The original documents are located in Box 45, folder "5/13/76 HR2782 Oil and Gas Lease Reinstatement" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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Posted 5/13/76 Jo archives

5/14/76

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THE WHITE HOUSE

ACTION

WASHINGTON May 12, 1976

Last Day: May 15

MEMORANDUM FOR

THE PRESIDENT JIM CANNON

FROM:

SUBJECT:

H.R. 2782 - Oil and Gas Lease Reinstatement

Attached for your consideration is H.R. 2782, sponsored by Representative Sisk, which would provide for the reinstatement and validation of a United States oil and gas lease which was terminated because the company's annual rental check was received two days after its due date.

The late payment, which was due to a clerical error, was reviewed by the Bureau of Land Management and the Department of the Interior's Board of Land Appeals but reinstatement of the lease was denied.

Additional background information is provided in OMB's enrolled bill report at Tab A.

The Department of the Interior recommends disapproval of the enrolled bill because the Board of Land Appeals had reviewed the matter and had ruled against reinstatement and because H.R. 2782 would create an undesirable precedent.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 2782 at Tab B. Approve Disapprove _____

To Bie Roberto, Pustoffere 5/14/76





OFFICE OF MANAGEMENT AND BUDGET WASHINGTON, D.C. 20503

MAY 1 0 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2782 - Oil and gas lease reinstatement Sponsor - Rep. Sisk (D) California

Last Day for Action

May 15, 1976 - Saturday

Purpose

Provides for the reinstatement and validation of United States oil and gas lease no. U-0140571.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Disapproval (Veto Message attached)
Department of Justice	Defers to Interior

Discussion

Under provisions of the Mineral Leasing Act, the failure to pay the annual rental for an oil and gas lease on or before its due date results in the automatic termination of the lease. The Secretary of the Interior has the authority to reinstate such leases, but only if: (1) the rent was paid within 20 days after the due date; and (2) the Secretary determines that the failure to pay on time was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee ..."

In the case of the oil and gas lease cited in the enrolled bill, Charles S. Pashayan, a partner and the general manager of the company which held the lease, issued a check on April 28, 1972, to the Bureau of Land Management (BLM) for payment of the 1972-1973 rent (\$320.00). Although Mr. Pashayan instructed his secretary to mail the check that day, a Friday, the company's mail clerk was absent due to an injury and the person(s) delegated to carry out her duties did not post the letter containing the lease rental check. On the day the lease rental was due, Monday, May 1, 1972, the unmailed letter was discovered and immediately posted --- it arrived at BLM's Utah State Office on May 3, 1972. As required by law, the lease was terminated.

The lessee then filed a petition for reinstatement of the lease as allowed under the Mineral Leasing Act by claiming that his failure to make timely payment was "justifiable" and that he had demonstrated "reasonable diligence" in the matter. However, BLM denied his petition and its decision was affirmed in a split decision (2 to 1 vote) by Interior's Board of Land Appeals. Specifically, the Board's majority found that the failure to make timely payment was neither "justifiable" nor an example of "reasonable diligence." The majority stated that "forgetfulness, simple inadvertence or ignorance of the regulations" are not justifiable grounds for reinstatement.

On the other hand, the dissenting member of the Board recommended reinstatement of the lease by arguing that the "reasonable diligence" test had been met because the lessee had in fact demonstrated "what action a reasonably diligent person would take." The dissenting member further argued that the lessee's failure to pay on time was justifiable because the "appellant made every reasonable effort to mail the check but an unforeseen and even unknown breakdown in its office procedures prevented the timely mailing of the check."

The enrolled bill would require that, not withstanding any decision to the contrary heretofore made by the Secretary of the Interior or his authorized agents, United States oil and gas lease numbered U-0140571 shall be held not to have terminated on May 1, 1972, but shall be deemed to be in full force and effect. H.R. 2782 stipulates that the lease term would be extended from May 1, 1972, to four years after enactment or to May 1, 1977, whichever is later, and so long thereafter as oil and gas is produced in paying quantities. Finally, H.R. 2782 would require that all accrued and unpaid lease rental monies be paid within thirty days after the receipt of a billing for amounts due from the Secretary.

In reporting on H.R. 2782, Interior opposed enactment of the bill on the grounds that its Board of Land Appeals had thoroughly reviewed the matter in the appropriate administrative forum and had ruled against reinstatement.

However, in its report on the enrolled bill, the House Interior Committee took exception to the Department's position by stating that the Mineral Leasing Act's legislative history makes it clear:

> "That it was the intention of Congress to allow reinstatement of a lease in a case where late payment is due to inadvertency on the part of the lessee. Since the failure to mail the rental check was due to the absence of the mail clerk, it is apparent that the lack of payment was due to such an inadvertency and could therefore be considered justifiable."

H.R. 2782 passed in both the House and Senate on voice votes.

In its enrolled bill letter recommending disapproval, Interior reiterates the arguments it made before Congress, as discussed above. In addition, Interior's draft veto message notes that the decision of the Board of Land Appeals was consistent with previous decisions on similar cases and that H.R. 2782 would create an undesirable precedent.

In our judgment, there is no unequivocal answer to the central issue in this case; namely, whether or not the lessee's failure to make timely payment was either "justifiable" or characterized by "reasonable diligence." However, in light of the arguments made by the dissenting member of the Board and considering the assertions made by the House Interior Committee,

we believe question should be decided in favor of the lessee, and therefore, this Office recommends approval of the enrolled bill. We feel that circumstances in this case are sufficiently unusual so as to minimize any precedential effect it may have. Finally, we note that approval of H.R. 2782 would not result in any adverse consequences to the interests of the public or the Federal Government.

James M. Frey Assistant Director for

Legislative Reference

Enclosure



United States Department of the Interior

OFFICE OF THE SECRETARY WASHINGTON, D.C. 20240

MAY 7 - 1976

Dear Mr. Lynn:

This responds to your request for our views concerning the enrolled bill H.R. 2782, "To provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571, and for other purposes."

We recommend that the President withhold his approval of this bill. A proposed veto message is enclosed herewith.

H.R. 2782 would require that, notwithstanding any decision to the contrary made by the Secretary of the Interior or his authorized representative, the oil and gas lease identified in the bill shall be held not to have terminated by operation of law but to be in full force and effect. The term of the lease would be extended to 4 years after the effective date of the Act or May 1, 1977, whichever is later, and so long thereafter as oil and gas is produced in paying quantities. The bill would also require the Secretary of the Interior to notify the last record holder of the lease, within 30 days of enactment of the Act, of the amount of rental accrued on the lease and unpaid. The holder of the lease would then have 30 days after receipt of such written notice, to tender payment of said amount of rental.

The lease in question terminated by operation of law on May 1, 1972, for failure to pay rental timely. The issue in question involves an interpretation of whether, under the circumstances, the lessee exercised "due diligence" as required by the statute (30 U.S.C. 188(c)) in attempting to make this payment or whether its failure was "justifiable". The statute vested this determination in the Secretary of the Interior. The lessee's petition for reinstatement was denied by the Utah State Office on May 16, 1972. On appeal, the Interior Board of Land Appeals affirmed the decision of the Utah State Office on May 3, 1973, and again on reconsideration on October 12, 1973.



Attached hereto is a copy of the Interior Board of Land Appeals decision in the case (IBLA 72-443). We recommend against the approval of this bill because we believe that the matter has had a thorough review in the appropriate administrative forum. We find no reason to alter their resolution of the matter.

Sincerely yours,

Asistan Secretary of the Interior

Honorable James T. Lynn Director, Office of Management and Budget Washington, D.C.

Enclosures



United States Department of the Interior

• OFFICE OF HEARINGS AND APPEALS INTERIOR BOARD OF LAND APPEALS 4015 WILSON BOULEVARD ARLINGTON, VIRGINIA 22203

MONTURAH COMPANY

IBLA 72-443

Decided May 3, 1973

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying the reinstatement of oil and gas lease U-0140571 terminated by operation of law for failure to pay the annual rental on or before the anniversary date.

Affirmed.

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

An oil and gas lease terminated by operation of law for failure to timely pay the advance rentals can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Charles S. Pashayan, Esq., for appellant.

OPINION BY MR. HENRIQUES

Monturah Company appeals from a decision of the Utah State Office refusing to grant the reinstatement of its oil and gas lease, U-0140571, terminated by operation of law for failure to pay the annual rental on or before the due date.

The rental was due on or before May 1, 1972. It was not received until May 3, 1972. Thus, under the provisions of section 31 of the Mineral Leasing Act, 30 U.S.C. § 188, the lease terminated by operation of law. The envelope in which the payment was sent was postmarked May 1, 1972, the due date, in Fresno, California. Although originally, appellant contended that the payment was sent earlier, it now concedes that in point of fact the rental was not mailed until the due date.

It is clear, therefore, that reasonable diligence was not shown by appellant, and the major issue in this case is whether the failure to timely pay the advance rental was "justifiable" within the meaning of section 31 of the Mineral Leasing Act, as discussed in Louis Sanuel, 8 IBLA 268 (1972), and R. G. Price, 8 IBLA 290 (1972).

In order to decide this issue, a review of the factual construct of the case is in order. At the direction of the managing officer of the Monturah Company a check in payment of the lease was prepared on April 28, 1972. The envelope containing this check was correctly addressed to the Bureau of Land Management, Salt Lake City, Utah, and placed in the out box for mailing. The office clerk in charge of the mail pickup was not at work on that day, however, as she had suffered an injury to her shoulder the previous evening. The mail clerk's supervisor was, on that day, supervising an inventory at different premises. The mail clerk's supervisor was advised on the morning of the 28th of the clerk's injury, at which point he called the office to advise them that the mail clerk would not be at work and "to make certain her duties were fulfilled." The envelope, however, was not posted on April 28, a Friday. This fact of nonmailing was not discovered until Monday, May 1, the due date.

Appellant contends that these circumstances make its failure to timely pay the annual rental "justifiable." We disagree. It is admitted that the responsible officer of the company knew that the mail clerk was absent, and further that he specifically directed someone else to perform her duties. The duties, however, were neglected. Appellant is in no stronger position than if the assigned mail clerk had inadvertently neglected to collect the mail while at work. As this Board declared in Louis Samuel, supra, when it was discussing the scope of the reinstatement provisions of section 31, as they relate to the meaning of the word "justifiable" as used in the statute: "What is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations * * * ."

Companies are not held to a higher standard of diligence by the mere fact of their corporate structure. But by the same token, they cannot hide behind the bulk and complexity of their organizations, so as to make "justifiable" for them actions which would not be held to be justifiable for individual lessees.

We note that the dissent emphasizes at length that various statements were made under penalty of perjury. The inference is that this Board should accept them as true. In fact, we do. The decision in this case is premised not on a doubt of the veracity of appellant's representatives, but rather on the basis that, accepting as true all of their statements, the failure to timely pay the annual rental was not "justifiable."

The dissent also misreads the "reasonable diligence" requirement as spelled out both in 43 CFR 3108.2-1 (c) and Louis Samuel, supra: The regulation states that:

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment.

In Louis Samuel, supra, this Board declared:

The effect of this new regulation is that when lessees can show that they mailed the payment in sufficient time so that in the normal course of events it would be received on or prior to the due date, they may be granted reinstatement provided that they make timely application as required by the statute.

Id. at 273.

The dissent quotes Louis Samuel, supra, to the effect that "[t]he meaning of 'reasonable diligence' is 'what action a reasonably diligent person would take.'" The full sentence reads "Indeed, the reasonable diligence requirement is primarily an objective test dependent not upon the personal situation of the lessee, but upon what action a reasonably diligent person would take." Id. at 273 (emphasis added). What it means is that the simple question to be answered in any case to determine whether "reasonable diligence" has been shown is whether the lessee mailed the payment in sufficient time so that in the normal course of events the payment would be timely received. This is the interpretation that has consistently been followed by the Department. See e.g., R. G. Price, supra; Charles E. Reynolds, 9 IBLA 300 (1973); John Rusiniak, 10 IBLA 74 (1973); Mrs. Charles H. Blake, 10 IBLA 175 (1973).

Thus, the factors which the dissent discusses have no bearing on the issue of reasonable diligence but are instead relevant to a determination of whether the <u>failure</u> to exercise due diligence can be deemed "justifiable." For the reasons discussed above, we do not feel that the failure can be deemed "justifiable" within the meaning of section 31 of the Mineral Leasing Act.

Therefore, it should be given a liberal construction. See Attix v. Robinson, 155 F. Supp. 592 (D.C. Mont. 1957); see also 3 SUTHERLAND, STATUTORY CONSTRUCTION § 5701 (1943). Cf. Lance v. Udall, Civil No. 1864-N, January 23, 1968 (D.C. Nev.).

In conclusion I believe that the representatives of appellant in the present case acted as reasonably diligent persons would acc and, further, that its failure to send in the rental timely was justifiable in the sense that there was a reasonable, bona fide, sufficient excuse for the delay. Accordingly, I would reinstate the lease.

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.

.63*

11 11:15/120 h. Hentiques, Merter Doug1as/

I concur:

Martin Ritvo, Member

I dissent:

Poindexter Lewis, Member Anne

Anne Poindexter Lewis, dissenting.

For the reasons stated below, I would accept the late payment of rental herein under the exception provided for in the Mineral Leasing Act, 30 U.S.C. § 188(c), and would reinstate oil and gas lease U-0140571.

. The record shows that the rental was due on or before May 1, 1972. It was in fact postmarked May 1 and was received on May 3, 1972.

Charles S. Pashayan, a partner and the general manager of appellant company, filed a signed statement dated November 27, 1972, declaring the following under penalty of perjury: Three related corporations, including appellant, have business activities at one address, 565 Broadway, Fresno, California, and during April and May 1972, there were approximately 127 full-time employees employed by the two corporations other than appellant. On April 28, 1972, Mr. Pashayan drew and signed a check to the Bureau of Land Management for the payment of the 1972-1973 rent, check no. 1747, in the amount of \$320. He instructed his secretary, Winnie M. Burns, that the check was to be mailed forthwith. The policy of the office was that all checks and correspondence would be mailed on the day written. April 28 was a Friday. Sometime after Monday, May 1, he became aware that Celeste Mattos, the girl whose duty it was to pick up the mails, had injured her shoulder on the evening of April 27 and was not at work on April 28. In a separate similar signed statement dated November 28, 1972, Mr. Pashayan declared he deposited \$1000 to the account of appellant company on April 28 so that there would be sufficient funds to cover the check for rental.

Winnie M. Burns in a signed declaration under penalty of perjury, dated November 27, 1972, stated: She was secretary to Mr. Pashayan and as such drew all the checks for him on the company, and on April 28, she remembered drawing a check for \$320 to BLM for the payment of rent due May 1, 1972. She prepared and addressed an envelope and placed the check in it, and placed the envelope in the outgoing mailbox. The standard procedure was that letters would be picked up and run through the postage machine on the day she placed the envelope in the outgoing mail. After May 1, she found out that the mail girl, Celeste Mattos, had sprained her shoulder the evening of April 27 and, unknown to Ms. Burns, someone else was put in charge of the mail. Ms. Burns was never instructed by anyone to hold the check.

Celeste Mattos, under penalty of perjury, in a written statement dated November 27, 1972, said: During the month of April 1972

'10 IBLA 351

and until about October 1972, one of her duties was to pick up all the mail that was to be mailed, put it through the postage machine, and mail it the same day. During the evening of April 27, she sprained her shoulder and went to St. Agnes Hospital for emergency treatment and next returned to work on May 4.

TBLA 72-443

William C. Kerr, in a signed written statement dated November 28. 1972, under penalty of perjury, declared: He is the office manager of two related corporations at the same address as appellant, and that as such, he installed the office routine in effect April and May 1972. The mail was to be picked up by Celeste Mattos between 4 and 4:15 p.m., put through the postage meter, and mailed that day. On April 28, he spent the entire day in the warehouse taking inventory and was not in appellant's office at 565 Broadway, Fresno, California. Early on April 28, he received a call advising him Celeste Mattos had injured her shoulder and would not be at work. He called the office and told them Mattos would not be at work and advised them to make certain her duties were filled. He was not aware until after May 1 that all the mail was not handled pursuant to established office procedure. He has attempted to find out why the letter to BLM was not mailed according to usual office procedure. which would have been April 28. The only conclusion he can arrive at is that in view of Celeste Mattos' emergency absence the established office procedure broke down.

