

MANHATTAN RESOURCES, INC.

IBLA 78-124

Decided April 26, 1978

Appeal from decision of Colorado State Office holding noncompetitive oil and gas leases terminated (C-1823, C-1824, C-1946, C-2035, C-2740, C-2741, C-2744, C-2745).

Set aside and remanded.

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

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

2. Hearings—Oil and Gas Leases: Termination—Oil and Gas Leases: Unit or Cooperative Agreement—Oil and Gas Leases: Well Capable of Production

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

APPEARANCES: Elmer E. Gray, Secretary, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Manhattan Resources, Inc., has appealed from a decision dated November 22, 1977, holding eight oil and gas leases to have terminated at the end of their respective 10-year terms. ^{1/}

The leases were committed to the Manhattan Unit, Rio Blanco County, Colorado, effective December 23, 1976.

[1] If there had been production of oil and gas in paying quantities on any lease committed to the unit, that production would have been credited to the subject leases and their terms would have continued beyond the 10-year expiration date. Solicitor's Opinion, 69 I.D. 110 (1962).

In a memorandum dated November 16, 1977, the District Engineer, Conservation Division, Geological Survey, Salt Lake City, Utah, informed the State Office that he had determined that a well, No. 2-4 in the NE 1/4 SW 1/4 sec. 4, T. 2 N., R. 103 W., was not capable of production in paying quantities as defined in the unit agreement and that, absent any other reason for extending them, the subject leases expired on their respective expiration dates. The State Office issued its decision in reliance on this memorandum.

On appeal, appellant states:

[P]roduction was established on the Unit prior to the expiration date of the above leases. There were three completed wells on the Unit prior to the critical dates. Two were producing oil wells from the Morrison formation, producing at rates of 8 to 22 bbls. of oil daily; and a shut-in gas well in the Dakota formation which was tested at rates of 150 to 300 MCF of gas and 7 bbls. of oil daily. These wells are completed at depths of 4800' to 4300'.

Whereas the above production is nothing startling, the operators have done a great deal of work on this Unit

^{1/} The leases and their expiration dates are as follows:

<u>Lease No.</u>	<u>Expiration Date</u>
C-1823	5/31/77
C-1824	5/31/77
C-1946	6/30/77
C-2035	6/30/77
C-2740	9/30/77
C-2741	9/30/77
C-2744	9/30/77
C-2745	9/30/77

area for the past 25 years and probably know more about the potential possibilities than anyone else. They are anxious to continue development and should be assisted in this development rather than hampered. Two more wells are being started this month; one is on the Unit in Sec. 8, T2N, R102W and one is just outside the Unit in Sec. 9, T2N, R103W.

The U.S. Geological Survey maintains that the first Unit well, the Chevron #2-4 well in the NE1/4SW1/4 of Sec. 4, T2N, R103W is not a commercial well since its present producing rate is 8 to 12 bbls. of oil daily. This well has not been fracture-treated to date because the wells must have a certain production period before they are fracture-treated for best results and must be produced for a period of not less than sixty days to establish their potential.

This period covered the expiration date of the leases in question. Plans were made to fracture-treat the well in November but a workover rig was not available; and it has just been learned that a rig will be available on the 2nd of January, 1978. Fracture-treatment of the well should increase the production rate two to three times its present rate, which would definitely make it commercial.

It is, therefore, requested that the subject leases be reinstated because production on the Unit was established prior to their expiration. Whether or not the production is commercial is a matter of opinion and since the operators have done more work and have more data, they are probably more capable of making this decision. The type of reservoir involved is irregular, lenticular, and variable; so each well will be different. Some wells will be very good wells and others will be marginal; but it is believed that the overall development and production of the Unit should be quite lucrative.

In a recent decision this Board considered whether a lease in its extended term because of production had expired because of cessation of production. Universal Resources Corporation, 31 IBLA 61 (1977). It held that the lessees of record are entitled to notice and opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Since the issue in these cases is legally the same, the same conclusion should apply. The appellant here, having raised an issue

of fact supported by allegations of fact, it, too, should be afforded an opportunity for a hearing, if it desires one.

[2] However, as we said in Universal Resources, supra, Geological Survey has not had an opportunity to review the contentions raised by appellant for the first time on appeal. Therefore, the case is remanded for referral to it to give it an opportunity to consider them. If it determines then that there was no well capable of production within the unit, due notice shall then be given Manhattan Resources advising them of the basis of the determination and that it may request a hearing before an administrative law judge on the issue of the existence of a well capable of production in paying quantities. If a hearing is requested, the case shall be forwarded to the Hearings Division, Office of Hearings and Appeals, for assignment to a judge. 2/

Accordingly pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and the case remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

2/ If a hearing is held, the burden of going forward with the evidence and the ultimate burden of proof should fall upon the lessee who must establish the presence of a well capable of production in paying quantities. Universal Resources, supra.

