

Editor's note: no longer followed in part -- See Carol B. Rogers, 126 IBLA 117 (April 29, 1993)

PAUL D. LIEB
PARDEE PETROLEUM CORP.
RALPH W. M. KEATING

IBLA 88-393, 88-435

Decided October 22, 1990

Consolidated appeals from decisions of the California State Office, Bureau of Land Management, denying reinstatement of oil and gas leases CA LA 033164 and CA SAC 021009(b).

Affirmed.

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

Under 30 U.S.C. § 188(b) (1988), termination of a lease having no well capable of producing oil or gas in pay-ing quantities occurs automatically if the rental is not received on or before the anniversary date of the lease. Termination does not depend on or result from administrative action.

2. Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination--Oil and Gas Leases: 20-Year Leases

The provisions of 30 U.S.C. § 188(b) (1988) automati-cally terminating an oil and gas lease for failure to pay the rental on or before the anniversary date of the lease became applicable to 20-year or renewal leases upon the first renewal after July 29, 1954, either by force of law or by the lessee's execution of a renewal lease containing an automatic termination provision.

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

BLM has no authority to grant Class I reinstatement of an oil and gas lease under 30 U.S.C. § 188(c) (1988), if the rental amount is not submitted within 20 days after the anniversary date.

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

Cashing a late rental check for an oil and gas lease and depositing the funds in an unearned account does not

constitute acceptance of rental payment or rein-state a terminated oil and gas lease.

5. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination--
Oil and Gas Leases: 20-Year Leases

Class II reinstatement under 30 U.S.C. § 188(d) (1988) is expressly limited to oil and gas leases "issued pursuant to section 226(b) or (c) of this title." There is no authority under sec. 188(d) to reinstate terminated 20-year or renewal leases issued pursuant to 30 U.S.C. § 223 (1988).

APPEARANCES: Charles A. Patrizia, Esq., and Joseph E. Schmitz, Esq., Washington, D.C., for Paul D. Lieb; Jack Winters, President, Pardee Petroleum Corporation, Edison, California; Ralph R. M. Keating, Hillsborough, California, pro se; Lynn M. Cox, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Paul D. Lieb (Lieb) has appealed from a March 15, 1988, decision of the California State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease CA LA 033164. BLM determined that the lease had terminated by operation of law when Lieb failed to make timely payment of the rental due on or before September 1, 1986. Pardee Petroleum Corporation (Pardee) and Ralph W. M. Keating (Keating) have appealed from a March 30, 1988, decision of the same BLM office, holding that oil and gas lease CA SAC 021009(b) had terminated by operation of law upon failure to pay rental on or before December 1, 1987, without a right of reinstatement and that no further action would be taken on pending assignment. Both leases are 10-year renewal leases originating from 20-year leases issued pursuant to section 14 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. § 223 (1988). 1/

The appeals have been consolidated because they raise identical issues: (1) whether renewals of leases originally issued pursuant to 30 U.S.C. § 223 (1988) are subject to automatic termination pursuant to 30 U.S.C. § 188(b) (1988); and (2) if subject to that code section, are the leases eligible for reinstatement pursuant to 30 U.S.C. § 188(c) or 188(d) (1988).

1/ Lease CA LA 033164 was issued for a term of 10 years beginning Sept. 1, 1983, with the preferential right to renew for successive 10-year terms. CA LA 033164 was a renewal of an earlier 10-year lease originating from a 20-year lease issued in 1923 pursuant to section 14 of the Mineral Lands Leasing Act, as amended, 43 U.S.C. § 223 (1988). Oil and gas lease CA SAC 021009(b) is also a 10-year renewal lease issued effective Dec. 1, 1981. The original lease had also been issued pursuant to 30 U.S.C. § 223 (1988).

[1] The statute found at 30 U.S.C. § 188(b) (1988) provides that: "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Lease termination automatically occurs pursuant to this statute when the rent is not received, and does not depend on or result from administrative action. Mark Salisbury, 107 IBLA 335 (1989); Herbert J. Stinnett, 91 IBLA 239 (1986).

The rental for oil and gas lease CA LA 033164, due on September 1, 1986, was paid on November 26 of that year, and the rental for oil and gas lease CA SAC 021009(b), due on December 1, 1987, was paid by a check dated December 30, which was received by the Minerals Management Service (MMS) on January 27, 1988. If 30 U.S.C. § 188(b) (1988) is applicable to these leases, BLM correctly found them to have terminated by operation of law.

Section 13 of the Mineral Leasing Act of 1920, ch. 85, 41 Stat. 437, 441, authorized the Secretary of the Interior to issue oil and gas prospecting permits to qualified applicants. Under section 14 of the same act, a permittee who discovered valuable deposits of oil or gas in the permit area could lease one-fourth of the permitted land "for a term of 20 years upon a royalty of 5 per centum * * * with a right of renewal as prescribed in section 17." Section 14 also gave the permittee a preference right to lease the remainder of the land, subject to a 12-1/2-percent royalty.

