

INTERIOR BOARD OF LAND APPEALS

Carol B. Rodgers and G. Leslie Buchner

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CAROL B. RODGERS
G. LESLIE BUCHNER

IBLA 90-23

Decided April 29, 1993

Appeal from a decision of the California State Office, Bureau of Land Management, holding lessees not entitled to reinstatement of oil and gas lease SAC 019746(c).

Affirmed in part; set aside in part and remanded.

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

BLM properly holds an oil and gas lease issued pursuant to sec. 14 of the Mineral Leasing Act, as amended, 30 U.S.C. § 223 (1988), on which there was no well capable of producing oil or gas in paying quantities, to have automatically terminated by operation of law where the annual rental was not paid on or before the lease anniversary date, even if the Department had earlier stated that it would apply the same rental erroneously tendered for another lease account, but had instead refunded the money prior to the anniversary date.

2. Oil and Gas Leases: Rentals--Oil and Gas Leases: Reinstatement

Under the provisions of the Act of Nov. 15, 1990, 104 Stat. 2802, an oil and gas lease issued under sec. 14 of the Mineral Leasing Act, 30 U.S.C. § 223 (1988), which is automatically terminated for the failure to timely pay the annual rental, may be reinstated under either 30 U.S.C. § 188(c) (1988) or 30 U.S.C. § 188(d) (1988).

Paul D. Lieb, 116 IBLA 279 (1990), no longer followed in part.

APPEARANCES: Harvey H. Means, Esq., Bakersfield, California, for appellants; Lynn M. Cox, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Carol B. Rodgers and G. Leslie Buchner have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 23, 1989, determining that oil and gas lease SAC 019746(c) had terminated by operation of law for failure to pay annual rental on the

anniversary date of the lease, and further holding that no reinstatement of this lease was possible. For reasons set forth below, we affirm the decision to the extent it held the lease terminated by operation of law but set aside that part of the decision denying reinstatement.

On May 14, 1936, the Department issued oil and gas lease Sacramento 019746(b) to George O. H. Buchner for 480 acres of land situated in sec. 20, T. 26 S., R. 28 E., Mount Diablo Meridian, Kern County, California, pursuant to section 14 of the Mineral Leasing Act, as amended, 30 U.S.C. § 223 (1934), with an initial term of 20 years and the right to renew for successive 10-year periods. ^{1/} Thereafter, effective June 1, 1957, BLM issued a renewal of oil and gas lease Sacramento 019746(b) to Edna Buchner, the widow of George O. H. Buchner. This lease was issued for a period of 10 years, subject to the right to renew for successive 10-year periods. Subsequently, upon Edna Buchner's death, the record title interest in the lease was determined by BLM to have vested in Rodgers and G. Leslie Buchner, as her designated heirs, on October 7, 1964.

Effective May 1, 1966, BLM approved a partial assignment of oil and gas lease Sacramento 019746(b) to the Norris Oil Company (Norris). The resulting lease, designated Sacramento 019746(c), encompassed 80 acres of land situated in the E $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 20, T. 26 S., R. 28 E., Mount Diablo Meridian, Kern County, California. Thereafter, Norris assigned a portion of lease Sacramento 019746(c) to Sam Manchel, which assignment was approved by BLM effective August 1, 1966. The resulting lease was designated Sacramento 019746(d). Following the assignment, lease Sacramento 019746(c) encompassed the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 20.

Effective June 1, 1967, BLM issued a renewal of oil and gas leases Sacramento 019746(c) and (d) for a period of 10 years, again subject to renewal for successive 10-year periods. Thereafter, BLM approved assignments of lease Sacramento 019746(d) from Manchel to the Mountain States Development Company (Mountain States) and from Mountain States to Norris, all effective May 1, 1968. Subsequent thereto, effective August 1, 1969, BLM approved the assignment of leases Sacramento 019746(c) and (d) from Norris to Rodgers and G. Leslie Buchner, which were consolidated as a single lease under Sacramento 019746(c), which lease was renewed for another 10-year period effective June 1, 1977.

On January 15, 1987, Rodgers, on behalf of herself and G. Leslie Buchner, applied for renewal of oil and gas lease SAC 019746(c). By letter dated January 21, 1987, BLM required Rodgers and Buchner to file a "proper" application for renewal, which was promptly filed on January 30, 1987.

By decision dated December 21, 1987, BLM transmitted renewal lease forms to Rodgers and Buchner for execution. The executed forms were required to be returned to BLM within 30 days of receipt of the decision. Also, BLM specifically noted that "rental for [the] lease year beginning June 1, 1987,

^{1/} We note that during the original 20-year term of the lease, a portion of the lease was assigned, thereby reducing the total acreage covered by the lease to 440 acres.

to May 31, 1988, in the amount of \$160.00, is required prior to renewal of this lease."

Executed forms were filed with BLM on January 19, 1988. In addition, the first year's annual rental is recorded as having been paid January 20, 1988. The lease forms were then signed by the authorized BLM officer on January 22, 1988, with an effective date of June 1, 1987. The lease required the payment of annual rental in the amount of \$2 per acre, or a total of \$160, "in advance of each lease year." The lease further provided that: "Failure to pay annual rental * * * on or before the anniversary date of this lease * * * shall automatically terminate this lease by operation of law."

By decision dated August 23, 1989, BLM concluded that oil and gas lease SAC 019746(c) had automatically terminated by operation of law for failure to pay the annual rental on or before the lease anniversary date (June 1, 1988), since the payment had not been received until January 31, 1989. BLM also determined that the lease could not be reinstated under Class I (see 30 U.S.C. § 188(c) (1988)), since a pre-condition for a Class I reinstatement was the payment of the annual rental within 20 days of the anniversary date. Furthermore, relying on an opinion by the Regional Solicitor's office, BLM held that appellants could not obtain a Class II reinstatement (see 30 U.S.C. § 188(d) (1988)), since their lease had been issued pursuant to section 14 of the Mineral Leasing Act, and Class II reinstatement was not available for such a lease. Rodgers and Buchner thereupon took the instant appeal to this Board.

In their amended statement of reasons for appeal (SOR), appellants primarily contend that BLM erred in concluding that oil and gas lease SAC 019746(c) had automatically terminated by operation of law because the "rent due on June 1, 1988 * * * was in fact tendered and paid in a timely manner" (Amended SOR at 9). They explain that, on January 14, 1988, they sent two checks, both in the amount of \$160, in payment of the first year's advance rental in connection with applications for renewal of the subject lease and the original lease which was also held by them, SAC (formerly Sacramento) 019746(b). While admitting that the two checks were meant to pay 1 year's rental with respect to each lease, appellants assert that they were orally informed by the Minerals Management Service (MMS) that, because lease SAC 019746(b) was a producing lease and, thus, no rental was due, MMS "would take the \$160.00 check (#1148) written for lease #SAC 019746B, and apply or credit said sum * * * to the other lease #SAC 019746C." Id. at 3. Believing that the additional \$160 had been applied to the rental due on June 1, 1988, with respect to the subject lease, appellants admit that they did not submit any other payment in that regard and were unaware, until receipt of the August 23 decision, that BLM considered the rental due on June 1, 1988, not to have been paid. 2/

2/ This assertion is somewhat undermined by the fact that on Jan. 31, 1989, and again on Mar. 29, 1989, appellants had submitted a check in the amount of \$160 "as a rental payment on lease #SAC 019746C" (Amended SOR at 4). As BLM points out, appellants never explain why they submitted a double payment for the 1989-90 lease year (Answer at 5).

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), provides that any lease on which there is no well capable of producing oil or gas in paying quantities "shall automatically terminate by operation of law" upon the failure of the lessee to pay rental on or before the lease anniversary date. See also 43 CFR 3108.2-1(a). This statutory provision applies in the case of a lease originally issued pursuant to section 14 of the Mineral Leasing Act but thereafter renewed subsequent to July 29, 1954, the date the automatic termination language was incorporated into the statute. See Paul D. Lieb, 116 IBLA 279, 283-84 (1990). It is, therefore, clearly applicable herein. The initial question is whether or not, under the facts of this case, the lease terminated under the statute.

At the outset, we note that there is no assertion that the subject lease contains a well capable of producing oil or gas in paying quantities. Nor is there any dispute that appellants submitted two checks in payment of the first year's rental for the renewal of leases SAC 019746(b) and SAC 019746(c) on January 20, 1988, or that the checks were cashed by BLM. Furthermore, appellants admit that they did not submit any other rental payment prior to the June 1, 1988, lease anniversary date with respect to lease SAC 019746(c), but argue that this was because they were informed by MMS that the rental check submitted with respect to lease SAC 019746(b) would be applied to the rental due on that date.

Responding to this assertion, BLM notes that only the check in payment of the first year's rental with respect to lease SAC 019746(c) was ever sent to MMS and that BLM cashed the other check with respect to lease SAC 019746(b) and authorized a refund to be made to appellants, which refund was, in fact, made (Answer at 4). As proof of this, BLM submits a copy of the refund check, dated March 23, 1988, and made payable to Rodgers. ^{3/} The copy of the back of the check indicates that it was cashed by Rodgers and deposited to her account on March 30, 1988. Thus, BLM challenges appellants' contention that MMS agreed to apply the excess rental erroneously paid for lease SAC 019746(b) to the 1988-89 rental due for lease SAC 019746(c), since "MMS simply did not have the money paid for the lease SAC 019746B, and, therefore, could not transfer it to lease SAC 019746C" (Declaration of Kurt T. Mueller, dated Nov. 17, 1989, at 3).

Not only do the facts bear out BLM's assertions, but it is also well established that neither BLM nor MMS has authority to apply a rental payment submitted in connection with one lease to the rental owed on another lease, absent written instruction from the lessees. See Energy Research Associates, Inc., 102 IBLA 329, 332-33 (1988). Moreover, we have long held that a lease terminates by operation of law for failure to pay annual rental timely even though the lessee incorrectly tendered money with respect to another lease account and that money was available to pay the rent actually owed on

^{3/} The check indicates that it was issued by the Treasury Department, on behalf of the California State Office, for the reason: "Rental Not Needed SAC." This reason seems to be a shortened version of that which appears on the "Rental Data Sheet" submitted along with the Nov. 17, 1989, declaration of Kurt T. Mueller: "Rental Not Needed SAC 019746 B."

the date due, unless the lessee provided prior written instruction to transfer the money. See Pacific Transmission Supply Co., 35 IBLA 297, 299-300 (1978). Similarly, we have held that where a lessee submits excess payments with respect to one lease, BLM has no authority to determine on its own whether the lessee has any outstanding obligations to which the money might be applied or to so apply the money. See, e.g., James A. Lynch, Jr., 107 IBLA 253, 256 (1989).

In any event, even had MMS originally informed appellants that the erroneous rental payment would be applied to the rental owed with respect to lease SAC 019746(c) on June 1, 1988, appellants were clearly upon notice as of receipt of the refund in March 1988 that the payment could not be so applied. ^{4/} It, therefore, was their affirmative obligation, if unsure of the reason for the refund, to inquire as to its basis. See Sue A. Hartman, 99 IBLA 1 (1987). This they did not do.

Appellants also argue that BLM should have expressly notified them at some point prior to the June 1, 1988, lease anniversary date that the payment submitted in connection with lease SAC 019746(b) would not be applied to the rental due with respect to lease SAC 019746(c). In particular, appellants contend that BLM should have provided them with a courtesy notice that the rental payment with respect to lease SAC 019746(b) would not be so applied and that, in the absence of such notice, they had a right to assume that the payment had been applied. See Amended SOR at 6.

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 (1989); Louis J. Patla, 10 IBLA 127 (1973). Thus, the failure to provide notice does not justify a lessee in believing that the rental obligation has been discharged, nor does it discharge that obligation so as to avoid termination of the lease. As we have long said, "reliance upon receipt of a courtesy notice can [not] prevent an oil and gas lease from terminating." Nyle Edwards, supra at 74.

Insofar as this specific case is concerned, we note that the refund check must be construed as affirmative notice that the tendered submission for SAC 019746(b) would not be applied to SAC 019746(c). Thus, appellants were, in fact, on notice of their obligation to pay the annual rental on or before June 1, 1988.

Appellants also contend that BLM was required by 43 CFR 3108.2-1 to provide them with a notice of deficiency, thereby putting them on notice that the lease SAC 019746(b) rental payment had not been applied to the lease SAC 019746(c) obligation (Amended SOR at 6). As BLM points out, however, 43 CFR 3108.2-1 is simply not applicable in the present case. That regulation provides, inter alia, that a lease will not have automatically terminated by operation of law where a rental payment, although nominally

^{4/} While appellants assert that they have no records of receiving any refund, the Supplemental Answer filed by BLM clearly establishes that the refund was received by Carol Rogers and the check was negotiated on Mar. 30, 1988.

deficient, is received on or before the lease anniversary date. See also 30 U.S.C. § 188(b) (1988); Petrolex 84-1 Limited, 118 IBLA 372, 374 (1991). In such cases, the lessee is afforded additional time to submit the full payment in response to a notice of deficiency. The regulation plainly does not apply where, as here, the lessees have failed to pay any amount of the rental owed on or before the lease anniversary date. See C. J. Iverson, 21 IBLA 312, 321, 82 I.D. 386, 390 (1975).

In summary, absent written instruction from appellants, there was no requirement that BLM notify them that the January 1988 rental payment for lease SAC 019746(b) would not be applied to the rental owed on June 1, 1988, with respect to lease SAC 019746(c). In any case, the refund clearly put them on notice that the rental obligation had not been discharged and left them with ample opportunity to fulfill that obligation. We, therefore, must conclude that BLM properly held that lease SAC 019746(c) automatically terminated by operation of law upon the failure of appellants to pay the annual rental due on June 1, 1988. See, e.g., Henry Y. Yoshino, 108 IBLA 47, 48 (1989). To that extent, we hereby affirm the August 1989 BLM decision.

[2] Turning to the question of reinstatement, it is clear that in the absence of payment or tender of the rental payment within 20 days of the lease anniversary date, BLM was correct in holding that appellants were not entitled to reinstatement under Class I. See Mark Salisbury, 107 IBLA 335 (1989).

Insofar as the denial of a Class II reinstatement is concerned, we note that, at the time the decision was issued, BLM was correct in holding that appellants were not entitled to reinstatement. Thus, in Paul D. Lieb, supra at 285-86, we held that the holders of section 14 leases were not entitled to reinstatement under section 31(d) of the Mineral Leasing Act since that statute unambiguously limited such reinstatement to leases issued pursuant to section 17(b) and (c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) and (c) (1988). Subsequent to the filing of the present appeal, however, Congress enacted the Act of November 15, 1990, 104 Stat. 2802 (1990), which, inter alia, amended section 31(g) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(g) (1988), to provide that any lease issued pursuant to section 14 of the Mineral Leasing Act "shall be eligible for reinstatement under the terms and conditions set forth in subsection[] * * * (d) * * * of this section." The express purpose of this change was to extend the benefit of reinstatement to section 14 leases. See S. Rep. No. 395, 101st Cong., 2d Sess. 2, reprinted in 1990 U.S. Code Cong. & Admin. News 3985. To the extent that our decision in Paul D. Lieb, supra, held otherwise, it may no longer be followed.

Moreover, the instant lease was specifically addressed in the Act of November 15, 1990, supra. Section 2 of that Act expressly provided that oil and gas lease SAC 019746(c) (referred to as CAS 019746C) 5/ "shall be

5/ In his Nov. 17, 1989, declaration attached to BLM's Answer, at page 1, Kurt T. Mueller explained that the serial number of the subject lease was changed "in order to accommodate a new computer record keeping system."

eligible for reinstatement under the terms and conditions set forth in subsection 31 * * * (d) * * * of the Mineral Leasing Act." 104 Stat. 2802. Further, the statute required the Secretary of the Interior to notify appellants, within 30 days after enactment of the Act, that they could petition for reinstatement, whereupon they would have 60 days to file such a petition.

To date, BLM has issued a notice to appellants on December 11, 1990, informing them of what was needed to be submitted in order to "perfect" their petition for reinstatement, which, BLM stated, is "now considered filed under the new law." On February 7, 1991, appellants fully complied with the December 1990 notice. However, despite the fact that BLM has concluded that appellants "have [now] met the requirements for a Class II reinstatement," in accordance with the December 1990 notice, no action has been taken on appellants' petition pending the conclusion of the present appeal which involved the question of whether or not the lease had terminated in the first instance (Memorandum to the Board from Deputy State Director, Operations, California State Office, BLM, dated Feb. 27, 1991).

Having held that the lease did terminate, it is clear that the provisions of the Act of November 15, 1990, which affords appellants the right to seek reinstatement of oil and gas lease SAC 019746(c), now apply. Therefore, we set aside the decision below to the extent that it concluded that appellants were not entitled to reinstatement of the lease and remand the case to BLM for further adjudication of appellants' petition for reinstatement in accordance with applicable law.

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 in part and set aside in part and the case is remanded to BLM for further action consistent herewith.

James L. Burski
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge