Appeal from a decision of the New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease NM 55808.

Affirmed.

1. Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

2. Oil and Gas Leases: Cancellation

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease.


OPINION BY ADMINISTRATIVE JUDGE BURSKI

L & B Land Lease Group 82-3 has appealed from an October 12, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM). That decision in pertinent part states:

Simultaneous oil and gas lease NM 55808, which issued effective April 1, 1983, is hereby cancelled for the following reason:

The lands in NM 55808 were in prior lease NM 43071, which was terminated for non-payment of rental on August 1, 1982. However, a review of the records disclosed that payment was timely paid on NM 43071 on July 23, 1982. The rental for the period commencing August 1, 1983, was paid on July 27, 1983. Therefore, lease NM 43071 is in good standing with rentals paid for the period ending July 31, 1984. Lease NM 43071 has been reinstated by decision dated October 5, 1983.
An account of the events preceding BLM's decision is as follows: On July 29, 1981, BLM issued noncompetitive oil and gas lease NM 43701 to W. Wayne Gill, effective August 1, 1981, for certain lands in T. 5 N., R. 19 E., New Mexico Principal Meridian. By instrument signed September 22, 1981, Gill assigned oil and gas lease NM 43071 to Gulf Oil Corporation (Gulf). The assignment was filed with BLM on October 15, 1981. On July 22, 1982, BLM received Gulf's annual rental payment for lease NM 43071. However, due to an accounting error by BLM, the payment was credited to NM 43701. Because no payment was credited to lease NM 43071, BLM treated it as terminated by operation of law pursuant to 30 U.S.C. § 188 (1982) when no payment was received by the anniversary date.

As a result of this clerical error, the BLM records indicated that the land within NM 43071 was available for leasing. BLM posted the land for leasing in the November 1982 simultaneous oil and gas lease drawing as parcel NM 108. In this drawing, L & B Land Lease Group 82-3 received first priority for parcel NM 108. Oil and gas lease NM 55808 was issued by BLM on March 21, 1983, effective April 1, 1983.

On July 18, 1983, BLM received another rental payment from Gulf for lease NM 43071. By notice dated July 19, 1983, BLM returned Gulf's check and informed it that the lease had terminated for nonpayment of rental on August 1, 1982. Gulf then submitted the canceled check showing its 1982 payment as proof of timely payment for 1982 and resubmitted the 1983 rental payment. On October 5, 1983, BLM issued a decision reinstating oil and gas lease NM 43071. 1/

On October 12, 1983, BLM issued a decision cancelling lease NM 55808 for the reason that it had issued for land which was, at that time, under an earlier valid lease. This appeal followed.

On appeal, appellant states that there is no authority or precedent for BLM's action. In addition, appellant states that it has conducted its business based on the belief that it owned lease NM 55808 and will be damaged by BLM's retroactive action.

In response, Gulf, citing Nucorp Energy, Inc., 73 IBLA 101 (1983), and Pacific Transmission Supply Co., 35 IBLA 297 (1978), argues that where the lease records demonstrate that the rental payment was timely received and BLM failed to apply the payment to the lease indicated, the lease is properly held not to have terminated.

1/ While BLM denominated its actions as a "reinstatement" of the lease, it is important to differentiate this clerical "reinstatement" from the statutory reinstatement provisions found at 30 U.S.C. § 188(c) and (d) (1982). The action here is merely an administrative recognition that prior treatment of the lease as terminated was in error and that, in fact, the lease never terminated. Statutory reinstatement, on the other hand, occurs only where the lease has terminated and the statutory provisions of either 30 U.S.C. § 188(c) or (d) have been met.
An oil and gas lease on which there is no well capable of production of oil or gas in paying quantities terminates automatically by operation of law upon the failure of the lessee to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). It is incumbent upon the lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that BLM can credit the payment to the proper lease account. Nucorp Energy, Inc., supra; Pyco Energy Corp., 69 IBLA 327 (1982); Pacific Transmission Supply Co., supra.

In the instant case it seems clear that Gulf's check was accompanied by the notice of payment due which properly identified the lease as NM 43071. However, in typing up the receipt the BLM Accounting Division transposed the zero and the seven and credited the payment to lease NM 43701. In Nucorp Energy Inc., supra, we held that where a payment was submitted together with the notice of rental due, it was properly credited to the lease account shown on the notice, even where the remitter had misidentified the lease number on the face of the check. Here, where there was no misidentification on the face of the check, it is clear that it should have been credited to lease NM 43071, and BLM's failure to properly so credit the check could not adversely affect the lease.

The Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Fortune Oil Co., 69 IBLA 13 (1982); Paul N. Temple, 33 IBLA 98 (1977). Inasmuch as the rental was timely paid, oil and gas lease NM 43071 did not terminate by operation of law. Thus, the inclusion of its lands in the November 1982 simultaneous oil and gas drawing was in error. Lands included in an outstanding oil and gas lease are not available for oil and gas leasing and a lease issued for such land is void. While it is unfortunate that BLM's clerical error served to heighten appellant's expectations, appellant could gain no rights under the lease, so long as the prior lease remained outstanding. It is to be expected, of course, that since the posting of the land as available was the result of a BLM oversight, both the first year's rentals and the filing fees will be duly refunded to appellant.

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.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge