



DONNA J. VROOMAN and
UNIVERSAL OIL & GAS, LLC

186 IBLA 241

Decided September 30, 2015



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

DONNA J. VROOMAN and
UNIVERSAL OIL & GAS, LLC

IBLA 2014-5

Decided September 30, 2015

Appeal from a denial of a Petition for Class I Reinstatement of an oil and gas lease, by the Branch of Fluid Minerals Adjudication, Wyoming State Office, Bureau of Land Management. WYW 155339.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement

A lessee applying for Class I Reinstatement bears the burden of showing that the full amount of rental due was paid within 20 days after the lease anniversary date, and the failure to pay the full rental amount on or before the lease anniversary date was either justified or not due to a lack of reasonable diligence. A lessee fails to exercise reasonable diligence if the rental payment was mailed after the lease anniversary date (*i.e.*, the due date). A late payment may be considered “justified,” if it is shown that, at or near the lease anniversary date, there existed sufficiently extenuating circumstances outside the lessee’s control, which affected the lessee’s actions in failing to make timely payment. A lessee’s failure to pay the full rental amount on the lease anniversary date because of an unsubstantiated, mistaken belief that the rental amount due is less than required is not a circumstance outside a lessee’s control, and therefore does not demonstrate that the late payment was justified.

APPEARANCES: Donna J. Vrooman, *pro se*; Dean Young, Manager, Universal Oil & Gas, LLC; Phillip C. Lowe, Esq., Office of the Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Appellants, Donna J. Vrooman (Vrooman), Lease Owner and Manager, and Universal Oil and Gas, LLC (Universal), Lease Operator (collectively, “appellants” or “lessees”), have appealed from a September 6, 2013, decision (Decision) denying a petition for Class I Reinstatement for oil and gas lease WYW 155339 (lease), issued by the Branch of Fluid Minerals Adjudication, Wyoming State Office, Bureau of Land Management (BLM).^{1,2} At issue is whether the lease qualifies for Class I Reinstatement because the failure to timely pay rental was either justified or not due to lack of reasonable diligence.

I. BACKGROUND

On November 21, 2012, the Office of Natural Resources and Revenue (ONRR) received a rental payment of \$4,940 as annual rental payment for appellants’ lease. On May 16, 2013, BLM issued a notice, titled, Rental Deficiency – Additional Rental Required (Deficiency Notice). In the Deficiency Notice, BLM quoted the regulation at 43 C.F.R. § 3108.2-1(b), which provides, *inter alia*, “A deficiency shall be considered nominal if it is not more than \$100 or more than 5 percent of the total payment due, whichever is less.” BLM stated ONRR had received a “nominally-deficient” rental for the oil and gas lease. BLM stated that the rental due was \$5,100, but ONRR only

¹ Appellants also petitioned for a stay of the Decision, which the Board denied, by Order, dated Nov. 18, 2013.

² Under Departmental regulations implementing 30 U.S.C. § 188(c) (2012), the Department is authorized to reinstate a lease only if the full amount of the rental due is paid or tendered within 20 days after the lease anniversary date and the lessee establishes that the failure to timely pay “was either justified or not due to a lack of reasonable diligence on the part of the lessee” Reinstatement under this provision is known as a Class I Reinstatement. 43 C.F.R. § 3108.2-2. Both the statute at 30 U.S.C. § 188(d)-(e) (2012), and the regulations at 43 C.F.R. § 3108.2-3 provide relief when rental is not paid within 20 days of the termination date. The Secretary may reinstate an oil and gas lease when a lessee shows, to the satisfaction of the Secretary, that the failure to pay timely “was justified or not due to lack of reasonable diligence, or, no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent.” 43 C.F.R. § 3108.2-3(a). This type of reinstatement is known as Class II. Class II Reinstatements also require higher rental and royalty rates, whereas Class I Reinstatements are instituted at existing rental and royalty rates. Compare 43 C.F.R. § 3108.2-3 with 43 C.F.R. § 3108.2-2; *Tekxon Onshore Oil & Gas, LLC (Tekxon)*, 184 IBLA 134, 136-37 (2014).

received \$4,940, resulting in a nominal deficiency of \$160. BLM required payment of \$160 in order to avoid termination of the lease, and allowed the lessees 15 days from receipt of the Deficiency Notice to furnish the additional amount. On May 24, 2013, ONRR received Vrooman's payment of \$160, by check dated May 18, 2013.

However, on August 12, 2013, BLM issued another notice, Rental Deficiency Notice Vacated – Lease Terminated (August 12, 2013, Rental Deficiency Notice Vacated), vacating the May 16, 2013, Deficiency Notice, explaining that, in the May 16 Notice, BLM had misconstrued the regulation at 43 C.F.R. § 3108.2-1(b), and incorrectly determined the deficiency was “nominal,” and that, consequently, it also had incorrectly notified the lessee that timely payment of \$160 would cure the nominal deficiency. BLM also advised the lessee that, in a separate transmission that same day, it was sending a lease termination notice, explaining that, since the \$160 balance due (deficiency) was more than the regulatory limit of \$100 for a nominal deficiency, the deficiency was not considered nominal under the rule, and consequently, the lease was terminated by operation of law, effective January 1, 2013. BLM provided that, if appellants chose not to reinstate the lease, ONRR would refund the \$4,940 received on November 21, 2012, and the \$160 received on May 24, 2013. If, however, appellants chose to seek a Class II Reinstatement, then the \$5,100 rental paid would be applied to the rental due at the increased rental rate of \$5 per acre.

As promised, BLM also issued a Notice – Oil and Gas Lease Terminated, dated August 12, 2013 (Lease Termination Notice). In the Lease Termination Notice, BLM stated, “Termination of your lease is automatic and is statutorily imposed by Congress when the annual rental is not timely received. [BLM] has no discretion in the matter and merely notifies you of this occurrence. Such termination is triggered solely by failure of a lessee to submit the rental timely.” Lease Termination Notice at unpaginated (unp.) 2. BLM accurately described the regulatory procedures for seeking a Class I and Class II reinstatement, as summarized *supra*, note 1, at 2, and stated appellants “may qualify for reinstatement of the lease under Class I and/or Class II reinstatement provisions.” Lease Termination Notice at 1; *see* 43 C.F.R. §§ 3108.2-2, 3108.2-3.

Appellants did not appeal either the August 12, 2013, Rental Deficiency Notice Vacated or the August 12, 2013, Lease Termination Notice.

On August 29, 2013, appellants filed a petition for Class I Reinstatement of the lease (Petition for Reinstatement). Enclosed with the Petition for Reinstatement is an undated map, which appears to be a subset of the entire leased area, showing one

parcel marked in yellow.³ Appellants asserted the highlighted parcel comprises approximately 80 acres of the lease. They asked BLM to “take note” that they had paid less than the full amount of rental because, at the time the BLM office in Casper was reviewing Universal’s application for the Bothwell Syncline Federal Unit (Bothwell Unit), it adhered to “an unwritten office rule,” ensuring units follow straight section lines, and appellants believed that, in order to do so, BLM had approved the unit without including 80 acres. Petition for Reinstatement at unp. 1 (citing Petition for Reinstatement’s enclosed map).

In addition, appellants asserted that, since they had not received a refund of the \$160, they “thereby assume[] that the payment was accepted and the lease should be deemed paid in full and effective as such.” Petition for Reinstatement at unp. 1. They concluded by stating, “Universal herein states that the failure, if there is a failure since the BLM does acknowledge[] having received the \$160.00 payment for [the lease], that such failure was justified and not due to lack of reasonable diligence.” *Id.* at unp. 2.

On September 6, 2013, BLM issued its Decision. BLM addressed the criteria for approving a Class I Reinstatement. With respect to reasonable diligence, BLM pointed to Board precedent in *Gilbert and Bonnie Sockwell*, 125 IBLA 150 (1993), stating there “the Board held failure to exercise reasonable diligence may be considered justified if it is demonstrated that, at or near the lease anniversary date, there existed sufficiently extenuating circumstances outside the lessee’s control which affected the lessee’s actions in failing to make timely payment.” Decision at 1. Applying that holding to the matter at hand, BLM stated, here, “[t]he failure to timely pay the rental, while based on a mistaken belief [that BLM had approved the unit with 80 fewer acres in the lease], nevertheless represented a conscious choice and was not caused by extenuating circumstances outside the lessee’s control. You did not prove that your failure to timely pay the rental was justifiable or that you had exercised reasonable diligence.” *Id.* In conclusion, BLM explained that, in order for the lease to be reinstated, the Class II Reinstatement procedures, outlined in the Lease Termination Notice must be followed, and then the agency would apply the \$5,100 rental paid to the rental due at the increased rental rate of \$5 per year. *Id.* at 2. Alternatively, BLM stated, if appellants chose not to reinstate the lease, ONRR would refund the \$4,940 payment it received on November 21, 2012, and the \$160 it received on May 24, 2013. *Id.*

³ There is no indication of the date of the enclosed map, who generated it, who highlighted the parcel, or for what purpose.

On October 5, 2013, appellants submitted a Notice of Appeal (NOA), received by BLM on October 17, 2013.⁴ At issue is whether appellants have shown their lease qualifies for Class I Reinstatement because they paid the full rental due within 20 days of the lease anniversary date and their failure to timely pay rental was either justified or not due to lack of reasonable diligence.

II. ANALYSIS

A. *Statutory and Regulatory Background*

The Mineral Leasing Act provides, “upon 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.” 30 U.S.C. § 188(b) (2012); *see also* 43 C.F.R. § 3108.2-1. However, as indicated, the lease will not automatically terminate if the rental payment due under a lease is paid on or before the anniversary date but either (1) the payment amount is nominally deficient, as determined by regulation, or (2) the amount of payment made was determined in accordance with the rental or acreage figure stated in a bill, or decision, and such figure is found to be in error, resulting in a deficiency. “A deficiency shall be considered nominal if it is not more than \$ 100 or more than 5 percent of the total payment due, whichever is less.” 43 C.F.R. § 3108.2-1(b).

Even if the lease automatically terminates, the authorized officer may reinstate an oil and gas lease, which has terminated for failure to pay on or before the lease anniversary date the full amount of rental due, under the rule at 43 C.F.R. § 3108.2-2, for a Class I Reinstatement, provided that:

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, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public);

43 C.F.R. § 3108.2-2(a)(2).

⁴ Counsel for BLM attributes the delay in receipt to the Federal government shutdown from October 1 to 16, 2013, due to a lapse in appropriations. Answer at 1.

B. Arguments on Appeal

On appeal, appellants assert that the “nominally-deficient rental payment of \$160, was the difference resulting from a justifiable reliance on dealings with the BLM Casper Field Office.” Statement of Reasons (SOR) at 2; *see also, id.* at 3 (“Appellant justifiably relied on dealings with the Casper Field Office in determining proper rental payment due.”). They state that, “exercising reasonable diligence, [they] submitted [lease rental] payment of \$4,940 . . . such amount being 3% less than the BLM’s stated requirement of \$5,100.” *Id.*; *accord id.* at 3 (“Appellant diligently submitted rental payment before lease anniversary, and failure by Appellant to fully satisfy rental obligations on or before lease anniversary was justifiable and inadvertent.”).⁵ BLM asserts that “Universal’s argument is based on its incorrect interpretation of the plain language of 43 C.F.R. 3018.2-1(b),” and explains mathematically why “Universal’s underpayment cannot qualify as nominal.” Answer at 4-5.⁶ BLM also rebuts

⁵ Appellants also assert that BLM’s original and later-rescinded May 16, 2013, Deficiency Notice correctly identified the rental balance due as a “nominal deficiency.” They argue that BLM erred in denying appellants’ petition for Class I Reinstatement based on erroneous determinations in its Aug. 12, 2013, Rental Deficiency Notice Vacated (deciding the deficiency was not “nominal”), and in the Aug. 12, 2013, Lease Termination Notice (deciding the lease terminated). SOR at 3-5. Since appellants did not appeal the Aug. 12, 2013, Rental Deficiency Notice Vacated and Aug. 12, 2013, Lease Termination Notice, those determinations are administratively final for the Department. The notices are appealable, final decisions, despite the absence of notice of appeal rights in the documents. *See Shamrock Metals, LLC*, 184 IBLA 1, 5 (2013); *Uranium Watch & Living Rivers*, 182 IBLA 311, 314-15 (2012); *Devon Energy*, 171 IBLA 43, 47-48 (2007). Although the issues of whether BLM erred in determining that the deficiency did not qualify under the regulation at 43 C.F.R. § 3108.2-1(b), as a “nominal deficiency,” and whether the lease terminated by operation of law for failure to submit timely payment are no longer administratively justiciable, we nevertheless note that, applying the plain language of the regulatory phrase, “whichever is less,” in 43 C.F.R. § 3108.2-1(b), the \$160 deficiency in this case cannot be considered “nominal,” since, to be “nominal” here, the deficiency would have to be no more than \$100—the lesser of 5% (\$255) and \$100. *Cf. Chainman Oil & Gas, LLC*, 182 IBLA 355, 358-59 (2012) (similar application of “whichever is less” language in context of whether rental payment submitted with an offer for a noncompetitive oil and gas lease was nominally deficient under 43 C.F.R. § 3103.2-1(a)).

⁶ In its Answer, BLM appears inaccurately to represent the basis for BLM’s Decision on appeal and conflate the regulatory provision at 43 C.F.R. § 3108.2-1(b) with the rule at 43 C.F.R. § 3108.2-2(a) and (b). The nominal deficiency exception to automatic termination for failure to timely pay under 43 C.F.R. § 3108.2-1(b), is not one of the
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appellants' claim that it "justifiably relied on dealings with the BLM Casper Field Office in determining the annual rental payment due." *Id.* at 5 (quoting Petition for Stay at 2). BLM states that "while not providing any detail regarding its reliance" on alleged dealings with BLM, "any statements from the Field Office cannot operate to alter the amount of annual rental specified" in the Lease. *Id.* BLM continues, "Universal's only other argument is that its underpayment of annual rental was 'inadvertent' however Universal provides no explanation to support this conclusion." *Id.* at 5-6.

C. Appellants Have Not Shown They Paid the Full Rental Due Within 20 Days After the Lease Anniversary Date

Appellants argue that their original payment of \$4,940 should be considered sufficient because it was timely and reasonable, given their reliance on purported discussions with BLM concerning the size of the Lease, and that, "[e]ven if the timely lease payment was deficient, Appellant[s] believe[] any alleged deficiency in the lease payment to be nominal and timely cured pursuant to 43 CFR 3108.2-1(b)." SOR at 3. As indicated, the nominal deficiency exception to automatic termination for failure to timely pay under 43 C.F.R. § 3108.2-1(b), is not one of the criteria for a Class I Reinstatement under 43 C.F.R. § 3108.2-2(a). The Class I Reinstatement rule provides a simple timeliness condition for qualifying for a Class I Reinstatement. It requires payment of "such rental," referring to "the full amount of rental due" in the previous sentence at 43 C.F.R. § 3108.2-2(a), "within 20 days of the anniversary date." 43 C.F.R. § 3108.2-2(a)(1). The record is clear that appellants did not pay the full amount of rental due within 20 days of the lease anniversary date, and, therefore, they did not qualify for a Class I Reinstatement, despite the fact that, in the Termination Notice, BLM informed appellants that they "may qualify for reinstatement of the lease under Class I and/or Class II reinstatement provisions." Accordingly, the Decision is modified to include this basis, which could have served as the sole basis for denying Appellants' Petition for Class I Reinstatement.

Nevertheless, because both parties focus on other criteria required under 43 C.F.R. § 3108.2-2(a), we point out that, even if Appellants had made full payment within 20 days of the lease anniversary date, they have not demonstrated that their failure to pay the full amount by the lease anniversary date was either justified or not due to a lack of reasonable diligence, as also required under 43 C.F.R.

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criterion for a Class I Reinstatement under 43 C.F.R. § 3108.2-2(a). Answer at 2 ("On September 6, 2013, BLM informed Universal that because the \$4940 payment submitted to ONRR was more than nominally-deficient, reinstatement under Class I was not available."), 4-5.

§ 3108.2-2(a)(2), and, for those reasons also, failed to show they qualified for a Class I Reinstatement.

D. Appellants Have Not Shown Failure to Pay was Either Justified or Not Due to a Lack of Reasonable Diligence, Qualifying for Class I Reinstatement

Appellants claim the \$160 deficiency in its oil and gas lease rental amount was due to its mistaken belief that the lease rental due was based on 80 fewer acres, which, at the rate of \$2 per acre, would account for the \$160 balance due. SOR at unp. 2-3.⁷ Appellants state they detrimentally relied on their belief that BLM had applied an unwritten office policy and reduced the acreage on which their rental was based.

[1] The burden of showing that the failure to pay the full rental amount on or before the lease anniversary date was either justified or not due to a lack of reasonable diligence is on the lessee. 43 C.F.R. § 3108.2-2(b). The Board has held that a lessee fails to exercise reasonable diligence if the rental payment was mailed after the lease anniversary date (*i.e.*, the due date). *Sockwell*, 125 IBLA at 151-52; *see also* 43 C.F.R. § 3108.2-2(a)(2). Appellants, in the instant case, do not dispute they submitted the full rental payment after the lease anniversary date. The facts are clear: appellants did not submit the full rental amount owed, until they submitted the deficient \$160 balance, on May 18, 2013, well after the lease anniversary date. Therefore, we cannot consider their payment reasonably diligent. *See Sockwell*, 125 IBLA at 151-52.

We next review appellants' appeal to determine whether they have shown the late payment was "justified," that is, whether, at or near the lease anniversary date, there existed sufficiently extenuating circumstances *outside their control*, which affected their actions in failing to make timely payment. *See Sockwell*, 125 IBLA at 152. Those circumstances, which must be proximate in time to the lease anniversary date, must also be the causative factor for the failure to exercise reasonable diligence in making the late payment. *Id.* Such determinations are necessarily made on a case by case basis, but precedent is instructive. Situations in which extenuating circumstances *outside the lessee's control* were found to be justified include: death or illness of the lessee or a member of the lessee's close family; injury to a key employee;

⁷ Moreover, the Board finds no evidence in the record or in documents provided by appellants showing that rental was based on 2,470 acres instead of 2,550 acres. Our record review shows precisely 2,549.99 acres at issue. *See* BLM Receipt and Accounting Advice, Suspension of Operations Granted, Jan. 2, 2013; *see also* BLM Offer to Lease and Lease for Oil and Gas, Dec. 4, 2002; BLM Oil and Gas Leases List Review Form, Platte River Resource Area, Oct. 2002; BLM Minerals Management Service (MMS) Transmittal, Mar. 1, 2002.

severe winter weather; and natural disasters, such as floods or earthquakes. *Ramoco, Inc. v. Andrus*, 649 F.2d 814, 815 (10th Cir. 1979) (citing Board cases); *see also, e.g., Marian L. Kleiner*, 129 IBLA 216, 217-18 (1994).

By contrast, where a lessee relied upon the incorrect statements of its employee that she had timely paid the rental, we held such reliance was not justified, since the lessee hired and supervised the employee and could have taken the initiative to verify that the employee had, in fact, submitted proper payments. *Ramoco*, 37 IBLA 184, 186-87 (1978), *affirmed*, Civ. No. 79-007 (D. Utah Nov. 14, 1979), *affirmed*, 649 F.2d 814.⁸ Similarly, in *Sockwell*, where the lessees “apparently did not timely pay the annual rental due on February 1, 1990, because they believed that ‘all was lost,’” we found their “mistaken belief . . . represented a conscious choice on their part and was not caused by extenuating circumstances outside their control,” and consequently determined their late payment was not justified. *Sockwell*, 125 IBLA at 152.

Here too, appellants state they acted upon an erroneous belief that the rental amount due was \$160 less than in previous years. They consciously and deliberately did not pay the \$160 due in reliance on this incorrect and unsubstantiated belief, and only remitted the deficient \$160 upon notice from BLM. The ability to take the initiative to timely determine and remit the proper rental amount was *within appellants’ control*. They point to no extenuating circumstances *outside their control*, which precluded them from determining the correct amount due and justified their late payment.⁹

⁸ In addition, we have held that the unexpected failure of a computer system or the complexity of a lessee’s business affairs are *within the control* of the lessee and therefore do not justify a late rental payment. *Western Energy Resources, Inc.*, 172 IBLA 395, 401 (2007), *affirmed*, Civil Action No. 07-cv-02684-RPM (D. Colo. Jan. 16, 2009), *available at*: 2009 U.S. Dist. LEXIS 3115, at *17-19; *Clarence Souser*, 108 IBLA 59, 60-61 (1989).

⁹ Finally, we note that, in their Petition for Reinstatement, appellants stated that, since their \$160 payment for the deficiency was accepted and BLM still holds the funds, the lease should be deemed paid in full and effective as such. Petition for Reinstatement at unp. 1. Their appeal reports BLM’s receipt and retention of the funds, but stops short of reaching their earlier conclusion. This is appropriate, for when a lease is terminated by operation of law for rental payment deficiency, pursuant to 30 U.S.C. § 188(b) (2012) and 43 C.F.R. § 3108.2-1(a), BLM’s retention of a late deficiency payment cannot operate to void the automatic termination of the lease or to reinstate it. *Accord Paul D. Lieb*, 116 IBLA 279, 284 (1990) (acceptance of a late rental check and deposit of funds in an unearned account does not constitute acceptance of rental

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E. *BLM is not Estopped from Denying the Petition*

Appellants' argument suggests BLM should be estopped from denying the petition for reinstatement of the lease because they detrimentally relied "on dealings with BLM Casper Field Office in determining proper rental payment due" (SOR at 3), reminiscent of a claim raised by the appellants in *Tekxon*, 184 IBLA at 143-45. Although that case involved an appeal from BLM's denial of a Petition for Class II Reinstatement, our reasoning and holding are equally applicable here. In that case, the record included no evidence of affirmative misrepresentation, *in writing*, regarding the applicable deadline for submission of payment of the required back rental, only a representation of an oral statement, which we found did not support a claim of estoppel. We stated:

Estoppel is generally considered an extraordinary remedy when applied against the United States, especially when what is at issue is the proper use and management of Federal lands and resources. *See, e.g., Jack C. Scales*, 182 IBLA 174, 180 (2012). However, this is not to say that estoppel may never be applied, simply that the hurdles to doing so are considerable. The party seeking estoppel must first establish that the four basic elements of estoppel have been met:

- (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his/her conduct shall be acted on or must so act that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Terra Res., Inc., 107 IBLA 10, 13 (1989) (citing *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 96 (9th Cir. 1970)). However even then, estoppel must be based upon affirmative misconduct, such as an affirmative misrepresentation or concealment of material facts by a Federal agency, upon which the party asserting estoppel detrimentally relied. *See United States v. Ruby Co.*, 588 F.2d 697, 703-04 (9th Cir. 1978); *Terra Res., Inc.*, 107 IBLA at 13. Further, estoppel will not lie where the crucial misstatement by the Federal agency, relied upon by the