Section 17, as enacted in 1920, provided:

Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

Dissatisfaction with the permit-lease system prompted Congress to enact significant amendments to the Mineral Leasing Act in 1935. The Act of August 21, 1935, ch. 599, 49 Stat. 654, scrapped the permit system. With a limited exception, no further permits were issued after passage of the 1935 amendments, and 20-year leases were issued only in the case of outstanding permits. The new 5- and 10-year leases could be extended beyond their term only if and so long as oil or gas was being produced in paying quantities. The 1935 amendments also provided for cancellation by a district court when a "pre 1935" lessee failed to comply with an Act provision or the lease, and administrative cancellation of leases issued after August 21, 1935.

[2] The provision for automatic termination for failure to pay timely the annual rental, now codified at 30 U.S.C. § 188(b) (1988), was added by the Act of July 29, 1954, ch. 644, 68 Stat. 585. This section applies to "any lease on which there is no well capable of producing oil or gas in

paying quantities." 2/ In subsequent determinations the Department found this provision applicable to all leases issued after July 29, 1954. See Stanley Odlum, 65 I.D. 25 (1958). However, it is also clear that the holder of a lease issued prior to July 29, 1954, could elect to subject the lease to the automatic termination provisions. See 43 CFR 192.161(a) (1963), 43 CFR 3129.2(b) (1965), 43 CFR 3108.2-3 (1971). This language was omitted from later versions of this regulation, but no substantive change was intended. See 48 FR 33673 (July 22, 1983). Under the Odlum decision, cited above, an extension of a lease issued prior to July 29, 1954, will also subject the leases to the automatic termination provision. 3/ The provision "upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods" set forth in section 17, and quoted above, subjects the renewed leases to the automatic termination provision, and we find no legal impediment to doing so.

Renewal of a 20-year lease by statute expressly subjects the lease to other provisions of law. Ann Burnett Tandy, 33 IBLA 106, 112 (1977);

2/ Lieb asserts that this provision applies only to leases issued pursuant to 30 U.S.C. § 226. Only the first sentence of section 188(b) is restricted to leases issued pursuant to 30 U.S.C. § 226 (1988). The second sentence, containing the automatic termination provision, contains no such restriction.

3/ The following explanation of the applicability of the automatic termination provision after extension is set forth at page 29 of the Odlum decision:

"It was to relieve the Department of the heavy administrative burden incident to canceling leases where the annual rental was not paid by the anniversary dates of the leases and to bring Federal oil and gas leases in line with State and private leases in this respect that the provision was suggested. All of this was explained to the Congress when the amendment was suggested. In the Department's report on the proposed amendment of section 31, it was pointed out that the provision for automatic termination would have limited application to leases issued before the effective date of the amendment. As an instance of that limited application, it was stated that it would apply to such leases following extensions of those leases upon application therefor. In other words, it would apply to leases issued prior to July 29, 1954, only where those leases were extended after the date of the amendment.

"At the beginning of the hearing, certain committee members voiced concern over whether the amendment, if adopted, would result in the automatic termination of outstanding leases. They expressed concern that the rights of existing leaseholders be protected. They were given assurance by the Assistant Secretary and the Chief Counsel of the Bureau of Land Management that those rights would be protected and that the provision was not intended to be retroactive."

(Footnotes omitted).

Texaco, Inc., 76 I.D. 196 (1969). ^{4/} The Department has consistently con-sidered the provision to be applicable to 10-year renewal leases issued after July 29, 1954. Applicability of the automatic termination provision is implicit in Ralph W. M. Keating, 55 IBLA 13 (1981), in which we affirmed BLM's denial of reinstatement of a renewal lease. BLM now contends that appellants' leases became subject to the automatic termination provision when they were renewed subsequent to July 29, 1954, and this contention is consistent with prior Board decisions.

The only Board decision holding the automatic termination provision inapplicable is Keohane, Inc., 50 IBLA 240 (1980). In that case the les-see had not submitted the annual rental payment for the first year of its renewal term. The Board referred to the Departmental practice of treating a renewal lease as a new lease obtained upon application rather than an extension of an existing lease. We found automatic termination inapplica-ble because the provision "does not require or authorize termination of a lease not yet in existence" but "applies to a lease in esse." Id. at 250-51. We expressly noted, however, that our holding was "confined to the initial rental payment due upon approval of an application to renew a preference-right lease." Id. at 251 n.3 (emphasis in original). ^{5/}

Upon renewal, the automatic termination provision was incorporated in the renewed leases, and the appellants, or their predecessors-in-interest, executed the lease agreements without objection. This act constitutes the

^{4/} In these cases, it was held that subsequently enacted provisions con-cerning the tenure of unitized leases overrides the right of renewal for a 20-year lease which is in a unit at the end of its term.

^{5/} A leading treatise suggests that 20-year and renewal leases "are not subject to automatic termination for failure to pay rentals but rather can be terminated only through cancellation proceedings." 1 Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, § 14.21[1] n.1. The treatise cites Trico Oil and Gas Co., GFS(O&G)BLM 1962-56, in support of that proposition. This was apparently a decision by BLM's Office of Appeals and Hearings, cited as Trico Oil and Gas Co., Sacramento 019740(b) (June 25, 1962). We note, however, that the Trico decision does not cate-gorically hold that such leases are not subject to the automatic termina-tion provision, but, like Keohane, the Trico decision involved an advance rental to be paid in connection with an application for a renewal lease. The Trico decision is consistent with the Board's holding in Keohane. Even if Trico could be construed in the manner suggested, it would not control. As we have previously observed, similar BLM decisions do "not carry the authority of Departmental precedents." Hiko Bell Mining & Oil Co. (On Reconsideration), 100 IBLA 371, 395, 95 I.D. 1, 14 (1988). In Udall v. Battle Mountain Co., 385 F.2d 90, 95 (9th Cir. 1967), the court refers to a situation in which

"the action of an inferior agent of the Department, being such as to avoid grievance, never reached the level of administrative appeal at which authoritative Departmental determinations on behalf of the Secretary are made. We cannot permit the judgment of an inferior official to set at naught the otherwise clear Departmental construction."

necessary consent. Appellants' leases were subject to the automatic termination provisions of 30 U.S.C. § 188(b) (1988), and when the rental payments were not timely received, the leases terminated by operation of law.

[3] Under 30 U.S.C. § 188(c) (1988) -- Class I reinstatement -- an oil and gas lease terminated for failure to pay the annual rental on or before the due date may be reinstated if the rental was paid or tendered within 20 days thereafter, and if "it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee."

Neither lessee submitted the rental payment within 20 days after the anniversary date, and BLM correctly determined that they were ineligible for Class I reinstatement. Mark Salisbury, supra; Herbert J. Stinnett, supra.

The rental payment for lease CA SAC 021009(b) had been directed to the wrong office. Under 43 CFR 3103.1-2(a)(2) (1987), annual rentals are to be submitted to MMS, but payment was sent to the California State Office. ^{6/} Regulations in effect at the time Pardee submitted payment stated that BLM would not forward checks sent to an improper office. 43 CFR 3103.2-2 (1987).

Pardee observes that when its payment was submitted to BLM in Sacramento, that office returned the check with the statement that the payment should be mailed to the MMS office in Colorado. This observation is confirmed by a notice from BLM dated January 19, 1988. Pardee states that the payment check was then submitted to the MMS office, received on January 27, 1988, and cashed by that office. Pardee asserts that "it is well settled law that if payment of a debt is accepted, that it is cancelled. Therefore, by acceptance of payment, the MMS is not justified in cancelling our lease."

[4] As noted earlier in this decision, Pardee's lease was not cancelled by BLM or MMS -- it terminated by operation of law. Acceptance of Pardee's late check cannot operate to reinstate its lease because BLM lacks the statutory authority to do so. It is well established that cashing a late rental check and depositing the funds in an unearned account does not constitute acceptance of rental payment or reinstate a terminated oil and gas lease. Clarence Souser, 108 IBLA 59, 61 (1989), and cases cited therein. A refund should be made in due course. Id.

Appellants Keating and Lieb contend that BLM erred in denying Class II reinstatement under 30 U.S.C. § 188(d) (1988). This section authorizes reinstatement of certain automatically terminated leases if rental was received more than 20 days after the due date upon meeting the requirements set out in that section.

^{6/} BLM's decision incorrectly noted that the lessee had been notified of this requirement by decision dated July 25, 1987. The case file shows that the date of the notice was July 25, 1985.

BLM's decision was based on the exact language of the statute. The statutory language describing the leases reinstatable under Class I and Class II is not the same. The language of 30 U.S.C. § 188(c) (1988), grants authority for Class I reinstatement of any lease terminated auto-matically by operation of law, without restriction or limitation. For Class II reinstatement, 30 U.S.C. § 188(d) (1988) expressly limits its application to "any oil and gas lease issued pursuant to section 226(b) or (c) of this title." BLM concluded that it had no authority under section 188(d) to grant Class II reinstatement of a terminated lease which had been issued pursuant to 30 U.S.C. § 223 (1988).

Lieb advances two arguments for reversing BLM's determination: (1) the leases should be deemed to be section 17 leases which would qualify for reinstatement under section 188(d); and (2) Class II reinstatement should be allowed because Congress intended section 188(d) to apply to all leases.

In support of the first argument, Lieb points to the original 1920 Act provision that section 14 leases enjoy "the right of renewal as prescribed in section 17 hereof." 41 Stat. 442. Although Lieb believes that this reference makes section 14 leases eligible for reinstatement under section 188(d), this is clearly not the case. Subsection 188(d) does not make a general reference to section 226 of the act. It refers to two specific subsections of that section. Neither of the stated subsections ((b) and (c)) has any relevance to renewal leases. Appellants' leases are renewal leases and have not been extended by production. Lieb presents no basis for finding that they have been issued pursuant to either subsection (b) or subsection (c) of section 226.

Lieb refers to BLM's decision as one doubting whether Congress considered section 188(d) applicable to the "tiny subset of Federal oil and gas leases" issued pursuant to section 223. Lieb suggests that Congress had no intent to exclude section 14 leases from section 188(d), and that reading the statute as a whole supports a finding that Congress intended to treat section 14 leases the same as section 17 leases. Citing legislative history of section 188(d) referring to the provision as a "generic bill," Lieb suggests that Congress intended to apply 30 U.S.C. § 188(d) (1988) to all terminated oil and gas leases. Citing Chevron USA v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984), Lieb concludes that Congress did not address the precise question at issue, thus enabling the Secretary to fill the gap.

In response, BLM states that the language limiting Class II reinstatement to leases issued pursuant to section 226(b) or (c) is plain and unambiguous, precluding further inquiry into congressional intent, and cites the same Chevron USA decision in support of this contention.

We do not find an ambiguity in the portion of 30 U.S.C. § 188(d) (1988) applicable to the cases now before us, and find Lieb's argument unpersuasive. When this Board perceives an ambiguity in the scope of legislation and one interpretation would leave a gap that Congress clearly intended to fill, we attempt to render a statutory interpretation giving effect to the perceived congressional intent. However, we find no ambiguity in the

applicable statutory language. In essence, appellant seeks to have us to ignore unambiguous language of the statute because there is no clear leg-islative intent to exclude the leases now before us from the coverage of section 188(d).

Unlike the cases cited by appellant where there was a gap to be filled by statutory construction, the case before raises the issue of whether Congress authorized Class II reinstatement of section 223 leases. We find a response by the Supreme Court to a similar issue applicable:

But the fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft stat-utes in an effort to achieve that which Congress is perceived to have failed to do. "There is a basic difference between filling a gap left by Congressional silence and rewriting rules that Con-gress has affirmatively and specifically enacted." Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 625 (1978). Nor is the Judiciary licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result. See Northwest Airlines, Inc. v. Trans-port Workers, 451 U.S. 77, 98 (1981). On the contrary, deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that "the legislative purpose is expressed by the ordinary meaning of the words used." Richards v. United States, 369 U.S. 1, 9 (1962). "Going behind the plain language of a statute in search of a possibly contrary congressional intent is 'a step to be taken cautiously' even under the best of circumstances." American Tobacco Co. v. Patterson, 456 U.S. 63, 75 (1982) (quoting Piper v. Chris-Craft Industries, Inc., 430 U.S. 1, 26 (1977)).

United States v. Locke, 471 U.S. 84, 95-96 (1985).

[5] Limitation of section 188(d) to leases "issued pursuant to section 226(b) or (c) of this title" may have been both unfortunate and unintentional. However, the effect of the language is unmistakably clear. The authority granted by section 188(d) permits Class II reinstatement of oil and gas leases issued pursuant to section 226(b) or (c). No relief is afforded if the lease has been issued pursuant to other provisions of law.

Appellant suggests that we look to the "whole law" for guidance, but our concern for textual consistency impels us to adhere to the exact text of the Mineral Leasing Act. Its current provisions are the result of many amendments. The Act is a complex piece of legislation requiring coherent interpretation. The Board endeavors to apply a uniform interpretation of the same words used in various parts of the act, and has rejected arguments that certain words could be interchanged, even when the arguments claimed greater support in the legislative history than now presented. E.g., Hiko Bell Mining & Oil Co. (On Reconsideration), 100 IBLA 371, 95 I.D. 1 (1988). When Congress has chosen to employ expressions modifying the import of a particular term,

the Board has given those modifications effect. E.g., Celsius Energy Co., 99 IBLA 53, 94 I.D. 394 (1987).

In Celsius we concluded that the most authoritative construction of a word could be achieved by comparing it with other uses of the word in the text of the statute rather than by deriving a general policy from the legislative history. We stressed the importance of adhering to the exact language of the statutory text, and overruled a line of cases giving effect to a perceived "policy." We cannot disregard the express language of section 188(d) limiting Class II reinstatement to leases issued pursuant to section 226(b) and (c), and must affirm BLM's decision to deny reinstatement in the cases now before us.

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.

R. W. Mullen
Administrative Judge

I concur:

David L. Hughes
Administrative Judge