

PETRO RESOURCES, INC.

IBLA 90-416

Decided June 26, 1992

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying a petition for class I reinstatement of competitive oil and gas lease WYW 102044.

Affirmed.

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

When a competitive oil and gas lessee fails to pay annual rental on or before the anniversary date of its lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law. The Department's regulation at 43 CFR 3103.1-2(2) provides that second-year and subsequent rentals are to be paid to MMS at its Royalty Management Program/ BRASS in Denver, Colorado. Payment sent to BLM's Wyoming State Office will not constitute a proper tender of rental.

2. Oil and Gas Leases: Reinstatement

Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. The explanation for failure to pay on or before the anniversary date was that the payment had initially been mailed to the wrong office by mistake. This does not demonstrate that the failure to submit the payment in a timely manner was not due to a lack of reasonable diligence..

APPEARANCES: Robert D. Montella, Vice President, Petro Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Petro Resources, Inc. (Petro), has appealed from a May 23, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its petition for class I reinstatement of competitive oil and gas lease WYW 102044.

The facts in this case are clear. Competitive oil and gas lease WYW 102044 was issued to Todd W. Smith and Ronald T. Mackey effective December 1, 1986, and assigned to Petro effective December 1, 1987. Having an anniversary date of December 1, the annual rental was to be paid on or before that date each year. On November 30, 1989, Petro sent payment to the Wyoming State Office by Federal Express. The check was received by that office on December 1, 1989. On the same day the check was returned to Petro under cover of a form letter stating, in part, that BLM was not the proper office to receive rental payments and that Petro should resubmit the check to the Minerals Management Service (MMS). The check was resent to MMS in an envelope postmarked December 5, 1989, and received on December 7, 1989. On February 15, 1990, notice was sent to Petro that the lease had automatically terminated when MMS did not receive payment on or before December 1, 1989. The notice also advised Petro of requirements for and the steps necessary to apply for class I and class II reinstatement.

In a letter received by BLM on February 26, 1990, Petro applied for class I reinstatement. The explanation for Petro's failure to tender the rental in time was that payment was sent to BLM "by mistake." On May 23, 1990, BLM issued a decision denying Petro's request for class I reinstatement. After noting that "failure to pay annual rental, if due, on or before the anniversary date \* \* \* shall automatically terminate [the] lease," BLM noted that to be eligible under class I reinstatement Petro must show that the failure to submit the annual rental due in a timely manner was either justified or not due to lack of reasonable diligence on Petro's part. BLM noted that the check was dated November 30, 1989, and the envelope containing the check was postmarked December 5, 1989. Citing 43 CFR 3103.1-2(a)(2), BLM then stated that rentals are to be paid to MMS at its Royalty Management Program/BRASS office in Denver, Colorado, that rentals received in the wrong office will not constitute a proper tender of rental, and its conclusion that Petro had not shown that the late payment was justified or that Petro's acts constituted reasonable diligence. Petro appealed from that decision.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), provides that, when the lessee fails to pay rental on or before the anniversary date of the lease for a 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. See also 43 CFR 3108.2-1(a). The Department's regulation found at 43 CFR 3103.1-2(a)(2) provides that "[a]ll second-year and subsequent rentals \* \* \* shall be paid to the Ser-vice [meaning MMS] at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, CO 80217." 1/ Thus, rental for this lease was due at MMS on or before the December 1, 1989, anniversary date. Payment received in the wrong office will not constitute a proper tender of rental. Henry Y. Yoshino, 108 IBLA 47, 49

1/ MMS and BLM are separate agencies within the Department of the Interior. MMS was created on Jan. 19, 1982, by Secretarial Order No. 3071 (47 FR 4751 (Feb. 2, 1982)). See Satellite 8307193, 85 IBLA 357, 360 (1985).

(1989); Gulf Oil Corp., 69 IBLA 263, 268 (1982); Gretchen Capital, Ltd., 37 IBLA 392, 393-94 (1978). Thus, BLM correctly held that Petro's remittance to BLM's Wyoming office did not constitute proper tender of rental. Estate of Arlyne Lansdale, 83 IBLA 190 (1984). Oil and gas lease WYW 102044 terminated automatically when rental was not received by MMS on or before December 1, 1989.

Regulations found at 43 CFR 3108.2-2(a), pertaining to reinstatement at existing rental and royalty rates (class I reinstatements), provide, in pertinent part:

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service \* \* \* on or before the lease anniversary date \* \* \*); and

(3) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental \* \* \* is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental.

Petro sent its payment to the wrong office 1 day before the deadline for payment. When the check was received by the Wyoming State Office it was immediately returned to Petro. Upon receipt of the returned check, Petro mailed it to the proper address in an envelope postmarked December 5, 1989. If Petro had made its initial payment 6 days before the deadline instead of the day before, this case would probably not be before us.

[2] It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Ann L. Rose, 92 IBLA 308, 310 (1986), and cases cited. Failure to exercise reasonable diligence may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside of the lessee's control which affected its actions in failing to make timely payment. Freedom Oil Co., 87 IBLA 71 (1985); Dena F. Collins, 86 IBLA 32 (1985). The key component of this test is that the factors which caused the late payment must be outside the control of the lessee. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1032 (1981). The explanation offered by Petro that the payment

had initially been mailed to the wrong office by mistake does not demonstrate that the failure to submit the payment in a timely manner was not due to a lack of reasonable diligence. In its statement of reasons, Petro's Vice President states that he realizes that the rules are made to be followed and that he may have bent one. We agree. He then states his belief that Petro should not have to pay such a steep price for his infraction. Unfortunately, an oil and gas lease cannot be reinstated because the lessee has paid \$12,500 to acquire the lease and has done the geological and other work preliminary to drilling. Congress did not allow reinstatement for this reason, and if BLM were to do so it would be bending the rules as well.

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.

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R. W. Mullen  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge