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payment or reinstatement of a terminated oil and gas lease); *Souser*, 108 IBLA at 61; *see* 43 C.F.R. § 1810.3(b)-(c) (restrictions on estoppel).

party seeking estoppel, no matter how definite and assured, was *not in writing*. *David E. Best*, 140 IBLA 234, 236 (1997) (citing *Heckler v. Comty. Health Serv. of Crawford County, Inc.*, 467 U.S. 51, 65 (1984)).

....

Finally, it is firmly established that, while estoppel may lie where failing to do so deprives the party of a right he would have legally acquired had he not relied on the Federal agency, *it will not lie where to do so would grant the party a right not authorized by law*. See 43 C.F.R. § 1810.3(b) and (c);¹⁰ *Heckler v. Comty. Health Serv. of Crawford County, Inc.*, 467 U.S. at 60-63; *Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970); *Terra Res., Inc.*, 107 IBLA at 13.

Tekxon, 184 IBLA at 143-45.

As in *Tekxon*, appellants are not able to establish the prerequisites for asserting an estoppel. They have not demonstrated any affirmative misconduct, such as an affirmative misrepresentation, *in writing*, or concealment of material facts by BLM, upon which they detrimentally relied. However, even if they had, estoppel would not lie because it would afford appellants a right to which they are not entitled under 30 U.S.C. § 188(c) (2012) and 43 C.F.R. § 3108.2-2, *i.e.*, Class I Reinstatement of a lease, where they have plainly failed to submit full payment of the required rental within 20 days of the lease anniversary date, and thus failed to comply with the applicable statute and regulation. *Tekxon*, 184 IBLA at 144-45 (citing *Martin Faley*, 116 IBLA 398, 402 (1990)).

III. CONCLUSION

In sum, a lessee applying for Class I Reinstatement bears the burden of showing that the full amount of rental due was paid within 20 days after the lease anniversary date, and the failure to pay the full rental amount on or before the lease anniversary date was either justified or not due to a lack of reasonable diligence. A lessee fails to exercise reasonable diligence if the rental payment was mailed after the lease

¹⁰ The regulation at 43 C.F.R. § 1810.3 provides, in subsection (b), that “[t]he United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do . . . *what the law does not sanction or permit*,” and, in subsection (c), that “[r]eliance upon information or opinion of any officer, agent or employee . . . cannot operate to *vest any right not authorized by law*.” (Emphasis added.)

anniversary date (*i.e.*, the due date). *Sockwell*, 125 IBLA at 151-52; *see also* 43 C.F.R. § 3108.2-2(a)(2). Appellants have not demonstrated they paid the full amount of rental due within 20 days after the lease anniversary date. They have not shown BLM erred in finding they failed to exercise reasonable diligence. Appellants also have not shown BLM erred in finding their failure to make timely payment was not justified, under the regulations, because they failed to demonstrate that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside their control which affected their actions in failing to make timely payment. Appellants' failure to pay the full rental amount on the lease anniversary date because of an unsubstantiated, mistaken belief that the rental amount due is less than required is not a circumstance outside their control, and therefore does not demonstrate that appellants' late payment was justified under controlling legal authority.

In accordance with Board precedent, we find that appellants did not pay the full amount of rental due within 20 days after the lease anniversary date, and, furthermore, have not preponderated in showing their failure to pay the full rental amount on or before the lease anniversary date was either justified or not due to a lack of reasonable diligence. Therefore, we hold that appellants did not carry their burden to show that BLM, in its September 6, 2013, decision, erred in denying appellants' petition for Class I Reinstatement for oil and gas lease WYW 155339.

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 as modified.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
Eileen Jones
Chief Administrative Judge