Louis Samuel, 8 IBLA 268 (1972), interprets the here involved section of the Mineral Leasing Act, <u>supra</u>, thus: The meaning of "reasonable diligence" is "what action a reasonably diligent person would take." "Justifiable" means "a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met."

In the instant case, I believe the appellant met the definition of "reasonable diligence" set forth in the <u>Samuel</u> case. 1/ Moreover, I do not agree with <u>Samuel</u> that "justifiable" means only factors outside an individual's control, such as earthquake, fire, etc., and thus is an overly rigid and stringent test. Rather, I believe, "justifiable" is something akin to "reasonable diligence," and is a bona fide, sufficient, reasonable excuse for the failure to send the rental timely. Appellant made every reasonable effort to mail the check but an unforeseen and even unknown breakdown in its office procedures prevented the timely mailing of the check. Therefore, its failure to send the rental timely, in my opinion, was also "justifiable." I further repeat here the thought expressed in the dissent in Louis J. Patla, 10 IBLA 127 (1973), in which I joined. This is the concept that the section of the Mineral Leasing Act at 30 U.S.C. § 188(c) was intended to be remedial and for the benefit of lessees.

1/ See R. G. Price, 8 IBLA 299 (1972).

Department of Justice

Washington, D.C. 20530

May 6, 1976

Honorable James T. Lynn Director, Office of Management and Budget Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 2782, "To provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571, and for other purposes."

The subject lease was terminated by operation of law on May 1, 1972, for failure to pay rental on time. It is indicated that the rental check was timely prepared for mailing by the lessee, Monturah Company, on April 28, 1972. As a result of a breakdown of the lessee's office procedures, however, the check was not mailed until the due date, May 1, 1972. The lessee's petition for reinstatement of the lease, under the provisions of 30 U.S.C. 188(c), was denied by the Department of the Interior.

The enrolled bill H.R. 2782 would provide for reinstatement of the lease in the lessee's name notwithstanding its termination by the terms of the pertinent statute.

The Department of Justice has no objection to the language or construction of the enrolled bill. The Department of Justice defers to the Department of the Interior as to whether this bill should receive Executive approval.

Sincerely,

Michael M. Chlucon

Michael M. Uhlmann Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO .:

Date: May 11 FOR ACTION: George Humphreys cc (for information): Jack Marsh Dick Parsons defen Max Friedersdorf or Ken Lazarus on Robert FROM THE STAFF SECRETARY

DUE: Date: May 11

Time: 500pm

SUBJECT:

H.R. 2782 - Bol and gas lease reinstatement

ACTION REQUESTED:

____ For Necessary Action

- For Your Recommendations

_____ Prepare Agenda and Brief

____ Draft Reply

X For Your Comments

_____ Draft Remarks

REMARKS:

Please return to Judy JOhnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR. For the President



EXECUTIVE OFFICE OF THE PRESIDENT OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 1 0 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2782 - Oil and gas lease reinstatement Sponsor - Rep. Sisk (D) California

Last Day for Action

May 15, 1976 - Saturday

Purpose

Provides for the reinstatement and validation of United States oil and gas lease no. U-0140571.

Agency Recommendations

Office of Management and Budget

Department of the Interior

Disapproval (Veto Message attached) Defers to Interior

Approval

Department of Justice

Discussion

Under provisions of the Mineral Leasing Act, the failure to pay the annual rental for an oil and gas lease on or before its due date results in the automatic termination of the lease. The Secretary of the Interior has the authority to reinstate such leases, but only if: (1) the rent was paid within 20 days after the due date; and (2) the Secretary determines that the failure to pay on time was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee ..."

In the case of the oil and gas lease cited in the enrolled bill, Charles S. Pashayan, a partner and the general manager of the company which held the lease, issued a check on April 28, 1972, to the

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FOR ACTION:	George Humph Dick Parsons Max Friederso Ken Lazarus	-	cc (for in	nformation)	Jack Marsh Jim Cavanaug Ed Schmults
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PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Connon log the President

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ACTION MEMO	RANDUM	WASHING	TON	LOG	NO.:	
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James H. Connon For the President うまち あましんのでいたないと思想を保険ななると、なるの

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H.R. 2782 - Oil and gas lease reinstatement

ACTION REQUESTED:

_____ For Necessary Action

_____ For Your Recommendations

_____ Prepare Agenda and Brief

X For Your Comments

____ Draft Reply

REMARKS:

Please return to Judy JOhnston, Ground Floor West Wing

No objection -- Ken Lazarus 5/11/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon For the President THE WHITE HOUSE

WASHINGTON

May 11, 1976

MEMORANDUM FOR:

MAX L. FRIEDERSDORF

JIM CAVANAUGH

FROM: SUBJECT:

H.R. 2782 - Oil and gas least reinstatement

Mil

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

TO THE HOUSE OF REPRESENTATIVES

. .

I return herewith without my approval, H.R. 2782, a bill that would create an exception to the requirements and procedures of the Mineral Leasing Act for one particular company. An oil and gas lease issued to that company was terminated by operation of the provisions of section 31 of the Mineral Leasing Act. This legislation would give to that company a special benefit that it had no reason to expect.

The lease in question was terminated by operation of law on May 1, 1972, for failure to pay rental timely. The issue involved an interpretation of whether, under the circumstances, the lessee exercised "due diligence" as required by the statute (30 U.S.C. 188(c)) in attempting to make this payment or whether its failure was "justifiable". The lessee's petition for reinstatement was denied by the Utah State Office on May 16, 1972. On appeal, the Interior Board of Land Appeals affirmed the decision of the Utah State Office on May 3, 1973, and again on reconsideration on October 12, 1973.

Section 31 of the Mineral Leasing Act gives the Secretary of the Interior the responsibility for determining whether certain stated criteria have been met and thus, whether a Federal oil and gas lease, already terminated automatically by operation law, should be reinstated. In this case, the Secretary determined that criteria in the Mineral Leasing Act for reinstatement had not been met and, by decision setting forth the reasons therefor, determined that the lease should not be reinstated. This decision was consistent with previous decisions on similar cases involving the same provisions of law.

Thus, H.R. 2782 would, in effect, overrule the Secretary's decision with respect to this specific case and thereby create an exception to the procedure that the Congress established to handle these situations in a uniform manner.

For the foregoing reasons, I do not believe that the situation addressed by H.R. 2782 is an appropriate case for private legislative relief afforded by H.R. 2782.

THE WHITE HOUSE

May 1976

PROVIDING FOR THE REINSTATEMENT AND VALIDA-TION OF U.S. OIL AND GAS LEASE NO. U-0140571, AND FOR OTHER PURPOSES

OCTOBER 8, 1975.--Committed to the Committee of the Whole House and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 2782]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 2782) to provide for the reinstatement and validation of U.S. oil and gas lease No. U-0140571, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 2782, introduced by Mr. Sisk, is to provide for the reinstatement and validation of U.S. oil and gas lease No. U-0140571.

BACKGROUND

The lease in question terminated by operation of law on May 1, 1972, for failure to pay rental timely. At issue is the question of whether the lessee exercised "due diligence" as required by the statute (30 U.S.C. 188(c)) in attempting to make this payment or whether the failure to make timely payment was justifiable. The determination in this matter is vested by statute in the Secretary of the Interior.

The lessee, Monturah Co., of Fresno, Calif., has sought review of the decision. The lessee's petition for reinstatement was denied by the Utah State Office of the Bureau of Land Management on May 16, 1972. On appeal, the Interior Board of Land Appeals affirmed the decision of the Utah State Office on May 3, 1973, and again on reconsideration on October 12, 1973. The decision of the Interior Board of Land Appeals was affirmed in Federal Court.

The undisputed facts of the matter are that the rental check in the amount of \$320 was due in the Utah State Office of the Bureau of Land Management on the anniversary date of the appellant's lease May 1, 1972, but was not received by BLM until May 3, 1972. Appellant maintains that normal office procedures were followed in issuing the check which except for the intervention of an unforeseen illness of an office clerk, would have brought about timely delivery of the rental payment, and that he acted in good faith to meet with diligence requirements under the statute.

EXPLANATION

H.R. 2782 would require that the oil and gas lease identified in the bill be held not to have terminated by operation of law and be given full force and effect. The term of the lease would be extended to 4 years after the effective date of the act or May 1, 1977, whichever is later, and so long thereafter as oil and gas is produced in paying quantities. The Secretary of Interior would also be required to notify the last record holder of the lease, within 30 days of enactment of the act, of the amount of rental accrued on the lease and unpaid and the holder would be required to tender payment of the rental within 30 days of the receipt of the notice.

It is clear from the legislative history of Public Law 91-245 (30 U.S.C. 188(c)) that it was the intention of Congress to allow reinstatement of a lease in a case where late payment is due to inadvertency on the part of the lessee. Since the failure to mail the rental check was due to the absence of the mail clerk, it is apparent that the lack of payment was due to such an inadvertency and could therefore be considered justifiable.

SECTION-BY-SECTION ANALYSIS

Section 1 states the purpose of the bill, including reinstatement of the identified oil and gas lease under specified stipulations.

COST AND BUDGET ACT COMPLIANCE

No significant Federal expenditures are involved in the enactment of H.R. 2782, since the legislation merely contemplates the reinstatement of an oil and gas lease.

INFLATIONARY IMPACT STATEMENT

The sums involved in H.R. 2782 are nominal and will have no inflationary impact.

OVERSIGHT STATEMENT

Other than the normal oversight responsibilities exercised in conjunction with these legislative operations, no recommendations were submitted to the committee pursuant to rule X, clause 2(b)(2).

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by a voice vote, recommends the enactment of H.R. 2782.

DEPARTMENTAL REPORT

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The unfavorable report of the Department of the Interior follows:

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,

Washington, D.C., June 3, 1975.

Hon. JAMES A. HALEY,

Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views concerning H.R. 2782, a bill to provide for the reinstatement and validation of U.S. oil and gas lease No. U-0140571, and for other purposes.

We recommend that this bill not be enacted.

H.R. 2782 would require that, notwithstanding any decision to the contrary made by the Secretary of the Interior or his authorized representative, the oil and gas lease identified in the bill shall be held not to have terminated by operation of law but to be in full force and effect. The term of the lease would be extended to 4 years after the effective date of the act or May 1, 1977, whichever is later, and so long thereafter as oil and gas is produced in paying quantities. The bill would also require the Secretary of the Interior to notify the last record holder of the lease, within 30 days of enactment of the act, of the amount of rental accrued on the lease and unpaid. The holder of the lease would then have 30 days after receipt of such written notice, to tender payment of said amount of rental.

The lease in question terminated by operation of law on May 1, 1972, for failure to pay rental timely. The issue in question involves an interpretation of whether, under the circumstances, the lessee exercised "due diligence" as required by the statute (30 U.S.C. 188(c)) in attempting to make this payment or whether its failure was justifiable". The statute vested this determination in the Secretary of the Interior. The lessee's petition for reinstatement was denied by the Utah State Office on May 16, 1972. On appeal, the Interior Board of Land Appeals affirmed the decision of the Utah State Office on May 3, 1973, and again on reconsideration on October 12, 1973. We have been advised that the lessee has sought judicial review of the matter in the appropriate Federal courts and that the decision of the Interior Board of Land Appeals has been affirmed.

Attached hereto is a copy ¹ of the Interior Board of Land Appeals decision in the case (IBLA 72-443). We recommend against the enactment of this bill because we believe that the matter has had a thorough review in the appropriate administrative forum and the Federal courts. We find no reason to alter their resolution of the matter.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ROYSTON C. HUGHES, Assistant Secretary of the Interior.

¹Attachment referenced above has been included in the committee file on H.R. 2782.

94TH CONGRESS SENATE 2d Session Report No. 94-769

PROVIDING FOR REINSTATEMENT AND VALIDATION OF U.S. OIL AND GAS LEASE

APBIL 29, 1976.—Ordered to be printed

Mr. METCALF, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 2782]

The Committee on Interior and Insular Affairs, to which was referred the bill (H.R. 2782) to provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571, having considered the same, reports favorably thereon with out amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of H.R. 2782 is to provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571.

II. BACKGROUND AND NEED

The oil and gas lease in question terminated by operation of law on May 1, 1972, for failure to pay the rent on time. Under the authority of the 1970 amendment to the Mineral Leasing Act of 1920, (30 U.S.C. Sec. 188(c)), the Secretary of Interior has authority to reinstate leases terminated automatically by operation of law under certain circumstances. These are (1) that the rent was paid within 20 days after the due date and (2) it is shown to the satisfaction of the Secretary of the Interior that failure to pay on time was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee. . . ."

The undisputed facts in this case are that the rental check in the amount of \$320.00 was due in the Utah State Office of the Bureau of Land Management on May 1, 1972, but it was not received until May 3, 1972. The lessee mailed the payment on May 1, 1972 in Fresno, California. The lessee states that the check was prepared for mailing on Friday, April 28, but was inadvertently left in the office over the week-

end rather than mailed. The lessee filed a petition for reinstatement under the 1970 Act which was denied by the Bureau of Land Management. The BLM decision was affirmed by the Department of Interior's Board of Land Appeals on May 3, 1973. The lessee has filed a complaint in the Federal District Court in Fresno to seek review of the administrative decision. This action is currently pending in the Court.

The Interior Department regulations implementing the 1970 Act state, among other things:

The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. (43 CFR 3108.2 - 1(c)(2))

The Committee considered the facts in this situation and concluded that they justify the relief afforded by H.R. 2782.

III. LEGISLATIVE HISTORY

Hearings were held by the Committee on Interior and Insular Affairs of the House of Representatives on July 10, 1975. H.R. 2782 was passed by the House of Representatives on October 21, 1975.

IV. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open business meeting, on April 28, 1976, by unanimous vote of a quorum present. recommended that the Senate pass H.R. 2782 without amendment.

V. COST AND BUDGETARY CONSIDERATIONS

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the Committee provides the following estimates of cost:

No additional Federal expenditures are involved in the enactment of H.R. 2782.

VI. EXECUTIVE COMMUNICATION

U.S. DEPARTMENT OF THE INTERIOR. OFFICE OF THE SECRETARY. Washington, D.C., June 3, 1975.

Hon. JAMES A. HALEY,

Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views concerning H.R. 2782, a bill to provide for the reinstatement and validation of U.S. oil and gas lease No. U-0140571, and for other purposes. We recommend that this bill not be enacted.

H.R. 2782 would require that, notwithstanding any decision to the contrary made by the Secretary of the Interior or his authorized representative, the oil and gas lease identified in the bill shall be held not to have terminated by operation of law but to be in full force and effect. The term of the lease would be extended to 4 years after the

effective date of the act or May 1, 1977, whichever is later, and so long thereafter as oil and gas is produced in paying quantities. The bill would also require the Secretary of the Interior to notify the last record holder of the lease, within 30 days of enactment of the act, of the amount of rental accrued on the lease and unpaid. The holder of the lease would then have 30 days after receipt of such written notice, to tender payment of said amount of rental.

The lease in question terminated by operation of law on May 1, 1972, for failure to pay rental timely. The issue in question involves an interpretation of whether, under the circumstances, the lessee exercised "due diligence" as required by the statute (30 U.S.C. 188(c)) in attempting to make this payment or whether its failure was justifiable". The statute vested this determination in the Secretary of the Interior. The lessee's petition for reinstatement was denied by the Utah State Office on May 16, 1972. On appeal, the Interior Board of Land Appeals affirmed the decision of the Utah State Office on May 3. 1973, and again on reconsideration on October 12, 1973. We have been advised that the lessee has sought judicial review of the matter in the appropriate Federal courts and that the decision of the Interior Board. of Land Appeals has been affirmed.

Attached hereto is a copy of the Interior Board of Land Appeals decision in the case (IBLA 72-443). We recommend against the enactment of this bill because we believe that the matter has had a thorough review in the appropriate administrative forum and the Federal courts. We find no reason to alter their resolution of the matter.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ROYSTON C. HUGHES, Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF HEARINGS AND APPEALS, INTERIOR BOARD OF LAND APPEALS,

Arlington, Va.

MONTURAH COMPANY

Decided May 3, 1973

Appeal from a decision of the Utah State Office, Bureau of Land. Management, denying the reinstatement of oil and gas lease U-0140571 terminated by operation of law for failure to pay the annual rental on or before the anniversay date.

Affirmed.

IBLA 72-443

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

An oil and gas lease terminated by operation of law for failure to timely pay the advance rentals can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Appearances: Charles S. Pashayan, Esq., for appellant.

OPINION BY MR. HENRIQUES

Monturah Company appeals from a decision of the Utah State Office refusing to grant the reinstatement of its oil and gas lease, U-0140571, terminated by operation of law for failure to pay the annual rental on or before the due date.

The rental was due on or before May 1, 1972. It was not received until May 3, 1972. Thus, under the provisions of section 31 of the Mineral Leasing Act, 30 U.S.C. § 188, the lease terminated by operation of law. The envelope in which the payment was sent was postmarked May 1, 1972, the due date, in Fresno, California. Although originally, appellant contended that the payment was sent earlier, it now concedes that in point of fact the rental was not mailed until the due date.

It is clear, therefore, that reasonable diligence was not shown by appellant, and the major issue in this case is whether the failure to timely pay the advance rental was "justifiable" within the meaning of section 31 of the Mineral Leasing Act, as discussed in *Louis Samuel*, 8 IBLA 268 (1972), and R. G. Price, 8 IBLA 290 (1972).

In order to decide this issue, a review of the factual construct of the case is in order. At the direction of the managing officer of the Monturah Company a check in payment of the lease was prepared on April 28, 1972. The envelope containing this check was correctly addressed to the Bureau of Land Management, Salt Lake City, Utah, and placed in the out box for mailing. The office clerk in charge of the mail pickup was not at work on that day, however, as she had suffered an injury to her shoulder the previous evening. The mail clerk's supervisor was, on that day, supervising an inventory at different premises. The mail clerk's supervisor was advised on the morning of the 28th of the clerk's injury, at which point he called the office to advise them that the mail clerk would not be at work and "to make certain her duties were fulfilled." The envelope, however, was not posted on April 28, a Friday. This fact of nonmailing was not discovered until Monday, May 1, the due date.

Appellant contends that these circumstances make its failure to timely pay the annual rental "justifiable." We disagree. It is admitted that the responsible officer of the company knew that the mail clerk was absent, and further that he specifically directed someone else to perform her duties. The duties, however, were neglected. Appellant is in no stronger position than if the assigned mail clerk had inadvertently neglected to collect the mail while at work. As this Board declared in *Louis Samuel, supra*, when it was discussing the scope of the reinstatement provisions of section 31, as they relate to the meaning of the word "justifiable" as used in the statute: "What is clearly not covered are cases of forgetfulness, simple inadvertence or ignorance of the regulations * *."

Companies are not held to a higher standard of diligence by the mere fact of their corporate structure. But by the same token, they cannot hide behind the bulk and complexity of their organizations, so as to make "justifiable" for them actions which would not be held to be justifiable for individual lessees.

We note that the dissent emphasizes at length that various statements were made under penalty of perjury. The inference is that this

S.R. 769

Board should accept them as true. In fact, we do. The decision in this case is premised not on a doubt of the veracity of appellant's representatives, but rather on the basis that, accepting as true all of their statements, the failure to timely pay the annual rental was not "justifiable."

The dissent also misreads the "reasonable diligence" requirement as spelled out both in 43 CFR 3108.2-1 (c) and Louis Samuel, supra. The regulation states that:

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment.

In Louis Samuel, supra, this Board declared :

The effect of this new regulation is that when lessees can show that they mailed the payment in sufficient time so that in the normal course of events it would be received on or prior to the due date, they may be granted reinstatement provided that they make timely application as required by the statute.

Id. at 273.

The dissent quotes Louis Samuel, supra, to the effect that "[t]he meaning of 'reasonable diligence' is 'what action a reasonably diligent person would take.' "The full sentence reads "Indeed, the reasonable diligence requirement is primarily an objective test dependent not upon the personal situation of the lessee, but upon what action a reasonably diligent person would take." Id. at 273 (emphasis added). What it means is that the simple question to be answered in any case to determine whether "reasonable diligence" has been shown is whether the lessee mailed the payment in sufficient time so that in the normal course of events the payment would be timely received. This is the interpretation that has consistently been followed by the Department. See e.g., R. G. Price, supra; Charles E. Reynolds, 9 IBLA 300 (1973); John Rusiniak, 10 IBLA 74 (1973); Mrs. Charles H. Blake, 10 IBLA 175 (1973).

Thus, the factors which the dissent discusses have no bearing on the issue of reasonable diligence but are instead relevant to a determination of whether the *failure* to exercise due diligence can be deemed "justifiable." For the reasons discussed above, we do not feel that the failure can be deemed "justifiable" within the meaning of section 31 of the Mineral Leasing Act.

Accordingly, 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.

I concur:

Douglas E. Henriques, Member.

MARTIN RITVO, Member.

I dissent:

ALT: 42 11

ANNE POINDEXTER LEWIS, Member.

Anne Poindexter Lewis, dissenting.

For the reasons stated below, I would accept the late payment of rental herein under the exception provided for in the Mineral Leasing Act, 30 U.S.C. § 188(c), and would reinstate oil and gas lease U_{-1} 0140571.

The record shows that the rental was due on or before May 1, 1972. It was in fact postmarked May 1 and was received on May 3, 1972.

Charles S. Pashayan, a partner and the general manager of appellant company, filed a signed statement dated November 27, 1972, declaring the following under penalty of perjury: Three related corporations, including appellant, have business activities at one address, 565 Broadway, Fresno, California, and during April and May 1972, there were approximately 127 full-time employees employed by the two corporations other than appellant. On April 28, 1972, Mr. Pashayan drew and signed a check to the Bureau of Land Management for the payment of the 1972–1973 rent, check no. 1747, in the amount of \$320. He instructed his secretary, Winnie M. Burns, that the check was to be mailed forthwith. The policy of the office was that all checks and correspondence would be mailed on the day written. April 28 was a Friday. Sometime after Monday, May 1, he became aware that Celeste Mattos, the girl whose duty it was to pick up the mails, had injured her shoulder on the evening of April 27 and was not at work on April 28. In a separate similar signed statement dated November 28, 1972, Mr. Pashayan declared he deposited \$1000 to the account of appellant company on April 28 so that there would be sufficient funds to cover the check for rental.

Winnie M. Burns in a signed declaration under penalty of perjury, dated November 27, 1972, stated: She was secretary to Mr. Pashayan and as such drew all the checks for him on the company, and on April 28, she remembered drawing a check for \$320 to BLM for the payment of rent due May 1, 1972. She prepared and addressed an envelope and placed the check in it, and placed the envelope in the outoutgoing mailbox. The standard procedure was that letters would be picked up and run through the postage machine on the day she placed the envelope in the outgoing mail. After May 1, she found out that the mail girl, Celeste Mattos, had sprained her shoulder the evening of April 27 and, unknown to Ms. Burns, someone else was put in charge of the mail. Ms. Burns was never instructed by anyone to hold the check.

Celeste Mattos, under penalty of perjury, in a written statement dated November 27, 1972, said: During the month of April 1972 and until about October 1972, one of her duties was to pick up all the mail that was to be mailed, put it through the postage machine, and mail it the same day. During the evening of April 27, she sprained her shoulder and went to St. Agnes Hospital for emergency treatment and next returned to work on May 4.

William C. Kerr, in a signed written statement dated November 28, 1972, under penalty of perjury, declared: He is the office manager of two related corporations at the same address as appellant, and that as such, he installed the office routine in effect April and May 1972. The mail was to be picked up by Celeste Mattos between 4 and 4:15 p.m., put through the postage meter, and mailed that day. On April 28, he spent the entire day in the warehouse taking inventory and was not in appellant's office at 565 Broadway, Fresno, California. Early on April 28, he received a call advising him Celeste Mattos had injured her

shoulder and would not be at work. He called the office and told them Mattos would not be at work and advised them to make certain her duties were filled. He was not aware until after May 1 that all the mail was not handled pursuant to established office procedure. He has attempted to find out why the letter to BLM was not mailed according to usual office procedure, which would have been April 28. The only conclusion he can arrive at is that in view of Celeste Mattos' emergency absence the established office procedure broke down.

Louis Samuel, 8 IBLA 268 (1972), interprets the here involved section of the Mineral Leasing Act, *supra*, thus: The meaning of "reasonable diligence" is "what action a reasonably diligent person would take." "Justifiable" means "a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met."

In the instant case, I believe the appellant met the definition of "reasonable diligence" set forth in the Samuel case.¹ Moreover, I do, not agree with Samuel that "justifiable" means only factors outside an individual's control, such as earthquake, fire, etc., and thus is an overly rigid and stringent test. Rather, I believe, "justifiable" is something akin to "reasonable diligence," and is a bona fide, sufficient, reasonable excuse for the failure to send the rental timely. Appellant made every reasonable effort to mail the check but an unforeseen and even unknown breakdown in its office procedures prevented the timelymailing of the check. Therefore, its failure to send the rental timely, in my opinion, was also "justifiable." I further repeat here the thought expressed in the dissent in Louis J. Patla, 10 IBLA 127 (1973), in which I joined. This is the concept that the section of the Mineral Leasing Act at 30 U.S.C. § 188(c) was intended to be remedial and for the benefit of lessees.

Therefore, it should be given a liberal construction. See Attix v. Robinson, 155 F. Supp, 592 (D.C. Mont. 1957); see also 3 SUTHER-LAND, STATUTORY CONSTRUCTION § 5701 (1943). Cf. Lance v. Udall, Civil No. 1864-N, January 23, 1968 (D.C. Nev.).

In conclusion I believe that the representatives of appellant in the present case acted as reasonably diligent persons would act and, further that its failure to send in the rental timely was justifiable in the sense that there was a reasonable, bona fide, sufficient excuse for the delay. Accordingly, I would reinstate the lease.

VII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing-Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 2782.

¹ See R. G. Price, 8 IBLA 290 (1972).

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To provide for the reinstatement and validation of United States oil and gas lease numbered U-0140571, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered U-0140571 shall be held not to have terminated by operation of law or otherwise on May 1, 1972, but shall be deemed to be in full force and effect and the term of said lease extended from May 1, 1972, to four years after the effective date of this Act, or to May 1, 1977, whichever is later, and so long thereafter as oil or gas is produced in paying quantities: Provided, That within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said lease and unpaid, which notice shall be given by the Secretary within thirty days after the effective date of this Act, the last record holder of said lease, Monturah Company, doing business in Fresno, California, its successors or assigns, shall tender payment of said amount of rental.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

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May 14, 1976

Office of the White House Press Secretary

NOTICE TO THE PRESS

The President has signed H.R. 2782--Oil and Gas Lease Reinstatement This bill provides for the reinstatement and validation of United States oil and gas lease No. U-0140571.

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May 4, 1976

Dear Mr. Director:

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The following bills were received at the white House on May 4th:

8. 2115 H.R. 2782 H.R. 11876 V

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder Chief Executive Clerk

The Honorable James T. Lynn Director Office of Management and Budget Washington, D.C. ٤.