

ROBERT S. HUGHES  
HELEN G. HUGHES

IBLA 82-1042

Decided August 24, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 24856.

Affirmed.

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

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally 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 a rental payment after it is due does not constitute reasonable diligence.

APPEARANCES: Robert S. Hughes, Helen G. Hughes, pro sese.

OPINION OF ADMINISTRATIVE JUDGE HENRIQUES

Robert S. Hughes and Helen G. Hughes appeal the Montana State Office, Bureau of Land Management (BLM), decision of June 7, 1982, which denied their

petition for reinstatement of oil and gas lease M 24856, terminated May 1, 1982, for failure to pay the annual rental due on or before that date. The rental payment was received May 17, 1982.

Oil and gas lease M 24856 was issued for a period of 10 years, effective May 1, 1973, for the N 1/2 sec. 26, T. 7 S., R. 57 E., principal meridian, Montana. The E 1/2 NE 1/4 sec. 26, T. 7 S., R. 57 E., containing 80 acres, was assigned to Robert S. Hughes and Helen G. Hughes, effective February 1, 1974.

The BLM decision states reasonable diligence was not exercised as the rental payment was mailed May 12, 1982, after the due date. Reasonable diligence requires mailing the payment sufficiently in advance of the due date to account for normal delays in the collection, transmission, and delivery of the mail. Lessees have no legal right to expect a notice of rental due, as responsibility for timely payment of rental is on the lessees.

Appellants state they did not receive a notice that rental was due May 1, 1982, on lease M 24856, as they had received each year since 1974. Their payment was sent voluntarily, although late. They argue that denial of reinstatement is confiscation of their property, especially as they have paid the rental timely each year since 1974.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). When appellants' rental payment was not received on May 1, 1982, the lease terminated automatically. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay the rental on time was either justifiable or not due to lack of diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Mailing the rental payment after the due date does not constitute reasonable diligence. David E. Cooley, Jr., 62 IBLA 87 (1982); Southern Union Co., 60 IBLA 181 (1981); Gilbert Mark Castillo, 36 IBLA 32 (1978); Apostolos Paliombeis, 30 IBLA 153 (1977).

Appellants complain that BLM did not send them a courtesy notice of the rental due. The lack of a courtesy notice from BLM does not justify late payment. The courtesy notice is merely a reminder that rental is due. Reliance on the receipt of a notice does not justify a failure to pay the rental timely. William A. Klug, 43 IBLA 255 (1979); Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977).

We must conclude that the BLM State Office properly denied appellants' petition for reinstatement and that the oil and gas lease M 24856 terminated automatically by operation of law on May 1, 1982.

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:

Edward W. Stuebing  
Administrative Judge

James L. Burski  
Administrative Judge

