

D.L. COOK

IBLA 93-61      Decided May 18, 1998

Appeal from a decision of the Wyoming State Director, Bureau of Land Management, affirming a determination by the Casper District Office, Wyoming, Bureau of Land Management, declaring the Lucky 11 Unit Agreement invalid ab initio. SDR No. WY-92-16.

Affirmed.

1.      Oil and Gas Leases: Termination—Oil and Gas Leases: Well Capable of Production

The BLM properly declares a unit agreement invalid ab initio according to provisions contained therein where (absent a suspension of operations or production) an oil and gas lessee fails to diligently commence reworking or drilling operations on the unit obligation well following receipt from BLM of 60 and 30 day notice letters and thus fails to demonstrate that the well is capable of producing in paying quantities or that it is not capable of so producing.

APPEARANCES: David L. Conn, D.L. Cook, for Appellant; John R. Kunz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

D.L. Cook has appealed from a September 30, 1992, Decision by the State Director (SD), Bureau of Land Management (BLM), Wyoming, affirming a June 5, 1992, determination by BLM's Casper District Office (CDO), declaring the Lucky 11 Unit Agreement (Unit Agreement) invalid ab initio.

Background

By letter of June 7, 1990, Cook proposed the unit to BLM, stating that a test well would go to a depth of 2,500 feet "sufficient to test the Cache seam in search of methane gas." In a June 11, 1990, letter, Cook described

the contemplated operations of the test well, including the setting of production casing and the testing of individual coal zones from the bottom of the wellbore up.

The Unit Agreement for the Lucky 11 Gas Unit Area, Campbell County, Wyoming, was entered into on July 11, 1990, and certified by the Casper District Manager (DM) on August 9, 1990. Section 9 of the Unit Agreement obligated the unit operator to drill a test well within 6 months after its effective date and further provided:

Until the discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue drilling one well at a time, allowing not more than six months between the completion of one well and the commencement of drilling operations for the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the AO or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formation drilled hereunder \* \* \*.

\* \* \* \* \*

Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the unit operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, on time and to drill it diligently shall result in the unit agreement approval being declared invalid ab initio by the AO.

By letter of June 26, 1991, BLM advised Cook that it had determined that three wells, the Nos. 1-9, 1-11, and 1-22, were not capable of production in paying quantities. Citing 43 C.F.R. § 3107.2-2, BLM allowed Cook 60 days within which to "commence reworking or drilling operations on the \* \* \* unit" which, BLM advised would not terminate so long as approved operations were commenced within the 60-day period and continued with reasonable diligence. The BLM further advised that the unit would automatically terminate if a "reworking/drilling operation proposal or justification that [a] well is capable of production in paying quantities" was not submitted within 60 days.

By letter of March 18, 1992, the CDO DM requested Cook to submit, within 30 days, a detailed summary of actual operations of well No. 1-9, the initial obligation well for the unit. The DM notified Cook that if Cook failed to provide convincing evidence that well No. 1-9 was drilled and production tested consistent with the accepted practices for completing wells in coalbeds, BLM would recommend invalidation of the unit. The DM also requested Cook to furnish information on well Nos. 1-11 and 1-22, advising Cook of his obligation to show that the unit contained a well capable of production.

BLM Decisions

In his June 5, 1992, Decision, the CDO DM found that the initial unit obligation well, the No. 1-9, "has never tested and evaluated the coal beds encountered in the drilling of this well even though this was the specific basis for establishing and approving this unit." For this reason, the DM declared the Lucky 11 unit invalid ab initio.

The DM noted that Cook had been requested on two separate occasions to demonstrate that he had completed a well capable of producing in paying quantities. The DM observed that because the unit contained a number of Federal leases with an expiration date of August 25, 1990, there had to be a well physically capable of production as of August 25, 1990, "in order to hold the leases pursuant to [Yates Petroleum Corp., 67 IBLA 246, 249, 89 I.D. 480, 482 (1982)]." In Yates, the Board held that the presence of a well capable of producing oil or gas in paying quantities completed anywhere in the unit, subsequent to the effective date of the unit agreement but prior to the expiration date of a unitized lease, will continue that lease beyond its primary term.

