

RAJAC INDUSTRIES, INC.

IBLA 76-619

Decided August 11, 1976

Appeal from decision of California State Office, Bureau of Land Management, holding oil and gas lease Sac 079748 expired by operation of law.

Affirmed.

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

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

APPEARANCES: Harold Shafer, President of Rajac Industries, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Rajac Industries, Inc., appeals from a decision dated April 28, 1976, of the California State Office, Bureau of Land Management (BLM), holding that its oil and gas lease Sac 079748 had expired by operation of law on July 31, 1975.

A memorandum dated March 2, 1975, from D. F. Russell, District Engineer, United States Geological Survey (USGS) at Bakersfield, California, to F. J. Schambeck, Oil and Gas Supervisor, Pacific Area, USGS, Los Angeles, California, related the following information concerning the lease in question:

The subject lease was issued August 1, 1965 under Section 17 of the Mineral Leasing Act and according to the Conservation Division Manual Part 645.6.2 section 17 (e) " \* \* \* Each lease shall continue so long after its primary term as oil or gas is produced in paying quantities." Production from lease Sacramento 079748 ceased in November 1967 and at the end of the 10 year primary term of the lease there was no production of any kind.

We claim the lease was not capable of sustained production in paying quantities, especially during the last 8 or 9 years. According to our plats the SW1/4SW1/4 section 22, T. 26 S., R. 28 E., MDM was never placed in a KGS. The Bureau of Land Management should be advised the lease terminated at the end of its primary term or August 1, 1975.

In its statement of reasons, appellant asserts that it has been trying to get the lease in operating condition. Appellant refers to a USGS report dated October 22, 1974, which stated that well #4 was reworked and abandoned in 1974. Appellant also points to the Memorandum of March 2, 1976, supra, in which Mr. Russell states that the Geological Survey's records do not indicate that any of the wells have been plugged and abandoned.

We note that appellant's letter to Walter F. Holmes, Chief, Branch of Lands and Minerals Operations, California State Office, BLM, dated May 10, 1976, which constitutes its statement of reasons, is signed by Peter Jolly, Financial and Petroleum Consultant and Harold Shafer, President of Rajac Industries, Inc. Representation of parties before Appeals Boards of the Office of Hearings and Appeals is governed by 43 CFR Part I, which regulates practice before the Department of the Interior. 43 CFR 1.3. There is nothing in the file to indicate that Jolly is qualified to appear before the Department on behalf of appellant, as suggested by the California State Office. Shafer, as President of the corporation, is entitled to practice before the Department under 43 CFR 1.3(b)(3)(iii), and because he cosigned the document, the appeal will not be dismissed for lack of proper representation. Cf. Thomas P. Lang, 14 IBLA 20 (1973).

[1] 30 U.S.C. § 226(e) (1970) provides that a noncompetitive oil and gas lease shall continue so long after its primary term of 10 years as oil or gas is produced in paying quantities. It further states that any lease issued under this section for

land on which or for which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for 2 years. Inexco Oil Company, 20 IBLA 134 (1975).

Appellant has not shown that there was production of oil or gas in paying quantities at the end of the lease's primary term. Implications that well #4 may have been producing in 1974 and that the wells on the lease have not been plugged and abandoned are not sufficient to meet the requirements of the law. 1/

Neither is appellant entitled to a 2-year extension because no actual drilling operations were being diligently prosecuted at the end of the primary term. 30 U.S.C. § 226(e). Under 43 CFR 3107.2-2, drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts. Charles M. Goad, 25 IBLA 315 (1976). Appellant's statement of reasons provides no evidence of drilling operations. Since appellant has not met the requirements of 30 U.S.C. § 226(e), there is no basis for an extension of the lease, and we must hold that its lease expired by operation of law at the end of the primary term on July 31, 1975.

Therefore, 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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Frederick Fishman  
Administrative Judge

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1/ Appellant has also complained that it was never sent "the 60 day notice" to resume production. Presumably, this refers to 30 U.S.C. § 226(f) (1970). However, this applies only to cases where the cessation of production occurs during the extended term of the lease.

