



PETRO ENERGY, INC.

172 IBLA 186

Decided August 29, 2007



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PETRO ENERGY, INC.

IBLA 2006-263

Decided August 29, 2007

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying a Class II petition for reinstatement of a terminated Federal oil and gas lease. WYW93052.

Affirmed.

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

A BLM decision rejecting a Class II petition for reinstatement of a terminated Federal oil and gas lease is properly affirmed when the lessee fails to file the petition on or before the earlier of 60 days after receipt of notice of termination from BLM or 15 months after termination of the lease, pursuant to 30 U.S.C. § 188(d) and (e) (2000) and 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii).

APPEARANCES: Bryan Heath, Vice President, Administration, for Petro Energy, Inc..

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Petro Energy, Inc. (Petro Energy), has appealed from a July 26, 2006, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying its Class II petition for reinstatement of terminated oil and gas lease WYW93052.

BACKGROUND

On April 21, 2006, BLM issued a notice informing Petro Energy that lease WYW93052 had terminated by operation of law because the rental payment was not received on or before the July 1, 2005, anniversary date of the lease. In this notice, BLM specified that Petro Energy could petition for Class I reinstatement of its lease

under 30 U.S.C. § 188(c) (2000) and 43 C.F.R. § 3108.2-2, and for Class II reinstatement under 30 U.S.C. § 188(d) and (e) (2000) and 43 C.F.R. § 3108.2-3.¹

The subject oil and gas lease, a competitive lease with a lease period of 5 years and “so long thereafter as oil or gas is produced in paying quantities,” *see* Lease Terms, § 1, was created effective June 1, 1984, when 200 acres were segregated from oil and gas lease WYW59494² with the adoption of Communitization Agreement WYW114174 (Lonetree Creek), also effective June 1, 1984. As executed on June 29, 1977, lease WYW59494 included the lands in the SE $\frac{1}{4}$ of sec. 22 and W $\frac{1}{2}$ SW $\frac{1}{4}$ of sec. 23, T. 45 N., R. 67 W., Sixth Principal Meridian. The 200-acre segregation, however, was troubled in its execution. On April 22, 1985, BLM issued a decision segregating the 200 acres as lease WYW93052, and then re-issued the decision on May 9, 1985, to correct the land description of the lease area. Lease WYW59494 was to retain only 40 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 23 and within the unit area. This “unitized” lease was extended by production. The lands purportedly outside the unit area, the SE $\frac{1}{4}$ of sec. 22 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 23, constituted the new lease, WYW93052. BLM stated that this new lease was to continue “for so long as [WYW59494] remains in effect” and that the new lease was being transferred to a “non-producing status.” BLM provided notice that advance rental on WYW93052 would be payable.

On August 15, 1988, BLM issued a termination notice for WYW93052 for failure to timely pay the rental due on the 1988 anniversary date of the lease. The record shows that the rental was received on July 14, 1988. Petro Energy petitioned for Class I reinstatement of the lease or, in the alternative, for Class II reinstatement.

¹ Federal leases terminated for failure to timely remit the annual rental may be reinstated under two separate provisions. Section 2 of the Act of May 12, 1970, 84 Stat. 206, authorized the Secretary to reinstate a lease only if the rental payment was paid or tendered within 20 days after the due date and the lessee established that the failure to timely pay was either justifiable or not the result of the lessee’s lack of reasonable diligence. 30 U.S.C. § 188(c) (2000). Reinstatement under this provision is known as a Class I reinstatement. 43 C.F.R. § 3108.2-2. In 1983, Congress adopted additional provisions, 96 Stat. 2462, which permit reinstatement of leases not eligible under the provisions of the 1970 Act, provided the lessee shows that failure to timely pay was “inadvertent.” 30 U.S.C. § 188(d), (e) (2000). Reinstatements under the 1983 Act are known as Class II reinstatements and impose higher fees, rental, and royalty rates. 43 C.F.R. § 3108.2-3.

² This lease was originally issued for 240 acres effective July 1, 1977, and was identified as W 59494. BLM subsequently identified this lease as WYW59494 and that is how we will refer to it. We take the same approach with lease WYW93052, which was originally serialized as W 93052.

Before BLM acted upon the reinstatement request, however, Communitization Agreement WYW114174 was approved by BLM on January 11, 1989. The approved agreement covered not just the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 23 pertaining to lease WYW59494 but also included the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 23 within lease WYW93052. By decision on February 9, 1989, BLM vacated its termination notice “[b]ecause the lease was subject to minimum royalty, not rental,” and transferred royalty rental management to the Minerals Management Service (MMS).

On May 25, 2000, BLM issued a notice that Communitization Agreement WYW114174 terminated effective October 19, 1999, “due to cessation of production from the Well No. Federal 2-23.” BLM prepared a decision to that effect on June 22, 2000, and sent it by certified mail to Petro Energy. In addition to discussing the termination of the Communitization Agreement, BLM explained that “[p]ursuant to the regulations at 43 CFR 3107.4, . . . the subject leases are entitled to an extension of two years, through October 21, 2001.” BLM further elaborated on the status of WYW93052 as follows: “[T]here is no other actual or allocated production to hold lease WYW93052 beyond October 21, 2001; therefore the lease is being transferred to terminable (non-producing) status subject to payments of advance annual rental due on or before July 1 of each year.” Recognizing that notice regarding the agreement termination was not given prior to when rental was due on the July 1, 2000, anniversary date, BLM advised Petro Energy that it had 30 days in which to pay the annual rental. The record shows that this decision, sent to an address in Las Vegas, was returned “unclaimed.”³

On October 2, 2000, BLM issued a notice of automatic termination for lease WYW93052. This notice, also sent to the Las Vegas address, was also returned unclaimed. On April 24, 2001, BLM sent Petro Energy a letter explaining its error in sending the termination notice to the wrong address. In tandem with the explanation letter, BLM issued another decision worded exactly the same as the June 22 decision, except the following language was added: “Lease WYW93052 will continue through its new expiration date of October 21, 2001, and for so long thereafter as production continues on lease WYW59494.” However, soon thereafter, on May 30, 2001, BLM vacated the lease termination notice, noting that MMS had received the rental payment. BLM stated: “Your lease is in good standing and will remain in full force and effect through its expiration date of October 21, 2001, unless otherwise extended, so long as annual rentals are paid on or before the anniversary date of the lease.”

³ There is nothing to indicate why the Las Vegas address was used. Prior and subsequent to this notice, Petro Energy’s address of record was, and remains, a post office box in Farmington, New Mexico.

On September 4, 2001, BLM issued a new lease termination notice based on the explanation that MMS did not receive the appropriate rental payment on or before the anniversary date of July 1, 2001. Noting that the rental payment was received July 3, 2001, in an envelope postmarked before the anniversary date, BLM offered Petro Energy the opportunity to submit the necessary items for Class I reinstatement. An MMS transmittal sheet dated September 20, 2001, shows that the petition and filing fee were received on that date. BLM reinstated the lease on October 12, 2001, but it did not, however, specify whether the lease was extended for an additional period.⁴

Nothing else appears in the case file for lease WYW93052, neither notices nor accounting statements, until the April 21, 2006, "Notice Oil and Gas Lease Terminated" for failure to pay on or before the 2005 anniversary date. Petro Energy petitioned for reinstatement of the lease, stating:

Petro Energy believed the lease was being held by the production of the Federal 1-23 well. . . . The lease was reinstated in 2001 and Petro Energy thought it was being held by production.

Petro Energy was not notified of the impending lease payment due July 1, 2005. Believing the lease was held by production we did not anticipate having to make any payments.

BLM'S DECISION

In its July 26, 2006, decision, BLM noted that Petro Energy had timely responded to the notice of termination by petitioning for Class II reinstatement of the lease, submitting the signed amendment of lease terms, the requisite \$500.00 administrative fee, the \$166.00 *Federal Register* publication fee, and the \$4,000.00 rental payment for the lease years beginning July 1, 2005, and July 1, 2006. However, BLM stated that on July 29, 2006, MMS informed it that Petro Energy had failed to pay rental on the lease beginning with the lease year July 1, 2002, rather than lease year July 1, 2005, as MMS had previously informed BLM. Further, BLM stated that under 30 U.S.C. § 188(d) (2000) a lease terminating after January 12, 1983, shall not be reinstated unless a petition for reinstatement and the back rental is filed on or before the earlier of 60 days after receipt of BLM's notice of termination or 15 months after termination of the lease. BLM determined that the 15-month time limit was applicable and, accordingly, denied Petro Energy's petition.

⁴ Under the reinstatement process, the lease may be extended in accordance with the provisions of 30 U.S.C. § 188(c), (d) (2000), as implemented in 43 C.F.R. § 3107.6.

PETRO ENERGY'S ARGUMENTS

In its statement of reasons, Petro Energy argues that BLM's denial is inappropriate under these circumstances, asserting that lease WYW93052 is being held by production in accordance with the statement made by BLM in its April 2001 decision. It claims that, in reliance upon BLM's statement, it believed that annual rental payments were not necessary. Petro Energy further argues that "the failure of [MMS] to notify [BLM] of the failure to make the lease payments nullifies the fifteen month time limit for the years 2002-2004." It alleges that had it known back in 2003 "that our belief that the lease was held by production of the Federal 1-23 was up in the air," it would have acted quickly to clarify the status of the lease or rectify the situation by making appropriate payments. Therefore, it argues that, not having had the opportunity to clarify the lease status or make payments, the 15-month time limit should not apply with respect to questionable 2002, 2003, and 2004 rental requirements.

ANALYSIS

For the reasons that follow we must affirm BLM's decision. Section 401(2)(B) of the Federal Oil and Gas Royalty Management Act of 1982, 96 Stat. 2462, 30 U.S.C. § 188(d) (2000), specifies the time requirements for a Class II reinstatement, as BLM noted in its decision. *See also* 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii). BLM was obligated to look at the lease circumstances to determine the earlier of 60 days after Petro Energy received notice of termination or 15 months after termination of the lease. This need to assess the applicable dates requires a determination regarding when the lease terminated.

Section 31 of the Mineral Leasing Act (MLA), 30 U.S.C. § 188(b) (2000), 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 C.F.R. § 3108.2-1(a); *Petro Resources, Inc.*, 123 IBLA 310, 311 (1992). This obligation is also expressed as follows in section 2(e) of the lease: "If there is no well on the lease lands capable of producing oil or gas in paying quantities, the failure to pay rental on or before the anniversary date shall *automatically terminate the lease by operation of law*." (Emphasis added). Appellant argues that the subject lease is held by production, or rather, there is a well capable of producing oil or gas in paying quantities attributed to the lease and therefore royalties on the production rather than rental is required to hold the lease. We find that appellant has misconstrued the facts of its situation.

Congress provided under section 17 of the MLA, 30 U.S.C. § 226(e) (2000), that “[a]ny lease issued under this section for land on which . . . actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.” This 2-year period is defined as the “extended term” of the lease. Lease WYW93052 was not a lease where a well had been drilled and so the prior provision does not apply. Rather, the lease had been subjected to a communitization agreement under which a well on another lease was producing. Appellant’s situation upon termination of the communitization agreement was addressed by Congress when it provided under the MLA, 30 U.S.C. § 226(j) (2000), that “any lease which shall be in effect at the termination of . . . any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.” Hence, when the communitization agreement terminated, BLM properly apprised Petro Energy that lease WYW93052, having surpassed the primary lease period, was in an extended period set to expire on October 21, 2001.

BLM was incorrect, however, in stating in its April 24, 2001, decision that the status of WYW93052 was dependent upon production of WYW59494. In *Celsius Energy Co. (On Reconsideration)*, 154 IBLA 193, 198-99 (2001), we reviewed the provisions of 30 U.S.C. § 226(j) pertaining to the termination of a unit or communitization agreement and concluded that the complete elimination of a lease, which was beyond its primary term, from a unit or communitization agreement would only afford the lease a 2-year extension and so long thereafter as oil or gas was produced in paying quantities, but only on that lease. We specifically held that a segregated lease could not be tied to the production from the lease from which it was created. 154 IBLA at 199.

Moreover, we find the record to undermine Petro Energy’s assertion that it believed production was held by the “Federal 1-23” well.⁵ The only basis for this asserted belief is the April 24, 2001, decision, as noted above. That decision, however, erroneously stated that Lease WYW93052 was held by production so long as production continues on lease WYW59494. We believe the first lease reference to be a mistake on BLM’s part. Petro relies on an obvious mistake in the decision for its appeal, but that same decision makes abundantly clear that well No. 2-23 had ceased production. Thus, even relying on the decision, Petro Energy’s stated belief in continued production from this well is unfounded. Moreover, Petro Energy was aware for some years prior to the April 24, 2001, decision that the Federal 1-23

⁵ We assume that this well is one and the same as BLM’s references to the Federal 2-23 well, as there is no indication by either party that there were two wells.

(or 2-23) well had ceased production, and this fact was repeated to Petro Energy in the April 24, 2001, decision. *See also* June 22, 2000, Decision. Thus, its position, based entirely on a stated belief that this well continued in production, is belied by the record and undermined by the fact that a lessee/operator is deemed to know the status of its own lease wells.

Moreover, BLM repeatedly explained to Petro Energy, both before and after the April 24, 2001, decision that Lease WYW93052 had no production that would hold the lease. *See* Jan. 4, 2000, letter from BLM to Petro Energy (“[t]here is no other actual or allocated production that will continue to hold this lease.”); May 25, 2000, Notice (both leases should be eligible for a 2-year extension, “however, lease WYW59494 is held by production from Lonetree Unit.”); June 22, 2000, Decision (“there is no actual or allocation production to hold lease WYW93052”). The April 24, 2001, decision repeats that “there is no actual or allocated production to hold lease WYW93052.” Thus, Petro Energy has not substantiated how it possibly believed the lease to be held by production from Federal 1-23 (or 2-23). Even if BLM’s mistaken reference to that lease in April 2001 could have confused Petro Energy regarding the actual facts concerning continued operation of that well, an unlikely prospect, BLM’s subsequent May 30, 2001, Decision and September 4, 2001, Notice regarding lease WYW93052 made clear that Petro Energy was responsible for rental and that BLM did not consider the lease to be held by production. Notwithstanding whether Petro Energy reasonably could have mistakenly believed the lease was held by production before September 2001, it received these subsequent documents and is therefore in no position to deny knowledge of its lease obligations to pay rental after receiving them.

Despite the confusion asserted by Petro Energy regarding the status of lease WYW93052, the facts of this case are somewhat simple. BLM provided notice to Petro Energy when the communitization agreement ceased that lease WYW93052 was no longer held by production. It further apprised Petro Energy that the lease was being transferred to a terminable status requiring annual rental payments. While BLM may have created ambiguity as to the new lease period when it stated, “Lease WYW93052 will continue through its new expiration date of October 21, 2001, and for so long there after as production continues on lease WYW59494,” it also declared in clear terms that “[f]ailure to pay rentals will cause this lease to terminate.” The lease was indeed terminated under those conditions when Petro Energy’s 2001 payment was not received on or before the anniversary date. Petro Energy later acknowledged the terminable, or rental paying, status of the lease when it petitioned for and was awarded reinstatement of the lease in 2001. The record establishes that the determined and known status of the lease required Petro Energy to pay annual rent.

As established by the record, the lease was extended to October 21, 2001. Neither the 2001 reinstatement notice nor any other recorded document demonstrates another termination date. Even if we were to apply the regulation at 43 C.F.R. § 3107.6 liberally and add another 2 years to the extended period, that would mean the lease would have expired on October 21, 2003, without any other action. However, we are then left to account for the intervening failure to pay the annual rental in 2002. If the lease had not expired by then, it certainly terminated automatically, meaning there was no action to be taken on the part by MMS or BLM, when payment was not received on or before July 1, 2002. *See Mark Salisbury*, 107 IBLA 335, 336 (1989); *Herbert J. Stinnett*, 91 IBLA 239 (1986). This failure on the part of Petro Energy constitutes a statutory matter that cannot be overlooked or waived by the Department. Accordingly, we are left to consider the reinstatement issue based upon the concrete fact that termination of lease WYW93052 occurred more than 15 months prior to the filing of the petition for reinstatement in May 2006.

Petro Energy has made it a point of contention that it was not notified about the delinquent payments. While Petro Energy asserts that it could have corrected the situation “had it known,” as a general matter it is well established that BLM has no duty to provide lessees with a courtesy notice prior to the lease anniversary date. *See, e.g., Nyle Edwards*, 109 IBLA 72, 74 (1989); *Louis J. Patla*, 10 IBLA 127, 128 (1973) (“We want to make it clear that the Department does not send out ‘bills’ as such and that it has no obligation under the law to do so”). Thus, the lack of a courtesy notice does not justify a lessee’s belief that the rental obligation has been discharged, nor does it discharge that obligation so as to avoid termination of the lease. This Board has long held that “reliance upon receipt of a courtesy notice can [not] prevent an oil and gas lease from terminating.” *Nyle Edwards*, 109 IBLA at 74; *see also Sybil W. Taylor*, 120 IBLA 193, 198 (1991). As noted, a lease will terminate with or without action by the Department when a payment is not timely received. *See Mark Salisbury*, 107 IBLA at 336.

Likewise, the obligation to timely seek reinstatement (under the Class II provisions when payment was not received within 20 days of the due date) is also placed upon the lessee. *See* 30 U.S.C. § 188(d)(2)(B) (2000). As noted, Congress considered situations where the Department does provide notice, allowing the opportunity for the lessee to respond within the 60-day period following receipt of notice by filing the petition for reinstatement. *Id.* Congress, however, chose to limit this “opportunity” by requiring the filing of a petition for reinstatement within 15 months after termination of the lease. While we may express regret or even dismay that neither MMS nor BLM identified this situation in a timely manner, as averred by Petro Energy, Congress simply does not allow reinstatement where the filing of the petition occurs more than 15 months after termination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Lisa Hemmer
Administrative Judge