

CITIES SERVICE OIL AND GAS CORP.

IBLA 87-668

Decided June 21, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W-63045.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. | 188(c) (1982), the class I reinstatement authority, BLM has no authority to reinstate a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date and other requirements are met. This restriction applies regardless of the circumstances surrounding the failure to submit the rental timely.

2. Oil and Gas Leases: Assignments and Transfers

Where the assignment of an oil and gas lease is pending before BLM, the assignor is responsible for the performance of all obligations under the lease until the assignment has been approved. The failure of BLM to approve an assignment by the rental due date does not excuse or justify the nonpayment or late payment of rental.

3. Administrative Authority: Generally--Regulations: Force and Effect as Law

A BLM instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force and effect.

APPEARANCES: Patricia A. Patten, Esq., Tulsa, Oklahoma, for Cities Service Oil and Gas Corporation.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Cities Service Oil and Gas Corporation (appellant) has appealed from a decision dated June 16, 1987, by the Wyoming State Office, Bureau of Land

Management (BLM), denying a petition for class I reinstatement of oil and gas lease W-63045.

Oil and gas lease W-63045 was issued effective May 1, 1978, for 1,080 acres in Campbell County, Wyoming. On April 10, 1984, with an effective date of January 1, 1984, BLM approved an assignment of 100-percent record title in the lease to Shell Western E & P Inc. (Shell). On August 9, 1984, Shell filed an assignment of the lease to James K. Stewart and others. This assignment, with an effective date of September 1, 1984, was approved by BLM on July 26, 1985. On November 1, 1984, James K. Stewart and others filed an assignment of the lease to appellant. This assignment, with an effective date of December 1, 1984, was also approved by BLM on July 26, 1985.

Before it had approved these assignments to Stewart and others and to appellant on July 26, 1985, BLM had, by notice of May 22, 1985, advised Shell that part of the lease was within the known geologic structure (KGS) of the Buttes oil and gas field and that lease rental would be increased to \$2 per acre beginning with the ensuing lease year, i.e., on May 1, 1986.

On April 21, 1986, appellant remitted \$1,080 as annual rental for W-63045. On December 30, 1986, BLM issued appellant a termination notice advising that the lease had terminated on its anniversary date, May 1, 1986, because of failure to pay lease rental (\$2,160) in a timely manner. BLM's notice outlined two possible procedures for reinstatement of the lease, pursuant either to 30 U.S.C. | 188(c) (1982) (class I reinstatement) or 30 U.S.C. | 188(d) and (e) (1982) (class II reinstatement). 1/

On February 10, 1987, appellant filed separate petitions for reinstatement of the lease under class I and class II. Appellant also remitted back rental of \$1,080. In its petition for class I reinstatement appellant argued that its failure to pay the correct rental was justifiable and not due to a lack of reasonable diligence because BLM's notice of the increased rental per acre was sent to Shell on May 22, 1985, even though appellant had been approved as the record title owner effective December 1, 1984. Appellant also noted that neither the approved assignment form nor a serial

1/ Under 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2, class I reinstatement is subject to the following conditions, set forth in BLM's notice:

"(1) that a new oil and gas lease has not been issued for any of the lands affected by the terminated lease;

(2) that it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to lack of reasonable diligence;

(3) that rental due was paid or tendered within 20 days of the anniversary date of the lease; and

(4) that a petition for reinstatement is filed in this office within 60 days after receipt of this Notice, along with a nonrefundable filing fee of \$25 and any required rental, including any back rental which has accrued from the termination date of this lease."

(Emphasis in original).

register page it obtained that was certified on September 5, 1984, indicated that part of the lease was within a KGS.

In its June 16, 1987, decision, BLM found that appellant had submitted its payment within 20 days of the anniversary date but denied the petition for class I reinstatement on the grounds that appellant's "reasons for not paying the correct rent are not considered justifiable." The decision stated that the Department does not recognize the rights of an assignee to an interest in a lease until the assignment is approved; filing the assignment form does not constitute a "conveyance" to an assignee. ^{2/} Until the assignment to appellant was approved on July 26, 1985, Shell remained the lessee of record and for that reason the May 22, 1985, notice of increased rental under 43 CFR 3103.2-2(d) was sent to Shell rather than to appellant. The KGS status was noted on the serial register page after the May 22, 1985, notice was sent, the decision stated. "It should also be noted that land status never appears on an assignment," the decision added. BLM's decision also noted that appellant had filed a petition for class II reinstatement along with \$10,326.25 in fees and an agreement to abide by new lease terms and stated that a notice of proposed reinstatement would be published in the Federal Register if no appeal of the decision were filed within 30 days.

Appellant challenges the denial of class I reinstatement. Appellant restates its contention that its failure to pay the correct rental amount was justifiable and not due to lack of reasonable diligence because it was not timely notified of the rental increase. Appellant argues that but for BLM's delay in processing the assignment, appellant would have been the lessee of record in May 1985 when BLM sent notification of increased rental to Shell. Appellant refers to BLM Instruction Memorandum (IM) No. 86-177, dated December 31, 1985, in which the Acting Director notified all state BLM offices that oil and gas lease assignments were to receive higher priority and be processed more expeditiously, with the objective of eliminating the backlog of record title assignments. The memorandum instructed that assignment cases should not be pending Bureau action longer than 30 days from the date filed for approval or 120 days from the date of the assignor's execution, whichever was shorter. Appellant suggests that it did all it could to protect its interests, and that it should not be penalized for BLM's lack of diligence in processing the lease assignment:

[I]t is not justifiable for the Bureau of Land Management to attempt to transfer its negligence into liability for Cities Service to assume. If the BLM is allowed such delays in the approval of assignments, and benefit[s] therefrom by the increases in rental from lessees who do not receive appropriate notices, such behavior is only reinforced, and encouraged as the government sustains a monetary benefit in the form of increased revenues through a Class II reinstatement.

(Statement of Reasons at 8).

^{2/} See 43 CFR 3106.1.

[1] 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 a showing is made by the lessee that the failure to pay rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2 (class I reinstatements). 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. PRM Exploration Co., 90 IBLA 63, 68, 92 I.D. 617, 620 (1985), and cases cited; Samson Resources Co., 71 IBLA 224, 229 (1983). Where, for whatever circumstances, full rental is not tendered within the prescribed period, the opportunity for class I reinstatement is foreclosed by statute. Mark Salisbury, 107 IBLA 335, 337 (1989). Contrary to the statement in BLM's decision, full payment of the rental due for this lease was not received until more than 20 days after the May 1 anniversary date. Therefore, class I reinstatement cannot be granted.

[2] The statutory provision governing assignments, 30 U.S.C. | 187a (1982), states that until approval of an assignment, "the assignor or sublessor * * * shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." See PRM Exploration Co., 91 IBLA 165, 170 (1986). In this case, Shell continued as lessee of record until July 26, 1985, the date on which BLM approved the assignment of the lease to appellant. Thus, on May 22, 1985, appellant was still the unapproved assignee of the lease and potential lessee.

Appellant's arguments concerning BLM's delay in processing the assignment cannot serve as a basis for reinstatement contrary to the mandates of 30 U.S.C. | 188(c) (1982). Such arguments were considered and rejected in Jerry D. Powers, 85 IBLA 116 (1985), and Harry C. Peterson, 75 IBLA 195 (1983), where the Board stated:

Appellant's accusation that BLM unreasonably delayed in approving the assignment fails to consider the workload of applications, assignments, and other paperwork with which BLM may be burdened. We recognize that the filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department. 30 U.S.C. | 187a (1976); Petrol Resources Corp., 65 IBLA 104 (1982). However, appellant could not predict when approval would be granted. NP Energy Corp., [72 IBLA 34 at 37 n.2 (1983)]. Thus, he could not reasonably assume, as he contends, that the assignment would be approved within a month, or even by the lease's anniversary, or rental due, date. See Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980). [Emphasis in original.]

(75 IBLA at 196-97).

[3] Finally, a BLM IM is merely a document for internal use by BLM employees. Such documents are not regulations, have no legal force and effect, and are not binding on the public or this Board. The Joyce Foundation, 102 IBLA 342, 345 (1988). Consequently, we could not grant class I

reinstatement on the basis of BLM's failure to comply with it, even if it had been applicable at the time the assignment to appellant was filed.

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 as modified.

Will A. Irwin
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge