

PRM EXPLORATION CO.

IBLA 84-900

Decided December 10, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease OR 24589.

Affirmed.

1. Appeals -- Oil and Gas Leases: Termination -- Rules of Practice:
Appeals: Timely Filing

A person who wishes to appeal from a determination that an oil and gas lease has terminated by operation of law for failure to submit the rental amount due must file a notice of appeal within 30 days after the date of service of the determination. If an appellant fails to file a timely notice of appeal in accordance with 43 CFR 4.411, the issue of termination will not be considered in an appeal from a subsequent decision denying petition for reinstatement.

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

Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to make a class I reinstatement of a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

APPEARANCES: Rebecca J. Walliser, Lands Records Supervisor, PRM Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

PRM Exploration Company appeals from an August 21, 1984, decision of the Oregon State Office, Bureau of Land Management (BLM), denying its petition for reinstatement of oil and gas lease OR 24589. The lease had terminated on June 1, 1984, for failure of the lessees to tender the full rental amount due.

Oil and gas lease OR 24589 was issued to Centennial Petroleum, Inc., effective June 1, 1981, for 1,000 acres in SW 1/4, sec. 3; S 1/2 SE 1/4, NW 1/4 SE 1/4, sec. 12; sec. 34; W 1/2 NE 1/4, sec. 36, T. 18 S., R. 22 E., Willamette Meridian, Crook County, Oregon. Centennial Petroleum assigned a 75-percent interest in the lease to May Petroleum, Inc., and a 25-percent interest to PRM Exploration Company, approved effective September 1, 1981. May Petroleum subsequently assigned a 25-percent interest in the lease to British Exploration Inc., who, in turn, assigned a 10.7143-percent interest to PCO Leases, Inc. As a result, May Petroleum holds a one-half interest in the lease and the other three companies hold the other half. The record indicates the three latter companies share the same business address and corporate officers.

Full rental payment was submitted in a timely manner by May Petroleum in 1982 and 1983. However, on May 23, 1984, a check for \$ 380.00 (from PRM Exploration), a check for \$ 217.14 (from British Exploration), and a check for \$ 162.86 (from PCO Leases) were received and recorded for OR 24589 by Minerals Management Service (MMS). On June 29, 1984, BLM received a letter from PRM Exploration explaining the partial payment of \$ 760 and an unsigned partial

surrender of 240 acres (SW 1/4, sec. 3; W 1/2 NE 1/4, sec. 36, T. 18 S., R. 22 E., WM). Signed copies of the partial surrender and an assignment by May Petroleum of its interest in the remaining 760 acres to the other three co-lessees were subsequently submitted to BLM. On July 17, 1984, BLM issued a termination notice for OR 24589 because of the failure to pay the full rental due (\$ 1,000) in a timely manner. The opportunity and conditions for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (class I) and § 188(d), (e) (class II) were outlined in the notice of termination.

PRM Exploration filed a petition for class I reinstatement on August 3, 1984. It explained it had been instructed by an unidentified employee of MMS to submit a description of the lands it desired to retain and rental calculated on such acreage in order to "hold our lease in effect as to the desired lands." PRM Exploration asserted it followed those instructions and timely submitted rental for 760 acres. In its decision dated August 21, 1984, BLM denied the petition for class I reinstatement because the required rental was not submitted within the 20-day limit. BLM found the partial relinquishment and the assignment to be without effect because the required documents had been received after the date the lease had terminated by operation of law. BLM also explained the available option of class II reinstatement under 30 U.S.C. § 188(d), (e) (1982). Instead of pursuing that alternative, PRM Exploration filed a notice of appeal from BLM's August 21, 1984, decision.

In its statement of reasons PRM Exploration requests review of BLM's decision on the grounds it received incorrect instructions from an MMS employee. Appellant explains that when May Petroleum declared its intent

to withdraw from participation in the lease in February 1984, PRM Exploration decided to retain only those areas in the lease it felt were "geologically sound." It contacted MMS several weeks before the rental payment deadline for instruction and asserts an employee there informed it to describe the lands desired for retention and submit the appropriate rental for such acreage in order to "hold the lease in effect." However, appellant also states it contacted BLM and was instructed to pay the entire advance rental to maintain the lease and then submit the necessary paperwork for assignments and surrender of undesired lands. It argues such procedure would be unfair since it must pay rental on unwanted acreage in order to retain that portion of the lease it did desire. Appellant asserts, "We did not inadvertently miss the delay rental payment nor was there a lack of reasonable diligence; we sent well in advance the delay rental payment for the acreage we wished to retain, thinking this was proper procedure."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease in which there is no well capable of producing oil and gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). 1/ In its appeal, PRM Exploration challenges BLM's determination that the lease had terminated. It

1/ The only exception is a deficient payment made on or before the anniversary date where the deficiency is nominal. The lease does not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency. 43 CFR 3108.2-1(b); Louise V. Lee, 83 IBLA 50, 51 (1984). A deficiency is considered nominal if it is not more than \$ 100 or more than 5 percent of the total payment due, whichever is less. Id. The underpayment in the instant case constituted \$ 240, or 24 percent of the total rental payment due. The payment received by MMS was, therefore, not nominally deficient and the exception is inapplicable.

asserts rental was due on 760 acres, not on 1,000 acres, and claims sufficient payment was timely tendered. However, the only issue stated in appellant's statement of reasons which we may consider is the timely appeal from the denial of appellant's petition for reinstatement. BLM's determination that the lease had terminated for failure to tender sufficient rental payment was received by PRM Exploration on July 23, 1984. Instead of promptly appealing BLM's reason for termination of the lease, appellant chose to file a petition for class I reinstatement. The petition was denied and the notice of appeal from PRM Exploration was received on September 5, 1984.

The Departmental regulations governing an appeal to this Board provide that an appeal of an adverse decision must be properly filed within 30 days after the date of service. 43 CFR 4.411. A notice of termination of an oil and gas lease is a decision adverse to the lessee. A lessee must, therefore, file a notice of appeal from that decision within 30 days from the date of receipt of the notice of termination. See James and Lillian Chudnow, 86 IBLA 315 (1985). If an appeal is not filed in the time prescribed by 43 CFR 4.411, the lessee is precluded from litigating that issue in the Department. See Mid-Continent Coal & Coke Co., 83 IBLA 56, 66 (1984); Donna J. Waidtlow, 82 IBLA 247 (1984). However, the lessee may still file a petition for reinstatement of the terminated lease. In this case appellant failed to file a timely appeal from the notice of termination of oil and gas lease OR 24589. Therefore, the issue of termination cannot be considered. 2/

2/ Were we to consider the merits of appellant's arguments, several governing rules and principles would cause us to affirm BLM's decision. First, 30 U.S.C. § 187b (1982) and 43 CFR 3108.1 provide that rights in a lease or any legal subdivision thereof are surrendered when the lessee files a written relinquishment in the proper BLM office. Such relinquishment is effective on the date of filing. A written relinquishment of the undesired 240 acres had

[2] Therefore, the only question before the Board is whether a reinstatement of the lease is proper in this case. 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 and upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2 (class I reinstatements). However, the Department has no authority to make a class I reinstatement of a terminated lease if the full rental payment is not tendered at the proper office within 20 days after the due date. J. Edward Hollington, 86 IBLA 345 (1985); William E. Phalen, 85 IBLA 151 (1985). Since full rental payment for the lease was never tendered within the prescribed period, appellant's opportunity for class I reinstatement is foreclosed by statute.

BLM advised appellant in the notice of termination of an additional opportunity to file a class II reinstatement petition. In particular,

not been filed with BLM by the date of the lease anniversary and, therefore, a relinquishment of the lease was not effective as of June 1, 1984. Accordingly, full rental was due for the lease of record. See James and Lillian Chudnow, supra.

Second, PRM Exploration claims it received and followed instructions from an employee of the Department when it did not understand the process for relinquishing part of the lease. It is a well-established principle that reliance on erroneous or incomplete information or advice provided by Federal employees cannot create rights not authorized by law. Silver Buckle Mines, Inc., 84 IBLA 306 (1985); Stephen M. Thompson, 84 IBLA 146 (1984). The simple procedure for relinquishment of lessee rights in an oil and gas lease is clearly explained in statute and regulation. Moreover, although it did contact the agency delegated the authority to manage oil and gas leases, appellant alleges it followed erroneous instructions received from an employee of a different agency because the information received from BLM "[did] not seem fair."

Because those interests in the lease sought to be relinquished or assigned no longer existed after the lease had terminated, BLM properly concluded the respective documents filed to affect disposition of those interests were ineffective.

30 U.S.C. § 188(d), (e) (1982) allows the Secretary to reinstate a terminated oil and gas lease where it is demonstrated the failure to pay timely was inadvertent. See 43 CFR 3108.2-3 (class II reinstatements). However, appellant did not petition for reinstatement under that provision and the time for filing a class II petition has expired. Therefore, it is not necessary to address the issue.

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.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