The DM then narrated BLM's information concerning well Nos. 1-11A <sup>1/</sup> and 1-22. Well No. 1-11A was reported shut-in on August 25, 1990. Cook never filed with BLM a completion report or official well test on this well. Similarly, well No. 1-22 was reported as a shut-in gas well since August 1990. The DM stated:

This well was initially considered as completed for production on August 24, 1990, which served to hold leases by the Yates decision for those leases having a[n] August 25, 1990 expiration date. The preliminary reports on no. 1-22 indicated the well produced mostly water with a trace of gas. Consideration was given to this well as having the potential for production of gas assuming that the well would be continuously production tested and the gas production would increase. This was the basis for the first production memorandum written for the Lucky 11 unit which served to hold leases which would otherwise expire. Continuous production of the water associated with coal beds is a well documented completion procedure when attempting to establish gas production from coal beds. Yet, some 21 months after this well was drilled, continuous producing operations never were conducted to establish gas production. This well was not capable of production in paying quantities under the conditions that existed on August 25, 1990 nor is the well capable of production at his time.

As related in the SD's September 30, 1992, Decision, BLM's understanding of the Unit Agreement was as follows. The unit was formed for

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<sup>1/</sup> Well No. 1-11 is referred to as well No. 1-11A, in the more recent documents included in the sundry notice file pertaining to this well.

the purpose of exploring the potential for coalbed methane gas. During preliminary discussions, Cook was informed of

the expectations of the obligation well to diligently test the coalbed seams. The authorized officer (AO) would expect the unit operator to perform continuous production testing of the well including the continuous production of the water associated with coalbed seams, until it was determined that the well was capable of producing gas in paying quantities or it was established that the well was not capable of production.

(Decision at 1-2.)

Referring to BLM's records, the SD notes that well No. 1-9 was spudded August 22, 1990, reached a total depth of 2,238 feet on February 3, 1991, and was logged on February 4, 1991. No reports of a production test or of water and gas production were filed. Nothing was received from Cook in response to BLM's letters of June 26, 1991, and March 18, 1992 (the 60- and 30-day letters, respectively), advising of the requirement to demonstrate production. David Conn, Cook's representative, did respond to the CDO by letter of May 1, 1992, in which he notified BLM that Cook was experiencing difficulties with development of the unit area and promised that well No. 1-9 would be thoroughly tested and evaluated. (Decision at 2.)

According to sundry notices received by BLM's Buffalo Resource Area Office, certain operations were performed on well No. 1-9 between May 28 and June 30, 1992. A rig was moved onto the well, selective perforations were made, gas kicks were reported, pump and rods were run, and a pumping unit was on location ready to be set. (Decision at 3.)

On September 17, 1992, Cook made an oral presentation before the SD. Cook asserted that well No. 1-9 began producing gas and water on September 17 and that a completion report would be mailed the same day. Cook enumerated his difficulties with drill log evaluation, market conditions and interruptions. He also stated that a natural cavitation technique (rather than a costly process of mechanical cavitation) was being utilized in an attempt to stimulate potential production from the well and that this technique caused delay in completion of the well.

On September 25, 1992, the State Office received Cook's well logs and a completion report on well No. 1-9. According to the report, a 10-hour test on September 17, 1992, produced 11 cubic feet of gas and 110.5 barrels of water. Cook also notified BLM that the downhole pump failed after the production test and that the well was shut in awaiting repairs. (Decision at 3.)

The SD refers to 43 C.F.R. § 3100.0-5(g), defining "actual drilling operations" as including not only physical drilling of a well, but the testing, completing, and equipping such well for production. He notes further that BLM had issued Instruction Memorandum (IM) No. WY-91-174

(Feb. 7, 1991) to establish a policy for coal bed methane units "to hold leases in their extended term if the coal bed methane well is in the dewatering phase \* \* \* and the operator is diligently `producing' the well until [it can be determined] if it will be capable of production in paying quantities." (Decision at 3.) Under this policy, a well is given a provisional paying status if the authorized officer determines that a prudent operator would continue operations to dewater the well. (Decision at 4.)

The SD found that Cook had not diligently developed the obligation well and had not provided adequate justification for failing to do so. He therefore affirmed the CDO decision to declare the Unit Agreement invalid ab initio. (Decision at 3.)

The SD reversed CDO's determination on the No. 1-22 well. He found that this well has received a preliminary paying well determination in accordance with the IM No. WY-91-174, and that therefore Cook should be given a final opportunity to commence production and pursue operations until a final determination of paying well status could be made. (Decision at 5.)

#### Arguments on Appeal

Cook asserts on appeal that its No. 1-22 well "was completed and producing on 8-24-90," and that the No. 1-11A well was completed on August 25, 1992, "with an initial production test run on 11-2-90 of 326 mcf." Cook alleges that "[t]his well has been producing continuously since May, 1992 and paying substantial gas royalties to the U.S. Government." (Statement of Reasons (SOR) at 3.)<sup>2/</sup>

Cook states that a drilling moratorium stopped BLM from approving new applications for permit to drill (APD's) and "was disastrous to the coal bed Methane drilling in this area." Cook asserts that due to the moratorium it lost its financial backing and that its operations, considering "the moratorium throughout 1990 and 1991," were reasonable. Cook requests that BLM's determination to void the unit be reversed. (SOR at 5, 6.)

The BLM asserts that the No. 1-9 well was not capable of producing in paying quantities on June 5, 1992, when the CDO terminated the unit. The BLM points out that Cook admits that there was no production until September 17, 1992, and that such production amounted to no more than water and a trace of gas. (Answer at 17-18.)

Responding to Cook's allegation about a drilling moratorium, BLM refers to an October 25, 1990, Order of the Board, the effect of which was to stay, on an interim basis, the further issuance of APD's, pending

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<sup>2/</sup> The most recent sundry notice for the No. 1-11A well is dated July 3, 1992. The notice states that the well was "put on production" and "opened \* \* \* into pipe line" and that the well was not producing any water.

resolution of an appeal then before the Board. <sup>3/</sup> The BLM points out that Cook already had his permit to drill well No. 1-9, and was in no way affected by the Board's Order. (Answer at 22.)

The BLM asserts that since the SD reversed the CDO on well No. 1-22, questions as to its status on August 24, 1990, are irrelevant to this appeal, which concerns the unit obligation well, No. 1-9. For this reason, well No. 1-11 is also irrelevant. (Answer at 26-27.)

#### Discussion

[1] The record fully supports the SD's narration of facts and evaluation of Cook's operations including the status of the three wells at various points in time. The facts alleged by Cook on appeal about well Nos. 1-11A and 1-22 are not at odds with the record or with what is stated in the SD's Decision. However, these wells are not at issue in this appeal. Rather, the issue herein is whether there were timely diligent drilling operations on well No. 1-9. We conclude that the SD properly resolved that issue in the negative. Accordingly, BLM's declaration of the Unit Agreement as invalid ab initio must be affirmed.

There is simply no evidence that Cook pursued diligent drilling operations. The record, which Cook does not dispute, demonstrates a failure to respond to BLM's 60- and 30-day letters, and a lack of action on Cook's part to carry out its obligations. On appeal, Cook lists belated operational efforts which were fruitless to establish either that the well was capable of production in paying quantities or that it was not capable of such production. <sup>4/</sup> Cook's failure to timely drill and produce is unrefuted, nor is any justification shown on appeal.

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<sup>3/</sup> In Powder River Resource Council, 120 IBLA 47 (1991), the Board set aside and remanded a Wyoming State Office approval of the contemplated drilling of up to 1,000 gas wells for the extraction of methane gas associated with large coal deposits underlying an area of 2,160 square miles in Campbell and Johnson Counties, where it was unclear what certain environmental consequences of the drilling program would be and how they would be mitigated. On Oct. 25, 1990, while that appeal was pending, the Board issued an order granting an interim stay of BLM's decision so as to preclude the further issuance of APD's.

<sup>4/</sup> Operations conducted and results obtained after the expiration date of the leases may not be used to determine the presence of a well capable of production in paying quantities. Amoco Production Co., 101 IBLA 215, 222 (1988). As we stated in Amoco, a "well capable of producing" means a "well which is actually in a condition to produce at the particular time in question." Id. at 221, citing United Manufacturing Co., 65 I.D. 206 (1958). In Amoco, we reviewed several sets of factual circumstances precluding a finding of "capable of production." Such circumstances include situations where preliminary, maintenance, or reworking efforts are required before production could be initiated or restored.

The difficulties Cook lists on appeal — drilling moratorium, the cavitating process — do not amount to sufficient justification. As BLM points out, Cook was unaffected by the bar to BLM's issuance of APD's because it already had its permit to drill. The suggestion of loss of financial backing is on no firmer ground and cannot serve as a justification of Cook's obligation to carry out timely drilling operations. See Ruby Drilling Co., 119 IBLA 210, 214-15 (1991), and cases there cited.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry  
Administrative Judge

I concur.

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Franklin D. Amess  
Administrative Judge

