

HUGH CARTER CRUTCHFIELD TRUST

IBLA 84-729 Decided May 22, 1985

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. AA-48554-Y.

Affirmed.

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

Under 30 U.S.C. § 188(c) (1982), BLM has no authority to reinstate a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental where the rental payment was not tendered at the proper office within 20 days after the anniversary date.

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

BLM may properly condition class II reinstatement, under 30 U.S.C. § 188(d) and (e) (1982), of a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental upon tender of the required back rental, computed at the increased rate of \$5 per acre set forth in 30 U.S.C. § 188(e)(2) (1982), within 60 days after receipt of a notice of termination.

APPEARANCES: Brett F. Paulsen, Esq., Salt Lake City, Utah, for appellant.  
OPINION BY ADMINISTRATIVE JUDGE GRANT

The Hugh Carter Crutchfield Trust has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 11, 1984, rejecting its petition for reinstatement of noncompetitive oil and gas lease AA-48554-Y.

Effective April 1, 1983, BLM issued noncompetitive oil and gas lease AA-48554 to United Arctic Oil, Inc. (United Arctic) for 10,202 acres of land situated in Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By request dated June 17, 1983, received

August 22, 1983, appellant sought approval of an assignment of a portion of oil and gas lease AA-48554, totaling 80 acres, from United Arctic. By decision dated November 29, 1983, BLM approved the partial assignment effective September 1, 1983. The assigned lease was identified as AA-48554-Y, with an annual rental of \$80. The BLM decision approving the assignment stated that: "Hugh Carter Crutchfield Trust is responsible for payment of the annual rental on the assigned lands. 43 CFR 3103.2. Your first rental payment is due April 1, 1984."

By notice dated April 27, 1984, and received by appellant on April 30, 1984, BLM informed appellant that its oil and gas lease had terminated effective April 1, 1984, for failure to pay the annual rental on or before the lease anniversary date. However, BLM stated that appellant had the right to petition for reinstatement of the lease under the provisions of either 30 U.S.C. § 188(c) (1982) ("Class I" reinstatement) or 30 U.S.C. § 188(d) and (e) (1982) ("Class II" reinstatement), upon compliance with certain specified conditions.

On May 7, 1984, appellant filed a petition for reinstatement of oil and gas lease AA-48554-Y, contending that payment of the annual rental was "inadvertently overlooked" in clearing up the estate of Hugh Carter Crutchfield, who was "recently deceased." In addition, appellant submitted the rental payment, which was credited to appellant on May 8, 1984, in an unearned account.

In its June 1984 decision, BLM denied appellant's petition for reinstatement under 30 U.S.C. § 188(c) (1982), concluding that appellant had not demonstrated that the failure to pay the annual rental timely was either justifiable or not due to a lack of reasonable diligence. However, BLM stated it had determined that the failure to pay timely was inadvertent and that the lease could be reinstated under 30 U.S.C. § 188(d) and (e) (1982), if, within 60 days after appellant received the April 1984 termination notice, *i.e.*, by July 2, 1984, it agreed to amended lease terms and paid \$962 to cover the difference in back annual rental between the old rate (\$1 per acre) and the new rate (\$5 per acre), administrative costs of reinstatement, and the cost of publishing notice in the Federal Register of the proposed reinstatement. BLM stated that if appellant did not comply with these conditions, "reinstatement \* \* \* will be denied without further notice."

In its statement of reasons for appeal, appellant contends it relied on United Arctic, which informed appellant by letter dated April 10, 1984 (submitted on appeal), that it would notify appellant of the annual rental due "within fifteen days of the due date," to look after its interest in the assigned lease and that it "immediately" paid the required annual rental after receipt of the April 1984 termination notice.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon the failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). Since appellant's rental payment was not received on or before the anniversary date, oil and gas lease AA-48554-Y terminated automatically.

Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of termination upon a showing by the lessee that the failure to pay on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence. Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983).

Mailing the rental payment after the due date does not constitute reasonable diligence. 1/ O. L. Foster, 72 IBLA 367 (1983). However, failure to pay on time may be considered justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. Joanne F. Bechtel, 76 IBLA 1 (1983), and cases cited therein. Negligence, forgetfulness, and inadvertence do not justify failure to pay rental timely, since they are events within the lessee's control. Eleanor L. M. Dubey, 76 IBLA 177 (1983); John E. Conner, 72 IBLA 83 (1983).

In addition, appellant cannot justify a late payment by virtue of its reliance on United Arctic because, once a lease has been assigned, the assignee is responsible for making the rental payment timely. See NP Energy Corp., 72 IBLA 34 (1983).

Moreover, appellant clearly did not pay or tender its overdue annual rental within 20 days of the lease anniversary date, i.e., April 1, 1984. Appellant admittedly paid only in response to the termination notice, dated April 30, 1984, which payment was received on May 7, 1984. 2/ For this reason alone, appellant was not entitled to a class I reinstatement. Maynard J. Bonesteel, 82 IBLA 237 (1984). We conclude that BLM properly rejected appellant's petition for a class I reinstatement.

[2] The BLM decision also set forth certain conditions of appellant's entitlement to a class II reinstatement. BLM, in its June 1984 decision, concluded that appellant was eligible for a class II reinstatement because the failure to pay timely was due to inadvertence. As a condition to a

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1/ The Departmental regulations governing reinstatement provide that where a rental payment is mailed "on or before the lease anniversary date and is received in the proper BLM office \* \* \* no later than 20 days after such an anniversary date [it] shall be considered as timely filed." 43 CFR 3108.2-1(a). In effect, when a rental payment is mailed prior to, but received within, 20 days of the due date, a late payment is deemed not due to a lack of reasonable diligence; and, thus, the lease will be reinstated under 30 U.S.C. § 188(c) (1982). Hugh L. Scott, 83 IBLA 184 (1984). In this case, however, appellant's rental payment was mailed after the anniversary date. Thus, appellant cannot take advantage of 43 CFR 3108.2-1(a).

2/ Appellant also apparently suggests that the acceptance of his rental check is sufficient to bind the Department to reinstate his lease. The cashing of a check and depositing it in the unearned account does not constitute an acceptance of the payments nor a determination that a lease will be reinstated. A refund of the rental tendered will be made in due course if it is ultimately determined that appellant is not entitled to reinstatement. Rose L. Terenzi, 68 IBLA 21 (1982).

class II reinstatement, BLM required appellant to pay the difference between the back annual rental computed at the old rate of \$1 per acre (\$80) and the new rate of \$5 per acre (\$400) by "July 2, 1984, 60 days from receipt of your termination notice." The April 1984 termination notice had, likewise, required appellant, in order to be entitled to a class II reinstatement, to submit a petition for reinstatement

together with \* \* \* the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below, \* \* \* within 60 days after receipt of this notice \* \* \* For reinstated noncompetitive leases, rental shall be \$5.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of 16 2/3 percent.

The terms of 30 U.S.C. § 188(d)(2)(B) (1982), require that, with respect to leases terminated on or after January 12, 1983, a terminated lease will not be reinstated unless, in addition to showing that the late payment was the result of inadvertence, the lessee submits

a petition for reinstatement together with the required back rental and royalty accruing from the date of termination \* \* \* on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease. [Emphasis added.]

Since August 16, 1983, both Congress and the Department have consistently interpreted the term "required back rental" to be the minimum future rental set forth in 30 U.S.C. § 188(e)(2) (1982), i.e., \$5 per acre per year for noncompetitive leases. This is currently codified in 43 CFR 3108.2-3(b)(1). Thus, a lessee, in order to be entitled to a class II reinstatement, is required to pay back rental at the rate of \$5 per acre per year within 60 days of receipt of a termination notice. This requirement, as noted above, was embodied in the April 1984 termination notice issued herein. Failure to do so properly results in denial of a petition for a class II reinstatement. Kurt W. Mikat, 82 IBLA 71 (1984).

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge.

Gail M. Frazier  
Administrative Judge

