa Fe, New Mexico, does not constitute reasonable diligence. Ruth Eloise Brown, 60 IBLA 328 (1981); Kenneth W. Macek, 49 IBLA 153 (1980); Harry Zaslow, 46 IBLA 217 (1980). Appellant has shown nothing that indicates it used reasonable diligence in transmitting the rental payment, or that the delay may be deemed justifiable.

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.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

