



DOUD LAND CO., LLC

182 IBLA 234

Decided June 14, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

DOUD LAND CO., LLC

IBLA 2011-206

Decided June 14, 2012

Appeal from and petition for a stay of a decision of the Wyoming State Office, Bureau of Land Management, declaring oil and gas lease WYW-86089 to have terminated by cessation of production and denying requests for assignments of the lease.

Affirmed as modified; petition for stay denied as moot.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Production--
Oil and Gas Leases: Termination

When production ceases on an oil and gas lease which is in an extended term by reason of production, the lease will terminate unless (1) reworking or drilling operations are begun on the lease within 60 days after cessation of production, and then conducted with reasonable diligence during nonproduction, or so long as oil or gas is produced in paying quantities as a result of such operations; (2) the Secretary suspends operations or production on the lease; or (3) if the lease contains a well capable of producing oil or gas in paying quantities, the lessee places the well in a producing status within a reasonable time of not less than 60 days after receiving notice and continues production unless the Secretary allows production to be discontinued.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Production--
Oil and Gas Leases: Termination

When the record suggests different scenarios for possible dates of Lease termination for cessation of production, the Board must examine the record for the earliest instance in which production in paying quantities ceased and (1) there was no well capable of production and timely reworking did not occur, or (2) there was a well capable

of production, the lessee received notice from BLM, and production was not timely restored.

3. Oil and Gas Leases: Assignments and Transfers

When a lease has terminated before an assignment of the lease is filed with BLM for approval, a BLM decision denying such assignment will be affirmed because where a lease has already terminated, there is no lease interest left to be assigned and BLM must refuse to approve any such assignment.

4. Oil and Gas Leases: Generally--Oil and Gas Leases: Production--Oil and Gas Leases: Termination

When the only operating well on a lease has been shut-in, ceasing production, and BLM determines that the well was not capable of production in paying quantities, then the lessee must initiate reworking or drilling operations within 60 days after cessation of production. If the lessee fails to prove that the well is capable of production in paying quantities, and there is no evidence that reworking or drilling operations were initiated within 60 days of cessation of production, then the lease terminates by operation of law as of the date of cessation of production. There is no requirement under the Mineral Leasing Act that the lessee must receive notice before the lease terminates.

APPEARANCES: Ben Doud, Golden, Colorado, for appellant; Delissa L. Bixler, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

The Doud Land Co., LLC (Doud), has appealed from and petitioned for a stay of a July 21, 2011, decision of the Wyoming State Office, Bureau of Land Management (BLM), holding competitive oil and gas lease WYW-86089 (Lease) to have terminated, by operation of law, effective March 7, 2011, upon the cessation of production during its extended term by reason of production, and denying requests for approval of assignments of the lease. In addition, the Board received from

Bob DeMersseman, representing Empire Oil, LLC (Empire), a copy of a letter he sent to BLM expressing his interest in and support for the assignment of the Lease to Empire. DeMersseman, however, in his transmittal letter to the Board, describes his letter to BLM as “my letter . . . appealing [BLM’s] decision to terminate [the Lease].” Even if we were to consider his letter of support to be a notice of appeal, it was sent to BLM on July 14, 2011, before BLM made its July 21, 2011, decision, and so it was premature and cannot be accepted as a notice of appeal. Accordingly, we will consider it no further. *See, e.g., Powder River Basin Resource Council*, 180 IBLA 32, 44 (2010).

Because Doud has failed to establish any error in BLM’s decision, we affirm the decision finding that the Lease terminated by operation of law and denying the requests for assignment, but modify the decision as to the date of Lease termination. We also deny the petition for a stay as moot.

Legal Background

The Lease was issued pursuant to section 17 of the Mineral Leasing Act (MLA), 30 U.S.C. § 226 (2006). For such a lease, if actual drilling has started before the end of the primary term, and is being “diligently prosecuted,” then the lease term “shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.” 30 U.S.C. § 226(e)(2006); *see* 43 C.F.R. §§ 3107.1, 3707.2-1.

[1] Generally, a lease in its extended term because of production is subject to termination upon the cessation of production of oil and gas in paying quantities. Such a lease will terminate *unless* (1) reworking or drilling operations are commenced prior to or within 60 days after cessation of production, pursued with reasonable diligence, and oil or gas is produced in paying quantities as a result,¹ (2) operations or production is suspended by order or consent of the Secretary, or (3) if there is a well on the lease that is capable of producing oil or gas in paying quantities, then if after receipt of written notice of not less than 60 days, the well is

¹ This circumstance presupposes that there is no well on the lease capable of producing oil or gas in paying quantities, because if there were, there would be no need for reworking or drilling to restart production. *Merit Productions*, 144 IBLA 156, 163-65 & n.8 (1998) (Burski, A.J., concurring); *see also Amoco Production Co.*, 101 IBLA 215, 222 (1988).

placed in producing status.² 30 U.S.C. § 226(i) (2006); 43 C.F.R. §§ 3107.2-2,³ 3107.2-3.

Under circumstance (1) (upon cessation of production, no well capable of production), if reworking or drilling operations *are not* commenced within 60 days after cessation of production, then the lease terminates as of the date of cessation of production, without any required notice to the lessee. Under circumstance (3) (upon cessation of production, there is a well capable of production), if after the notice period (not less than 60 days after receipt of the notice) the well is not placed in producing status, then the lease terminates as of the expiration of the notice period. *See Ridgeway Arizona Oil Corp.*, 181 IBLA 232, 250-51 (2011); *Two Bay Petroleum, Inc.*, 166 IBLA 329, 345 (2005), *aff'd*, 2007 WL 2028192 (E.D. Cal. 2007); *Coronado Oil Co.*, 164 IBLA 309, 321-23 (2005), *aff'd*, No. 05-CV-111J, slip opinion (D. Wyo. Aug. 23, 2006); *Merit Productions*, 144 IBLA at 165 (Burski, A.J., concurring).

Factual Background

BLM issued the Lease on October 19, 1983, effective November 1, 1983, to the Nella Company Limited Partnership (Nella) for a primary term of 5 years, and so long thereafter as oil or gas was produced in paying quantities. *See* 30 U.S.C. § 226(e) (1982).⁴ The Lease encompassed a total of 598.38 acres of public land situated in secs. 3 and 4, T. 39 N., R. 79 W., Sixth Principal Meridian, Natrona County, Wyoming, in the Salt Creek Field Known Geologic Structure. The lease specifically covers the SW $\frac{1}{4}$ sec. 3, and Lots 1 through 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ sec. 4. At all relevant times, record title to the Lease has been held by Doud (50-percent) and Chris S. Glade (50-percent).⁵

² In the case of (1) and (3), production in paying quantities must again continue or the lease will then terminate, subject to approved suspensions of operations or production or other consent of the Secretary. 30 U.S.C. § 226(i) (2006); 43 C.F.R. § 3103.4-4.

³ BLM's regulations provide that under circumstance (1) (no well capable of production), BLM must provide notice of cessation of production, and that receipt of that notice starts the 60-day period for reworking or drilling. 43 C.F.R. § 3107.2-2. The MLA itself imposes no such requirement. *See* 30 U.S.C. § 226(i) (2006); *Merit Productions*, 144 IBLA at 161-66 (Burski, A.J., concurring).

⁴ The statute was amended in 1992 to provide for an initial term of ten years. *See* Pub. L. No. 102-486, § 2509, 106 Stat. 3109 (1992).

⁵ Subsequent to issuance, interest in the Lease passed by several mesne assignments. Of relevance here, Glade acquired 100-percent interest in the lease in 2001, and then
(continued...)

On October 31, 1988, at the end of the initial 5-year primary term of the Lease, drilling commenced on Well No. 42-4, and BLM concluded that the Lease qualified for a two-year extension pursuant to section 17(e) of the MLA, 30 U.S.C. § 226(e) (1988), and 43 C.F.R. § 3107.1.⁶ Memorandum to State Director from District Manager, Casper District, Wyoming, BLM, dated Apr. 21, 1989; *see* Decision by BLM Wyoming State Office, dated April 25, 1989 (extending Lease No. WYW-86089 through Oct. 31, 1990).

BLM reported first production from the Lease, from Well No. 42-4, on July 11, 1990, and concluded that “[i]n our opinion, this well is capable of production in paying quantities on a lease basis.”⁷ Memorandum to State Director from Area Manager, Platte River Resource Area, dated Oct. 25, 1990 (1990 Memorandum). BLM later notified the Lease operator that the Lease Account had been transferred to producing status under the jurisdiction of the Royalty Management Program of the Minerals Management Service (MMS). Notice from BLM Wyoming State Office to Salt Creek West Partnership, dated November 6, 1990 (1990 Notice). At this point, the Lease term apparently was in its extended term for “so long as oil or gas is being produced in paying quantities.” 43 C.F.R. § 3107.2-1.

On November 16 and 17, 2004, Ben Doud, as Manager of Doud, and Robb executed an assignment of Robb’s 50% interest in the Lease to Doud, effective January 1, 2005.

On April 10, 2006, the BLM Casper Field Office issued a letter to Doud and Glade, notifying them that BLM’s records indicated that Well No. 42-4 was shut-in⁶ in November 2004 “and is the last well on Lease No. WYW86089” (2006 60-day Notice). The letter continued that BLM had determined that “this lease is not capable of production in paying quantities,” and provided a 60-day period for Doud and Glade to either restore production in paying quantities from the Lease or provide justification that the Lease is capable of production in paying quantities. The letter

⁵ (...continued)

transferred a 50-percent interest to Ronald R. Robb, effective Dec. 1, 2001. Doud later acquired its 50-percent interest by assignment from Robb.

⁶ “Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term . . . shall be extended for 2 years” 43 C.F.R. § 3107.1.

⁷ The record indicates that Well No. 42-4 is the only well on the Lease.

⁸ A “shut-in well” is “[a] producing well that has been closed down temporarily for repairs, cleaning out, building up pressure, lack of a market, etc.” Williams & Meyers, *Manual of Oil and Gas Terms* at 234 (1957).

concludes that if such justification is not submitted within the time allowed, “the lease will automatically terminate.” The record contains no indication of when Doud or Glade may have received the letter, and no response from either Doud or Glade.⁹

On February 4, 2010, BLM sent another letter (2010 60-day Notice) to Doud,¹⁰ stating that Well No. 42-4 “has not produced in paying quantities since July 2006, and is the last producing well” on the Lease. The letter also provided for a 60-day period for Doud to either commence reworking or drilling operations on the Lease, or to provide justification for why the well is capable of production; otherwise, “the lease will automatically terminate.” The record contains no evidence of any response.

On March 2, 2011, BLM sent yet another letter (2011 60-day Notice) to Doud,¹¹ stating that Well No. 42-4 “has not produced in paying quantities since July 2006.” The letter also provided for a 60-day period for Doud to either commence reworking or drilling operations on the Lease, or provide justification for why the well is capable of production; otherwise, “the lease will automatically terminate.” Apparently, neither Glade nor Doud responded to either of BLM’s notices, within the 60-day time frame, as there is no response in the Administrative Record.¹²

BLM received on June 6, 2011, for its approval, two assignments involving the Lease. The first was an assignment of Glade’s 50% interest to Doud, executed May 28, 2011, and the second was an assignment of Doud’s 100% interest in the Lease to Empire, executed May 31, 2011.

⁹ Doud asserts that it did not receive BLM’s 2006 60-day Notice. SOR at 2.

¹⁰ The letter was addressed to “Doud Land Company LLC” to the attention of “Chris Glade” at a Lakewood, Colorado address. The letter was sent by certified mail, and a tracking document in the record shows that it was delivered on Feb. 9, 2010.

¹¹ This letter was addressed to “Doud Land Company LLC” to the attention of “Ben Doud” at a Golden, Colorado address. The letter was sent by certified mail, and a return receipt in the record indicates it was delivered on Mar. 7, 2011.

¹² On July 12, 2011, BLM received an email message from Tony Markve as a representative of Doud, who states “[o]n March 16, 2011, Mr. Doud sent a response to the BLM requesting an extension to P[lug]&A[bandon] the well I have attached the letter. Please keep in mind, I didn’t receive a response to this letter.” Although the printed email in the record shows an attached document, there is no hard copy of the attachment. However, Doud’s Statement of Reasons (SOR) includes a copy of the letter, asking that BLM give Doud an extension of time to “plug and abandon the well.” Letter from Ben Doud to BLM, dated Mar. 16, 2011. That letter, even if BLM had received it, clearly was not responsive to the 2011 60-day Notice.

Shortly thereafter, the BLM Casper Field Office Assistant Field Manager sent a memorandum dated June 29, 2011 (Last Production Memorandum, or LPM), to the BLM State Director stating that “[t]he following well has not produced since July 2006. The operator did not respond to the [2011 60-day Notice] The letter stated that after the allotted 60-day period if there was no response, the lease would be terminated.” It also confirmed that Well No. 42-4 was the only producing well on the Lease.¹³

On July 21, 2011, BLM issued its decision stating that the Lease “is currently in its extended term by reason of production. A determination has been made that the last producing well on the lease is no longer capable of producing hydrocarbons in paying quantities.” The decision referenced the February 4, 2010, and March 2, 2011, notice letters, and concluded:

No reworking or drilling operations commenced within the specified time frame. The CFO [Casper Field Office] has recommended that this lease terminated by cessation of production. **Therefore, the term of lease WYW86089 is exhausted and the lease is held to have terminated by cessation of production effective March 7, 2011.**

(Emphasis in original). The decision then denies the assignments filed on June 6, 2011, because the Lease terminated as of March 7, 2011. Doud timely appealed.

Administrative Record

Despite the fact that BLM’s decision in this case is based upon the cessation of production from Well No. 42-4, the last (and likely only) producing well on the Lease, the Administrative Record before us is virtually devoid of evidence of production or even references to production from that well, other than the several 60-day notices sent by BLM. There are no production records, no BLM inspection reports, and no documentation of or reference to royalty paid or other indication of actions taken with respect to the well. As a result, our review of the record takes on the guise of an investigation of inferences.

The only actual indications of production from Well No. 42-4 include the 1990 Memorandum, which documents that the well was completed and tested on July 11,

¹³ There are apparent contradictions in this LPM. After the narrative message, there is a description of Well No. 42-4 that states “First Production: January 1991” and “Last Production: May 2009.” It also states that the Lease “was held by actual production July 11, 1990.”

1990. The well produced at the rate of 13 barrels of petroleum per day, and BLM concluded that “[i]n our opinion, this well is capable of production in paying quantities on a lease basis.” 1990 Memorandum at 1. In addition, the June 29, 2011, LPM states that first production from the well was in January 1991 and last production was in May 2009. At this point, inferences overtake the facts.

The 1990 Notice, which referenced the first production from the well on July 11, 1990, provided notice that the lease account was transferred to “producing status,” suggesting that production had continued after July 1990 and that royalty payments were anticipated from continuing production. But, there is no direct evidence of that production. The record includes another suggestion of production in a letter dated November 12, 1992, from MMS to the well operator, notifying the operator that a reduced royalty rate under the “stripper royalty rate program” would be applicable as of October 1, 1992.¹⁴ The fact that a reduced royalty was approved by MMS strongly suggests that there was some continuing production from Well No. 42-4, although again there is no direct evidence of production in the record.

BLM’s 2006 60-day Notice states that Well No. 42-4 “was shut-in in November 2004 and is the last well on Lease No. WYW86089.” Although this notice then states BLM’s determination that the “lease is not capable of production in paying quantities,” there is an inference that the well had been producing at *some* rate before it was shut-in.¹⁵ A little more than two months after issuance of the 2006 60-day

¹⁴ Reduced royalty rates usually were applied to a “stripper well property.” 43 C.F.R. § 3103.4-1 (1993). A “stripper well” has been defined as “[a] well which produces such small volume of oil that the gross income therefrom provides only a small margin of profit or, in many cases, does not even cover actual cost of production.” Williams & Meyers, *Manual of Oil and Gas Terms* at 239 (1957). Under the then-applicable regulations, a “stripper well property” was one “that produces an average of less than 15 barrels of oil per eligible well per well-day.” 43 C.F.R. § 3103.4-1(c)(1) (1993). Royalty rates on such properties could be reduced “to encourage the greatest ultimate recovery of oil or gas” from properties of lower production, *id.* § 3103.4-1(a) (1993), based upon an application filed with BLM that included, among other things, aggregate amounts of oil and gas subject to royalty and the average production per well per day. *Id.* § 3103.4-1(b)(2) (1993).

¹⁵ Given BLM’s determinations in each of its three 60-day notices that there was no well on the Lease capable of production in paying quantities, the 60-day notices were not required under the MLA and have no effect on the lessee’s statutory obligation to initiate reworking or drilling operations and, in the absence of such operations, have no effect on the date of termination of the lease. *See* 30 U.S.C. § 266(i) (2006). However, the 60-day notices do document BLM’s determinations of well capability
(continued...)

Notice, the Administrative Record indicates in communications between employees in the Wyoming State Office that the operator may have “worked over the well and placed it back on production. They are supposed to be filing a Sundry Notice in the near future.” Email dated June 21, 2006, from BLM Petroleum Engineer to BLM Land Law Examiner. However, no such Sundry Notice or other tangible evidence of reworking the well appears in the Administrative Record.

Both the 2010 60-day Notice and the 2011 60-day Notice state that Well No. 42-4 “has not produced in paying quantities since July 2006,” as does the LPM. But, there is no specific evidence of cessation of production in July 2006. In addition, the LPM includes a contradictory statement that the date of last production was May 2009. *See supra* note 13.

Discussion

Arguments on Appeal

Although Ben Doud, Doud’s President, signed the notice of appeal and stay petition, the filed Statement of Reasons (SOR) was signed by Tony Markve, who asserts that he “work[s] with Doud Land Company” and is “a representative of Ben Doud, who is the president of Doud Land Company.” SOR at 1.¹⁶

At the heart of the SOR is the claim that Doud somehow acquired its 50% interest in the Lease under suspicious circumstances, initiated and consummated by Glade, of which Doud was completely ignorant.

[T]he employees of Doud Land Company were unaware Mr. Glade had taken this lease. This resulted in a total lack of reporting, activity, etc. While not an excuse for non-compliance, the actions of Mr. Glade were unknown.^[17] If Doud Land Company would have known about the

¹⁵ (...continued)

and the 2006 60-day Notice documents that the well was shut-in in November 2004, ceasing production at least by that date.

¹⁶ It is not clear that Markve is authorized to practice before the Board on behalf of Doud. *See* 43 C.F.R. § 1.3. However, considering his filing is the only substantive response to BLM’s decision, we will consider it in our review of Doud’s appeal.

¹⁷ This claim is simply not credible, considering the assignment document approved by BLM, effective Jan. 1, 2005, by which Robb assigned his 50% interest in the Lease to Doud, was signed by Ben Doud as Manager of Doud on Nov. 16, 2004.

lease, attempts would have been made to produce the well. *Economic production of the well has never been attempted by Doud Land Company.*

Id. (emphasis added). The remainder of the SOR discusses Doud's purported response to BLM's 2011 60-day Notice, requesting an extension of the lease to plug and abandon the well (*not* rework or drill or bring the well back into production), and Doud's efforts to sell the lease to Empire. Nowhere in the SOR does Doud dispute that, at least during its ownership of the Lease since January 1, 2005, no effort has been made to produce oil and gas. But, in requesting a stay of BLM's decision, Doud asserts that the public interest would be best served by the Board granting a stay and then allowing "the new operator [to] take over and begin producing the well." Petition for Stay at 2.

BLM generally argues that under the relevant statutory and regulatory provisions, and Board precedent, the Lease terminated by operation of law.¹⁸ BLM also acknowledges that the portion of the decision finding that such termination occurred on March 7, 2011, the date the 2011 60-day notice was received by Doud, is inconsistent with the law. Instead, BLM now urges that the Board modify the BLM decision to find that the Lease terminated as of July 2006, "the date production on the lease ceased." Answer at 8. BLM then argues that Doud's proposed assignments of the Lease were correctly denied because the Lease terminated before Doud submitted the assignments to BLM for approval. *Id.* at 10. Finally, in addressing Doud's Petition for Stay, BLM argues, among other things, that the public interest would not be served by issuance of a stay.

The public interest is not served by an operator that holds a lease, but does not use reasonable diligence to ensure that the lease produces in paying quantities. Such a practice ties up the nation's mineral resources and prevents a more diligent operator from acquiring the lease and working it to the benefit of the public.

Opposition to Petition for Stay at 8.

Termination of the Lease

Following the end of the Lease's initial 5-year term and the subsequent 2-year extension and the completion of Well No. 42-4, the Lease was in its extended term for "so long as oil or gas is being produced in paying quantities." 43 C.F.R.

¹⁸ BLM also confirms that the Lease was never suspended. "There is no evidence and Doud does not allege that it sought or BLM granted a suspension of operations and/or production at any time after production ceased." Answer at 8.

§ 3107.2-1. The only oil production on the Lease from Well No. 42-4 that is documented in the Administrative Record occurred on July 11, 1990. Over the subsequent 21 years, the record shows no direct evidence of production. And, BLM states in its 2006 60-day Notice that Well No. 42-4 was shut in November 2004, indicating that even if there had been prior production, that production ceased in November 2004. There also is no evidence, and no allegation by Doud, that BLM granted any suspension of operations or production or otherwise consented to the absence of production. During the past 6 years, BLM has issued 3 separate 60-day notices to Doud, to which Doud has failed to respond at all. Even with respect to Doud's alleged response to the 2011 60-day Notice, Doud only sought an extension to plug and abandon Well No. 42-4, not to bring the well back into production. Also, there is no direct evidence in the record that, following receipt of any of the 60-day notices, Doud took any action either to rework or drill Well No. 42-4, or provide justification for why it believed the well was capable of production in paying quantities, and then restart production. In fact, Doud admits that it never even attempted economic production from the well. SOR at 1.

Given these circumstances, based upon the record before us, we conclude that the Lease has terminated by operation of law because of cessation of production, pursuant to 30 U.S.C. § 226(i) (2006). More problematic, however, is precisely when the Lease terminated.

Date of Termination

[2] As already discussed, a lease in its extended term because of production terminates because of cessation of production under two different scenarios, both found in 30 U.S.C. § 226(i).

1. If there is no well capable of production in paying quantities, then if production ceases and reworking or drilling does not commence (and continue thereafter with reasonable diligence until production is reestablished) within 60 days after cessation of production, then the lease terminates as of the date of cessation of production.
2. If there is a well capable of production in paying quantities, then if production ceases, the lessee must place the well into production within a reasonable time (not less than 60 days) of receiving notice by registered or certified mail.

The facts revealed in the Administrative Record suggest different scenarios for possible Lease termination dates, and so we must examine the record for the earliest instance in which production in paying quantities ceased and (1) there was no well

capable of production and timely reworking did not occur, or (2) there was a well capable of production, the lessee received notice from BLM, and production was not timely restored.

Initially, the record shows that Well No. 42-4 produced a specific quantity of oil on July 11, 1990. There is no other direct evidence of production after that date. However, BLM determined at that time, based upon production of the well, that the well was capable of production in paying quantities. 1990 Memorandum at 1. In addition, the June 29, 2011, LPM states that the Lease was held by actual production July 11, 1990, and shows first production January 1991. As a result, the Lease could not have terminated in July 1990 or January 1991, even if no production continued, because the statute requires that with the presence of a well capable of production, the lessee must receive notice that he has a reasonable time (not less than 60 days) to put the well into production. 30 U.S.C. § 226(i) (2006). If no production is forthcoming by the end of that 60-day period, the Lease would terminate by operation of law as of the date the notice period expired. *Ridgeway Arizona Oil Corp.*, 181 IBLA at 243-44; *Merit Productions*, 144 IBLA at 165 (Burski, A.J., concurring). In this case, no such notice was given until BLM issued the 2006 60-day Notice. The difficulty with that notice, however, is that there is no evidence in the record showing when, or even if, the lessee received the notice and, therefore, there is no way to determine when that 60-day period expired.

However, BLM stated in its 2006 60-day Notice that Well No. 42-4 was shut-in November 2004, which indicates that production had ceased at least as of that date.¹⁹ BLM then determined that “this lease is not capable of production in paying quantities.”²⁰ Based upon that determination, the lessee would have had to begin reworking or drilling operations within 60 days after cessation of production, or prior to February 2005, conducting those operations with reasonable diligence. See 30 U.S.C. § 226(i) (2006). There is no evidence in the record that such reworking or drilling was conducted.²¹ By that time Doud had acquired its interest in the Lease,

¹⁹ Because a “shut-in well” is understood to be a producing well that is temporarily closed down, this suggests that there had been production prior to November 2004.

²⁰ BLM’s statement that the “lease” is not capable of production conflicts with the language of the statute, which focuses on whether or not a *well* is capable of production. See 30 U.S.C. § 226(i) (2006). However, since in this case the record indicates that Well No. 42-4 is the only well on the Lease, we consider that this and the later BLM notice letters relate to Well No. 42-4.

²¹ The possibility that the lessee may have “worked over the well and placed it back on production” following issuance of BLM’s 2006 60-day Notice, see Email dated

(continued...)

and Doud has admitted that it made no attempt at economic production of the well. SOR at 1.

Later determinations by BLM, in the 2010 60-day Notice, the 2011 60-day Notice, and the LPM, that Well No. 42-4 had not produced in paying quantities since July 2006, all appear to be based upon the lessee's failure to respond to the 2006 60-day Notice, not necessarily upon the cessation of actual production of oil.²² The only other determination appears in the LPM, which indicates the last production from the well was in May 2009. There is no evidence in the record that any reworking or drilling operations timely commenced after that date, or that Doud responded to the 2010 60-day Notice with timely renewed production or justification that Well No. 42-2 was capable of production in paying quantities.

Conclusion

[3] Despite the sparseness of the Administrative Record, it is clear that the Lease terminated because of cessation of production in November 2004 under the statutory provisions of the MLA when Doud failed to undertake reworking or drilling operations within 60 days of cessation of production. The statute is self operative. Neither BLM nor this Board can afford any relief from the statutory consequences. We affirm BLM's decision as to termination of the Lease. It is also clear that the Lease terminated prior to Doud's filing with BLM for approval the assignments that would have transferred the Lease to Empire. We also affirm BLM's decision to deny approval of the assignments. As we have held before, if a lease has already terminated, "BLM must refuse to approve any pending assignments as there is no lease interest left to be assigned." *Interior Reserves Corp.*, 116 IBLA 73, 80 (1990) (and cases cited).

[4] As for the date of termination of the Lease, we must modify BLM's decision. There is no rational basis for the March 7, 2011, date of termination

²¹ (...continued)

June 21, 2006, from BLM Petroleum Engineer to BLM Land Law Examiner, is irrelevant, considering production ceased in November 2004, and reworking operations had to be initiated before February 2005, and unpersuasive in light of Doud's admission that there was never any attempt to produce the well after Doud acquired its interest in November 2004.

²² As a result, BLM's request that we modify its decision to hold that the Lease terminated as of July 2006, must be rejected. *See Answer at 8.*

presented in the decision,²³ a circumstance now acknowledged by BLM. See Answer at 7-8. Instead, in its 2006 60-day Notice, BLM stated that Well No. 42-4 was shut-in November 2004, and that the well was not capable of production in paying quantities. Under those circumstances, the lessee has the burden to prove that the well is capable of production in paying quantities. *Stove Creek Oil Inc.*, 162 IBLA 97, 106 (2004). Here, not only has Doud failed to prove that fact, Doud has not even alleged that the well is capable of production in paying quantities. So, with a well not capable of production, Doud had to have initiated reworking or drilling operations within 60 days of cessation of production in November 2004, or before February 2005. There is no evidence in the Administrative Record of such operations, and Doud has admitted that it did not conduct such operations. In addition, when there is no well capable of production, there is no requirement under the MLA that BLM must provide notice to the lessee before the lease terminates by operation of law, a point conceded by BLM. See Answer at 8. As a result, the Lease terminated by operation of law as of November 2004, when production ceased and reworking operations were not conducted timely.

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 as modified, and the petition for a stay is denied as moot.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge

²³ That date is when Doud received BLM's 2011 60-day Notice, a date which cannot be the date of Lease termination under any circumstance, whether or not the Lease has a well capable of production in paying quantities. See *Ridgeway Arizona Oil Corp.*, 181 IBLA at 250-51.