

JIM'S WATER SERVICE, INC.

IBLA 88-120

Decided March 29, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring oil and gas lease W-42623-A to have expired at the end of its extended term.

Affirmed.

1. Oil and Gas Leases: Expiration--Oil and Gas Leases: Extensions--Oil and Gas Leases: Well Capable of Production

A decision holding an oil and gas lease to have expired at the end of its extended term will be affirmed in the absence of a well capable of producing oil or gas in paying quantities. Where a well on the leasehold has been found not capable of production in paying quantities as of the end of the primary term of the lease in a prior decision affirmed by the Board on appeal, a sub-sequent decision on remand finding the lease to have expired at the end of its extended term will be affirmed in the absence of evidence of further development of the well during the extended term of the lease.

APPEARANCES: Haultain E. Corbett, Esq., and Dan B. Riggs, Esq., Sheridan, Wyoming, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Jim's Water Service, Inc., 1/ appeals from a November 4, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM), finding

1/ Record title to the lease W-42623-A is held by JSC Producers. Appellant states that on May 20, 1985, JSC Producers assigned all of its interest in the lease to it, and that the assignment was recorded in the records of Campbell County, Wyoming. No assignment has been filed with BLM yet, but appellant asserts that an assignment will be filed should it prevail on this appeal. Under these circumstances, appellant has standing to appeal. See Tenneco Oil Co., 63 IBLA 339 (1982).

that segregated oil and gas lease W-42623-A expired on July 3, 1984, 2 years after the discovery of oil or gas on another part of the original lease.

This case has been before the Board previously. JSC Producers, 99 IBLA 164 (1987). In that decision we set out certain relevant facts:

Effective August 1, 1983, BLM approved a partial assignment of the record title interest in oil and gas lease W-42623 from Grace Petroleum Corporation to [JSC Producers]. Lease W-42623 had originally been issued for a 10-year term with an effective date of January 1, 1974. The assignment resulted in the creation of lease W-42623-A, covering 160 acres of land situated in the NE 1/4 sec. 22, T. 26 N., R. 76 W., sixth principal meridian, Campbell County, Wyoming.

On August 18, 1983, BLM approved [JSC Producer's] application for a permit to drill the Federal AU-1 well to a proposed depth of 11,700 feet on lease W-42623-A. This well is situated in the NE 1/4 NE 1/4 sec. 22, T. 46 N., R. 76 W., sixth principal meridian, Campbell County, Wyoming, within the North Prong field. [JSC Producers] had earlier reported that the well had been plugged and abandoned on July 12, 1977. In a geologic report, dated August 16, 1983, a BLM geologist had reported possible oil and/or gas resources in several formations, with the primary objective being the Muddy formation at a depth of 11,640 feet.

The record indicates that the well was re-entered on August 26, 1983, and drilling and development activity continued until October 25, 1983, when, according to a progress report received by BLM November 1, 1983, "all operations [were] suspended until further notice." It appears that during that time, both the Muddy and Turner formations had been perforated with total production of approximately 18 barrels of oil. The Muddy formation had also been stress-fractured.

JSC Producers, *supra* at 164-65.

Based on those facts, BLM issued a decision in January 1985, declaring that lease W-42623-A had expired at the end of its primary term on December 31, 1983, 2/ because no drilling operations were in progress over the end of the primary term and no other provision of the regulations entitled the lease to an extension. BLM concluded that the lessee was not entitled to an extension under 30 U.S.C. § 187a (1982) and the implementing regulation at 43 CFR 3107.5-1 because the discovery on the lease preceded the assignment which segregated the leased lands and created lease W-42623-A. JSC Producers appealed this prior decision to the Board.

2/ After enactment of the Mineral Leasing Act Revision of 1960, P.L. 86-705, § 2, 74 Stat. 781, 782, noncompetitive oil and gas leases for lands not within a known geological structure were issued for a primary term of 10 years.

On appeal from the earlier BLM decision holding that the lease expired at the end of its primary term, appellant raised two issues. First, the appellant argued that the term of the lease should have been extended for 2 years from the date of segregation by assignment out of the base lease. Further, appellant contended that the lease did not expire because of the existence of a well capable of "commercial paying production." The Board rejected appellant's contention that the partial assignment itself entitled the lessee to a 2-year extension from the date of segregation on the basis there is no statutory authority for such an extension. 99 IBLA at 166. ^{3/}

However, with respect to the question of a discovery of oil or gas in paying quantities, we noted that pursuant to section 30a of the Mineral Leasing Act, as amended, 30 U.S.C. § 187a (1982), a partial assignment of a lease shall segregate the assigned and retained lease tracts and such segregated leases shall continue for the primary term of the original lease but not less than 2 years after the date of discovery of oil or gas in paying quantities upon any segregated portion of the lands subject to the original lease. 99 IBLA at 166. The Board examined whether there had been a discovery of oil or gas in paying quantities within 2 years of the expiration date which might further extend the term of the lease. With respect to the Federal AU-1 well, the Board examined the evidence and held:

From the evidence of record, we conclude that [JSC Producers] had not discovered oil or gas in paying quantities in the Federal AU-1 well prior to expiration of the primary term of lease W-42623. ^{2/}

^{2/} We must also conclude that the well was not demonstrated to be physically capable of producing oil or gas in paying quantities, which might entitle [JSC Producers] to avoid expiration of its assigned lease under 30 U.S.C. § 226(f) (1982) and 43 CFR 3107.2-3. Cf. Max Barash, 6 IBLA 179 (1972). At best, [JSC Producers] has established a "potential capability" which is insufficient. American Resources Management Corp., 40 IBLA 195, 202 (1979); cf. Coronado Oil Co., 42 IBLA 235 (1979).

JSC Producers, *supra* at 167.

The Board went on to note that BLM had indicated that oil or gas had been discovered on another tract which remained part of the original lease

^{3/} Although there was an historical basis for extensions of this type, the authority was repealed prior to issuance of the lease in question here. Prior to passage of the Mineral Leasing Act Revisions of 1960 on Sept. 2, 1960, noncompetitive oil and gas leases were issued for a primary term of 5 years subject to extension for an additional 5 years for lands not within a known geological structure. Act of Aug. 8, 1946, ch. 916, § 3, 60 Stat. 950, 951. The 1954 revision of the Mineral Leasing Act provided that partial assignments of portions of leases in their extended terms under any

in the subsequent assignment, but that BLM had refused to consider a 2-year extension based on this discovery because the discovery occurred prior to the partial assignment which segregated the leases. We reversed BLM's decision on this point, holding that the 2-year extension after discovery for segregated lease tracts provided by 30 U.S.C. § 187a (1982) applies to lease tracts segregated by assignment both before and after the discovery. Because BLM had not stated the date of the discovery of oil or gas on the other part of the original lease, we set aside the decision holding lease W-42623-A to have expired at the end of its primary term and remanded the case to determine the expiration date of the 2-year extension pursuant to 30 U.S.C. § 187a (1982) and whether appellant was entitled to any further extensions of the lease. 99 IBLA at 169.

In response to our remand, BLM issued its November 4, 1987, decision. BLM found that oil or gas had been discovered on lease W-42623 on July 3, 1982, the date of completion of Well No. 41-14 in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 14. Therefore, BLM held that lease W-42623-A had expired effective July 3, 1984, 2 years after the discovery on lease W-42623.

In its statement of reasons (SOR) for appeal, appellant argues that, contrary to BLM's decision, "oil or gas in paying quantities was discovered in the Federal AU-1 Well as a result of the drilling and development activities of JSC Producers, which activities took place between August 26, 1983 and October 25, 1983" (SOR at 2). Appellant asserts that "in order to hold a federal oil and gas lease beyond its primary term, it is only necessary that oil and gas [have] been found in sufficient quantities with profitable production; it is not necessary that the well be completed as a producer" (SOR at 2). Appellant attaches a report by a petroleum engineer consultant as Exhibit A which it states supports its belief that oil and gas in paying quantities was discovered in the Federal AU-1 Well and demonstrates that there is a productive oil-bearing formation present in the subject well which has in fact produced oil. Because the discovery was made prior to July 3, 1984, appellant argues that lease W-42623-A is presently held by production.

In its answer BLM argues that the Board carefully considered the activities conducted by JSC Producers on the lease in its earlier decision and concluded that no discovery had been made on the assigned lease and that the Federal AU-1 well was not capable of producing oil or gas in paying quantities. BLM asserts that appellant has submitted no new facts concerning the activities which took place between August 26 and October 25, 1983, but has simply submitted an opinion of a consulting petroleum engineer. BLM attaches a report by one of its petroleum engineers who concludes that the evidence does not show that the Federal AU-1

fn. 3 (continued)

provision of the Act would qualify the tracts segregated thereby for further extension for 2 years from the date of segregation. Act of July 29, 1954, ch. 644, § 1(6), 68 Stat. 583, 585; see 43 CFR 192.144(b) (1963); Leslie C. Jonkey, 3 IBLA 280 (1971). This provision was subsequently repealed for oil and gas leases issued after Sept. 2, 1960. Mineral Leasing Act Revision of 1960, P.L. 86-705, § 6, 74 Stat. 781, 790.

well is capable of producing oil or gas in paying quantities. BLM further contends that, because the relevant facts are not in dispute and the Board already has found that those facts do not support a finding that the well was capable of producing oil or gas in paying quantities at the relevant time, no hearing on the issue is necessary, and the BLM decision should be affirmed.

[1] Noncompetitive oil and gas leases are issued for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1982). Because the lease in this case was created by a partial assignment, it was segregated from the land remaining in the original lease and was entitled to a 2-year extension from the date of discovery of oil or gas in paying quantities on any other segregated portion of the lands originally subject to the lease. 30 U.S.C. § 187a (1982); JSC Producers, supra at 166. This extension ended July 3, 1984. Thus, the only issue presented by this appeal is whether there are any circumstances which would cause lease W-42623-A not to expire at the end of its extended term. No lease "on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than 60 days after notice * * * within which to place such well in producing status." 30 U.S.C. § 226(i) (West Supp. 1989) (formerly § 226(f)); 43 CFR 3107.2-3.

Appellant does not argue that there was actual production from the Federal AU-1 well prior to July 3, 1984, which would extend the term of the lease, and the record clearly indicates that no such production existed. Rather, appellant argues that there was a discovery of oil and gas on the lease as of that date, and that this discovery caused the lease to be extended by production.

As an initial matter, appellant erroneously assumes that the discovery of oil or gas in paying quantities itself precludes an oil and gas lease from expiring. The relevant statute, however, clearly provides that, in the absence of actual production, it is the existence of a well capable of producing oil or gas in paying quantities prior to the expiration date of the lease, not merely the discovery of oil or gas in paying quantities, which may enable a lease to continue, if other conditions are met. Discovery of oil or gas in paying quantities is properly distinguished from the existence of a well physically capable of producing oil or gas in paying quantities. Joseph I. O'Neill, Jr., 1 IBLA 56, 77 I.D. 181 (1970); accord Hiko Bell Mining & Oil Co. (On Reconsideration), 100 IBLA 371, 95 I.D. 1 (1988); JSC Producers, supra. The statutory requirement of discovery simply means to find oil or gas "in sufficient quantities for profitable production." Joseph I. O'Neill, Jr., supra at 61, 77 I.D. at 185. In contrast, a well capable of production means a well which is actually physically capable of producing oil or gas in paying quantities at the particular time in question. See Amoco Production Co., 101 IBLA 215 (1988), and cases cited therein. Thus, a finding that there was a discovery of oil or gas in paying quantities on lease W-42623-A would not itself suffice to prevent the expiration of the lease.

This Board has previously examined the evidence concerning the activities conducted by JSC Producers on the lease from August 26 through October 25, 1983. Based on that careful review, we concluded that, as of December 31, 1983, there had been no discovery of oil or gas in paying quantities in the Federal AU-1 well, and that the well was not demonstrated to be physically capable of producing oil or gas in paying quantities. JSC Producers, supra at 167 and n.2. Under the principles of res judicata and collateral estoppel, a party may not raise an issue actually litigated and settled by a judgment in a prior proceeding between the same parties. ^{4/} See Turner Brothers Inc. v. OSMRE, 102 IBLA 111, 120 (1988), and authorities cited therein. The doctrine of administrative finality, which is the administrative counterpart of res judicata, "precludes reconsideration of a decision of an agency official when a party, or his predecessor-in-interest, had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed." Turner Brothers Inc. v. OSMRE, supra at 121. In general a decision which has become final will only be reexamined upon a showing of compelling legal or equitable reasons. Lloyd D. Hayes, 108 IBLA 189 (1989); Turner Brothers Inc. v. OSMRE, supra at 121.

In this case, a final decision on the issue of whether the Federal AU-1 well was capable of production in paying quantities as of December 31, 1983, was rendered by the Board after having been fully litigated by appellant's predecessor-in-interest with input from appellant. Appellant has presented no new evidence which challenges the Board's findings on this issue, nor has it submitted any compelling legal or equitable reason for reexamining that decision. Accordingly, the Board's finding that the Federal AU-1 well was not physically capable of producing oil or gas in paying quantities as of the December 31, 1983, expiration date of the primary term of the lease remains undisturbed.

The final question focuses on whether the condition of the well changed between December 31, 1983, and July 3, 1984, the end of the lease extension pursuant to 30 U.S.C. § 187a (1982). The key in this regard is whether the well was physically capable of producing oil or gas in paying quantities as of the July 3, 1984, expiration date of the lease extension. As we have held, "future expectations concerning a well and present assessments regarding potential for production from the well based on inferences drawn from present data must be distinguished from the issue of the present status of the well." Amoco Production Co., supra at 222.

Appellant has presented no new facts concerning the condition of the well as of the expiration date. In fact, appellant explicitly states that it bases its claim that the lease is held by production on the activities conducted by JSC Producers on the well between August 26 and October 25, 1983 (SOR at 2). Indeed, no new activity has occurred on the lease since October 25, 1983, when JSC Producers ceased operations on the lease. Furthermore, H. Boyd Moreland, appellant's consulting petroleum engineer, does not provide any new insights into the productive capacity of the well;

^{4/} Appellant participated in the earlier appeal in support of JSC Producers. See JSC Producers, supra at 165 n.1.

rather, he merely opines that, given the characteristics of the Turner formation below the well, the well is capable of flowing from that formation, and recommends that a flow test be conducted (Exh. A). This Board, however, has previously considered the same facts, and has concluded that the well is not physically capable of production. JSC Producers, supra at 167 n.2. In the absence of new evidence demonstrating that the well was capable of producing oil or gas in paying quantities as of the lease expiration date, the decision of BLM must be affirmed.

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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge