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§10/1/76

APPROVED  
OCT 1 - 1976

THE WHITE HOUSE  
WASHINGTON  
October 1, 1976

ACTION

Last Day: October 5

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON *J.C.*

SUBJECT:

S. 2220 - Reinstate an Oil  
and Gas Lease, New Mexico

Attached for your consideration is S. 2220, sponsored  
by Senators Montoya and Domenici.

The enrolled bill directs the Secretary of the Interior  
to receive, consider and act upon a petition for  
reinstatement of oil and gas lease New Mexico 18302  
if such a petition is filed within 90 days after the  
effective date of the legislation together with the  
required rental, if any, including back rental accrued  
since the termination of the lease.

A discussion of the bill is provided in OMB's enrolled  
bill report at Tab A.

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

RECOMMENDATION

That you sign S. 2220 at Tab B.

*Posted*  
*10/2/76*

*archives*  
*10/4/76*





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

SEP 29 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2220 - Reinstate an  
Oil and Gas Lease, New Mexico  
Sponsors - Sen. Montoya (D) New Mexico  
and Sen. Domenici (R) New Mexico

Last Day for Action

October 5, 1976 - Tuesday

Purpose

Directs the Secretary of the Interior to consider a petition to reinstate oil and gas lease New Mexico 18302.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection

Discussion

Under the Mineral Leasing Act, failure of a lessee to make rental payments on or before the anniversary date of any lease in which there is no well capable of active oil or gas production will cause the lease to be terminated. However, where a payment in full is received within 20 days after the anniversary date, and it is shown to the Secretary of the Interior that the failure was either justifiable or not due to a lack of reasonable diligence, the Secretary may reinstate the lease.

In the case addressed by this enrolled bill, Mr. Sol West III, the owner of a competitively



issued Federal oil and gas lease designated as New Mexico 18302, failed to make the required rental payment on the lease's anniversary date, May 1, 1975, and it was subsequently terminated by law. On July 17, 1975, Mr. West's attorney filed a petition for reinstatement of the lease with the Bureau of Land Management (BLM) State Office in New Mexico. The petition was accompanied by a check for \$800 to cover the rental for the period May 1, 1975 to May 2, 1976.

The Geological Survey reports that drilling operations were in progress on May 1, 1975, but that there was no well capable of active production on that date. A decision was issued by the BLM State Office on August 4, 1975, denying the petition, noting that since the rental was not received within the required 20-day grace period, the Secretary had no discretion to reinstate the lease. That decision was appealed to the Interior Board of Land Appeals, but the case has been suspended pending the outcome of this legislation.

S. 2220 would direct the Secretary of the Interior to receive, consider, and act upon any petition of Mr. Sol West III for reinstatement of oil and gas lease New Mexico 18302. The enrolled bill would require, within 90 days of enactment, both the filing of such a petition and the payment of rental due, including that accruing from the date of termination of the lease.

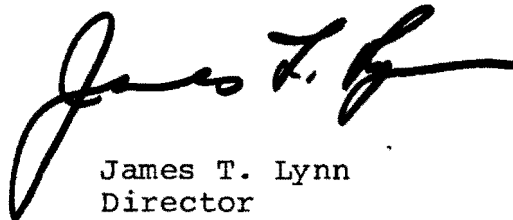
The Senate Interior Committee report on S. 2220 notes that Mr. West has spent some \$925,000 in developing a well on his leasehold. The Committee report further states that, according to Mr. West:

" ... failure to make timely payment was the result of his assumption that the well was capable of producing in paying quantities, which would have precluded rental payments under provisions of Section 31 of the Mineral Leasing Act."



In reporting to the Congress on S. 2220, Interior expressed no objection to enactment of the bill. The Department takes the same position in its attached enrolled bill letter, as it notes that Mr. West's near million dollar expenditure to develop the lease makes this case atypical when compared to other cases of termination of a lease for failure to pay rental. Moreover, Interior concludes that:

"S. 2220 would not require the Secretary to reinstate the lease, but rather to consider and act on an appropriate petition, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination. While S. 2220 would not guarantee reinstatement, it would authorize the Secretary to reinstate the lease if it is shown upon further inquiry into the facts of this case that failure to submit the rental on time was either justifiable or not due to lack of reasonable diligence."



James T. Lynn  
Director

Enclosure

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 30

Time: 630pm

FOR ACTION: George Humphreys *GH* cc (for information): Jack Marsh  
 Max Friedersdorf *MF* Jim Connor  
 Bobbie Kilberg *BK* Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: ~~September~~

Time: 500pm

SUBJECT:

S.2220-Reinsttate an Oil and Gas Lease, New Mexéco

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> 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



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 24 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on the enrolled bill S. 2220, "To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302."

We would have no objection to approval of the bill by the President.

S. 2220 directs the Secretary of the Interior to receive, consider, and act upon any petition of Sol West III, for reinstatement of oil and gas lease New Mexico 18302 if filed within 90 days after the effective date of the legislation together with the required rental, if any, including back rental accrued since the lease termination date.

Oil and gas lease NM 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973. By instrument of assignment executed April 9, 1973, and approved effective May 1, 1973, the lease was conveyed to Sol West, III.

The record shows that Mr. West failed to timely remit the rental due on the anniversary date, May 1, 1975, and that the lease terminated by operation of law (30 U.S.C. 188(b)). On July 17, 1975, George H. Hunker, Jr., Attorney, filed on behalf of the lessee a petition for reinstatement of the lease. The petition was accompanied by a check in the amount of \$800.00 to cover the rental payment for the period May 1, 1975 to May 1, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the anniversary date, but that there was no well capable of production on May 1, 1975.

Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in 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)). It further provides that where any lease has been so terminated, but rental was paid or tendered within twenty days after the anniversary date and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188(c)). In this case since the rental was not tendered within 20 days, the Secretary had no discretion to reinstate the lease.



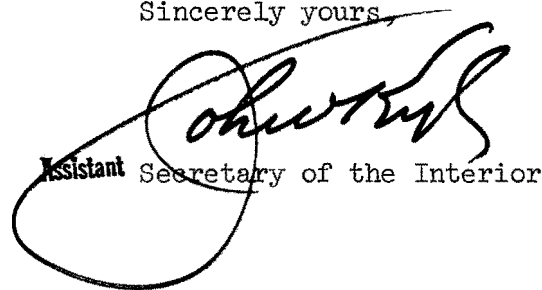
Although at the time of the anniversary date of the lease there was no well capable of producing oil or gas in paying quantities, such a well was completed not long thereafter, in early May of 1975, and another well was near completion in July.

Substantial work had been done on the leasehold as early as January 1975, with a capital commitment of \$925,000. In most cases of termination of a lease for failure to pay rental, there has been little or no development or financial commitment to the lease. This case is atypical in that regard.

The reasons for the failure to make timely payment of rent are not clear. It is known that Mr. West was out of the country at the time the rental was due. It has been suggested by his representative that he may have attempted to make a payment, which was subsequently misplaced in the mails or elsewhere or that he assumed that productive activity on the lease assured that it would be continued.

S. 2220 would not require the Secretary to reinstate the lease, but rather to consider and act on an appropriate petition, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination. While S. 2220 would not guarantee reinstatement, it would authorize the Secretary to reinstate the lease if it is shown upon further inquiry into the facts of this case that failure to submit the rental on time was either justifiable or not due to lack of reasonable diligence.

Sincerely yours,



Assistant Secretary of the Interior

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



THE WHITE HOUSE

MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 30

Time: 630pm

FOR ACTION: George Humphreys  
Max Friedersdorf  
Bobbie Kilberg

cc (for information): Jack Marsh  
Jim Connor  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 1

Time: 500pm

SUBJECT:

S.2220-Reinstate an Oil and Gas Lease, New Mexico

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*no objection Kelly 10/1/76*

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  
- President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 30

Time: 630pm

FOR ACTION: George Humphreys  
Max Friedersdorf  
Bobbie Kilberg

cc (for information): Jack Marsh  
Jim Connor  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 1

Time: 500pm

SUBJECT:

S.2220-Reinstate an Oil and Gas Lease, New Mexico

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*I recommend approval*

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  
— President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 30

Time: 630pm

FOR ACTION: George Humphreys  
Max Friedersdorf  
Bobbie Kilberg

cc (for information):

Jack Marsh  
Jim Connor  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 1

Time: 500pm

SUBJECT:

S.2220-Reinstate an Oil and Gas Lease, New Mexico

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Legislative affairs recommends signature*

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  
President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 29 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2220 - Reinstate an  
Oil and Gas Lease, New Mexico  
Sponsors - Sen. Montoya (D) New Mexico  
and Sen. Domenici (R) New Mexico

Last Day for Action

October 5, 1976 - Tuesday

Purpose

Directs the Secretary of the Interior to consider  
a petition to reinstate oil and gas lease New  
Mexico 18302.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection

Discussion

Under the Mineral Leasing Act, failure of a lessee to make rental payments on or before the anniversary date of any lease in which there is no well capable of active oil or gas production will cause the lease to be terminated. However, where a payment in full is received within 20 days after the anniversary date, and it is shown to the Secretary of the Interior that the failure was either justifiable or not due to a lack of reasonable diligence, the Secretary may reinstate the lease.

In the case addressed by this enrolled bill, Mr. Sol West III, the owner of a competitively



To: J. Johnson  
9-30-76  
10:30 9.7M.

## OIL AND GAS LEASE NEW MEXICO 18302

NOVEMBER 20 (legislative day, NOVEMBER 18), 1975.—Ordered to be printed

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

### REPORT

[To accompany S. 2220]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 2220) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### I. PURPOSE

The purpose of S. 2220 is to authorize and direct the Secretary of the Interior to consider a petition for reinstatement of oil and gas lease New Mexico 18302, if such petition is filed within 90 days of the effective date of this Act together with rental including back rental accrued since the lease termination date.

#### II. BACKGROUND AND NEED

Oil and gas lease New Mexico 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973, and by instrument of assignment effective May 1, 1973, was conveyed to Sol West, III. The land covered is within the known geologic structure of a producing oil and gas and thus was leased competitively.

Mr. West failed to pay timely the rental due on the anniversary date, May 1, 1975, and thus the lease terminated by operation of law. On July 17, 1975, a petition for reinstatement of the lease was filed with the Bureau of Land Management in the New Mexico State Office, together with a check for \$800 to cover the rental payment for the period May 1, 1975, to May 1, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the

anniversary date, but that there was no well capable of production in existence on May 1, 1975.

The Mineral Leasing Act of 1920 provides in section 31 that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in 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)). It further provides that where any lease has been so terminated, but rental was paid or tendered within 20 days after the anniversary date, and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188(c)). In this case since the rental was not tendered within 20 days, the Secretary has no discretion to reinstate the lease.

A decision was rendered by the New Mexico State Office on August 4, denying the petition. That decision has been appealed to the Board of Land Appeals of the Department of the Interior and the case is pending before the Board. Due to this pending legislation, action on the appeal has been suspended.

The lessee has spent \$925,000 to develop a productive oil and gas well. According to the testimony of the lessee, failure to make timely payment was the result of his assumption that the well was capable of producing in paying quantities, which would have precluded rental payments under provisions of Section 31 of the Mineral Leasing Act. Testimony at the hearings indicated that the well tested at 41 barrels per hour at the time it was decided to continue drilling to a deeper formation. Mr. West indicated that the well represents an important cash flow source to his firm, loss of which could severely hamper the firm's operations.

### III. LEGISLATIVE HISTORY

Open public hearings were held on the bill on October 7, 1975. The witness for the Department of the Interior testified that the Administration would have no objection to passage of the bill. No opposition was heard.

### IV. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open business meeting, on November 20, 1975, by unanimous vote of a quorum present, recommended that the Senate adopt S. 2220 without amendment.

### V. COST

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 S. 2220.

## VI. EXECUTIVE COMMUNICATION

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., October 6, 1975.

HON. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the opinion of the Department with respect to a bill, S. 2220, "To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302."

We have reviewed the proposed bill and we do not object to its enactment.

S. 2220 would direct the Secretary of the Interior to receive, consider, and act on the petition of Sol West III, for reinstatement of oil and gas lease New Mexico 18302 if a petition is filed within 90 days of the effective date of this proposed legislation together with rental including back rental accrued since the lease termination date.

Oil and gas lease NM 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973. By instrument of assignment executed April 9, 1973, and approved effective May 1, 1973, the lease was conveyed to Sol West, III. The land covered is in a KGS and must be leased competitively.

The record shows that Mr. West failed to timely remit the rental due on the anniversary date, May 1, 1975, and that the lease terminated by operation of law (30 U.S.C. 188(b)). On July 17, 1975, George H. Hunker, Jr., Attorney, filed on behalf of the lessee a petition for reinstatement of the lease with the BLM State Office. The petition was accompanied by a check in the amount of \$800.00 to cover the rental payment for the period May 1, 1975 to May 2, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the anniversary date, but that there was no well capable of production on May 1, 1975.

Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in 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)). It further provides that where any lease has been so terminated, but rental was paid or tendered within twenty days after the anniversary date and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188(c)). In this case since the rental was not tendered within 20 days, the Secretary has no discretion to reinstate the lease.

Thus a decision was rendered by our State Office on August 4 denying the petition. That decision has been appealed to the Interior Board of Land Appeals and the case is pending now before the Board.

Although at the time of the anniversary date of the lease there was no well capable of producing oil or gas in paying quantities; such a well was completed not long thereafter, in early May of 1975, and another well was near completion in July.

Substantial work has been done on the leasehold as early as January 1975, and a letter from Senator Montoya to Senator Metcalf, dated August 1, indicates that a substantial commitment of \$925,000 has been made to develop the lease and that the lease was productive. The letter further indicates that the wells represent an important cash flow source to the firm of Mr. West, and loss of the wells could severely hamper the firm's operations.

In most cases of termination of a lease for failure to pay rental, there has been little or no development or financial commitment to the lease. This case is atypical in that regard.

The reasons for the failure to make timely payment of rent are not clear. It is known that Mr. West was out of the country at the time the rental was due. It has been suggested by his representative that he may have attempted to make a payment, which was subsequently misplaced in the mails or elsewhere or that he assumed that productive activity on the lease assured that it would be continued.

It is our view that the bill as written would not require the Secretary to reinstate the lease, but rather would require the Secretary to consider and act on appropriate petition, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination. The 20-day time period is a statutory requirement that we are bound to observe regardless of the circumstances, in the absence of remedial legislation. The Department feels that Section 31 of the Mineral Leasing Act is explicit and is a clear expression of legislative purpose. S. 2220 would not guarantee reinstatement. It would authorize the Secretary to reinstate the lease if it is shown upon further inquiry into the facts of this case that failure to submit the rental on time was either justifiable or not due to lack of reasonable diligence.

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,

JACK HORTON,  
*Assistant Secretary of the Interior.*

#### VII. CHANGES IN EXISTING LAW

S. 2220 will not change existing law.



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AUTHORIZING THE SECRETARY OF THE INTERIOR TO  
REINSTATE OIL AND GAS LEASE NEW MEXICO 18302

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SEPTEMBER 8, 1976.—Committed to the Committee of the Whole House and  
ordered to be printed

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

REPORT

[To accompany S. 2220]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 2220) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18320, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of S. 2220, identical to H.R. 9082, is to authorize and direct the Secretary of the Interior to receive, consider, and act upon any petition of Sol West III, the lessee of record of terminated oil and gas lease New Mexico 18302, for reinstatement of that lease.

BACKGROUND

Oil and gas lease New Mexico 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973. By an assignment executed April 9, 1973 and approved effective May 1, 1973, the lease was conveyed to Sol West III. The record shows that Mr. West failed to timely remit the rental due on the anniversary date, May 1, 1975, and the lease terminated by operation of law. Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of any lease in which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. . .", with a further proviso that if rental was paid or tendered within 20 days after the anniversary date and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease,



if certain conditions are met. In this case, no rental was tendered within the 20 days, so the Secretary had no discretion to reinstate the lease.

On July 17, 1975, George H. Hunker, attorney, filed on behalf of the lessee a petition for reinstatement of the lease, accompanying the petition with a check in the amount of \$800 to cover the rental payment for the period May 1, 1975, to May 1, 1976. On July 23, the Geological Survey reported that drilling operations had been in progress on the anniversary date, but that there had been no well capable of production on the rental date (May 1, 1975). However, a well capable of producing oil or gas in paying quantities was completed in early May of 1975, and another well was near completion in June 1975.

The lessee's representative has suggested that Mr. West, the lessee, who was out of the country at the time the rental was due, may have attempted to make a payment which was misplaced in the mails, or he may have assumed that productive activity of the lease assured that it would be continued. The case is atypical in that there has been substantial work done on the leasehold, with a capital commitment of \$935,000 and the achieving of production. Most terminations of a lease for failure to make timely payment of rent do not involve such circumstances.

#### EXPLANATION

H.R. 9082 was replaced by S. 2220, which passed the Senate on December 1, 1975. It would not require the reinstatement of the lease, but rather would require the Secretary of the Interior to consider and act on an appropriate petition for reinstatement, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination, provided that the petition is filed within 90 days of approval of the bill and is accompanied by any required rental including back rental accruing from the date of termination.

#### ANALYSIS

The bill is in a single section, which states the purpose of the bill and contains the authorization and direction to the Secretary to receive, consider, and act upon any petition for reinstatement of the described lease if the petition is filed within 90 days after enactment and is accompanied by any required rental including back rental accrued since the termination of the described lease.

#### COST AND BUDGET ACT COMPLIANCE

No additional Federal expenditures are involved in the enactment of S. 2220.

#### INFLATIONARY IMPACT STATEMENT

The sums involved in S. 2220 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 S. 2220.

#### DEPARTMENTAL REPORT

The favorable report of the Department of the Interior follows:

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., December 24, 1975.

HON. JAMES A. HALEY,

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

DEAR MR. CHAIRMAN: This is in response to your request for the opinion of the Department with respect to a bill, H.R. 9082, "To authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302."

We have reviewed the proposed bill and we do not object to its enactment.

H.R. 9082 would direct the Secretary of the Interior to receive, consider, and act on the petition of Sol West III, for reinstatement of oil and gas lease New Mexico 18302 if a petition is filed within 90 days of the effective date of this proposed legislation together with rental including back rental accrued since the lease termination date.

Oil and gas lease NM 18302 was issued competitively to Randolph M. Richardson effective as of May 1, 1973. By instrument of assignment executed April 9, 1973, and approved effective May 1, 1973, the lease was conveyed to Sol West, III. The land covered is in a KGS and must be leased competitively.

The record shows that Mr. West failed to timely remit the rental due on the anniversary date, May 1, 1975, and that the lease terminated by operation of law (30 U.S.C. 188(b)). On July 17, 1975, George H. Hunker, Jr., Attorney, filed on behalf of the lessee a petition for reinstatement of the lease with the BLM State Office. The petition was accompanied by a check in the amount of \$800.00 to cover the rental payment for the period May 1, 1975, to May 1, 1976. The Geological Survey reported on July 23, 1975, that drilling operations were in progress on the anniversary date, but that there was no well capable of production on May 1, 1975.

Section 31 of the Mineral Leasing Act provides that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease in 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)). It further provides that where any lease has been so terminated, but rental was paid or tendered within 20 days after the anniversary date and it is shown to the Secretary that the failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if certain conditions are met (30 U.S.C. 188(c)). In this case since the rental was not tendered within 20 days, the Secretary has no discretion to reinstate the lease.

Thus a decision was rendered by our State Office on August 4 denying the petition. That decision has been appealed to the Interior Board of Land Appeals and the case is pending now before the Board. Action on it has been suspended due to the pending legislation.

Although at the time of the anniversary date of the lease there was no well capable of producing oil or gas in paying quantities, such a well was completed not long thereafter, in early May of 1975, and another well was near completion in July.

Substantial work has been done on the leasehold as early as January 1975, and a letter from Senator Montoya to Senator Metcalf, dated August 1, indicates that a substantial commitment of \$925,000 has been made to develop the lease and that the lease was productive. The letter further indicates that the wells represent an important cash flow source to the firm of Mr. West, and loss of the wells could severely hamper the firm's operations.

In most cases of termination of a lease for failure to pay rental, there has been little or no development or financial commitment to the lease. This case is atypical in that regard.

The reasons for the failure to make timely payment of rent are not clear. It is known that Mr. West was out of the country at the time the rental was due. It has been suggested by his representative that he may have attempted to make a payment, which was subsequently misplaced in the mails or elsewhere or that he assumed that productive activity on the lease assured that it would be continued.

It is our view that the bill as written would not require the Secretary to reinstate the lease, but rather would require the Secretary to consider and act on an appropriate petition, notwithstanding the failure of the lessee to tender the rent within 20 days of the termination. The 20-day time period is a statutory requirement that we are bound to observe regardless of the circumstances, in the absence of remedial legislation. The Department feels that section 31 of the Mineral Leasing Act is explicit and is a clear expression of legislative purpose. H.R. 9082 would not guarantee reinstatement. It would authorize the Secretary to reinstate the lease if it is shown upon further inquiry into the facts of this case that failure to submit the rental on time was either justifiable or not due to lack of reasonable diligence.

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,

RAYSTON C. HUGHES,  
*Assistant Secretary of the Interior.*

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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 authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 18302.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to receive, consider, and act upon any petition of Sol West III, lessee of record of terminated oil and gas lease New Mexico 18302, for reinstatement of said lease filed within ninety days after the effective date of this Act, together with the required rental, if any, including back rental accruing from the date of the termination of the lease.*

*Speaker of the House of Representatives.*

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