

VERN H. BOLINDER AND JULIENNE J. BOLINDER

IBLA 79-209

Decided April 3, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, that oil and gas lease U-015639-A terminated by operation of law.

Set aside and remanded.

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

An oil and gas lease which is in its extended term because of production terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in producing status at least within 60 days of receipt of notice to do so.

2. Hearings—Oil and Gas Leases: Extensions—Oil and Gas Leases: Termination—Rules of Practice: Hearings

Where production has ceased on an oil and gas lease extended by production, and the record is unclear whether the conditions prescribed by 30 U.S.C. § 226(f) precluding termination of the lease have occurred, the case will be remanded to the Bureau of Land Management to reconsider with the Geological Survey if the lease has terminated, including a determination whether

the lessee began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations before attaining production as asserted by him on appeal. A hearing should be held, if necessary, to resolve disputed facts.

APPEARANCES: Vern H. Bolinder, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Vern H. Bolinder, operator and lessee, 1/ appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated January 29, 1979, 2/ holding oil and gas lease U-015639-A terminated by operation of law March 31, 1975. This lease was created by partial assignment effective November 1, 1964, from a base lease with an effective date of July 1, 1955. Appellant received the lease by assignment effective March 1, 1973.

According to U.S. Geological Survey (Survey), the lease was held by production effective November 11, 1964, via Well No. 1, NE 1/4 NW 1/4, sec. 12, T. 16 S., R. 12 E., Salt Lake meridian, Emery County, Utah. Production ceased in March 1975. On August 8, 1975, Survey requested information from appellant concerning production on this lease. Survey states there was no response from the operator. Survey also states that at an unknown date, appellant responded to a Shut-In Well Data Sheet by saying the well was capable of producing hydrocarbons in paying quantities. On July 27, 1977, Survey notified appellant by certified mail that Well No. 1 must be shown to be capable of producing leasehold substances in paying quantities within 60 days of receipt of the letter or the lease would be considered terminated by operation of law effective March 31, 1975. Survey states that appellant thereafter "started procedures to place this well on production, however, no further communications have transpired since September 27, 1977." Memorandum, District Engineer, Salt Lake City, Utah, to Area Oil and Gas Supervisor, NRMA, Casper, Wyoming, December 26, 1978.

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1/ Julienne J. Bolinder is also a lessee of record but has not entered an appearance.

2/ The decision was amended by a decision dated February 7, 1979, only to include a paragraph stating that the lessee had the right to appeal to this Board. The BLM office has furnished this Board with the certified mail envelope containing the decision sent to Bolinder's address of record which was returned by the Post Office to BLM marked "Unclaimed." A communication to BLM prior to this decision clearly indicated he was appealing from the January 29, 1979, decision, and it has been so treated.

On the basis of this memorandum from Survey, stating that lessee failed to show Well No. 1 is capable of producing hydrocarbons in paying quantities, BLM issued its decision of January 29, 1979, declaring that the lease had terminated. Appellant submitted his letter of February 1, 1979, indicating he was appealing the January 29 decision and three more letters, dated February 7, 1979, March 3, 1979, and March 9, 1979, constituting his appeal.

On appeal, appellant states that termination will cause him irreparable harm, that he has been working hard with various agencies and engineers to get the well into production, and that cold weather has hindered his progress. Appellant quotes the BLM statement that the well was incapable of producing oil and/or gas after March 1, 1975, and asserts that the "statement is patently false and without basis in fact." Appellant further asserts that BLM is in error in stating no approved operations to restore production were commenced within 60 days after cessation of production. He has submitted a "Sundry Notice" approved by Survey September 27, 1977, authorizing reworking operations. After receiving this authorization, he sought a stripper certification from the Department of Energy to allow him to sell crude oil. Appellant alleges the certificate was not issued until November 1978, at which time he immediately began operations to place the well into production. Finally, in his letter dated March 9, 1979, appellant states he produced 4 barrels of crude oil from the well and he expects to "have this well in sustained production within the next two or three weeks." <sup>3/</sup>

[1] The applicable statute, 30 U.S.C. § 226(f) (1976), provides:

(f) Termination

No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil and gas is produced in paying quantities as a result of such

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<sup>3/</sup> Appellant also states that he has "paid my \$160.00 minimum cash lease through June 30, 1979. This check has been accepted." As BLM has not yet addressed appellant's right to a refund, it is premature for this Board to decide the issue. We only note that receipt of any payment from appellant for the lease did not represent that the lease was in good standing at that time as there had not been a determination of the lease status. In any event, payment would be necessary pending appeal to preserve any rights under the lease to be decided upon appeal.

operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands 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 sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

Under this statute, and regulations 43 CFR 3107.3-1 and 3107.3-2, a lease which is in its extended term because of production terminates when production ceases unless: (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary of the Interior has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well on producing status at least within 60 days of receipt of notice to do so. Universal Resources Corporation, 31 IBLA 61 (1977); Emily H. Oien, 25 IBLA 193 (1976).

Appellant refers to delays within the Department of Energy in approving his projected sale of hydrocarbons from the leasehold. However, he points to no order, law or regulation applying to his circumstance which could be interpreted as a suspension or consent order within the meaning of 30 U.S.C. § 226(f). In the absence of any showing of an appropriate Governmental suspension, it appears one of the other two remaining conditions must have been met to prevent our holding that the lease terminated.

[2] The problem in this case is that the record is not complete. We have appellant's assertions, the memorandum of Survey and copy of its letter of July 27, 1977, to appellant. The memorandum, however, alludes to communications between Survey and appellant, including one dated September 27, 1977, which is not part of the record. While it would appear that the third condition mentioned above has not been satisfied, namely, placing the well in a producing status within at least 60 days of receipt of notice to do so, we shall postpone ruling to that effect until the record is complete. For example, although not probable, it is conceivable that the time within which to place the well in production may have been extended. The record should clearly show the transactions between Survey and appellant to assure that this possibility did not occur.

There is also factual dispute on whether the first condition mentioned above was met here. Appellant, in effect, asserts that

reworking or drilling operations began within 60 days after production ceased and have been continued with reasonable diligence. If this is so, the lease would not be deemed to have terminated. The record is barren of any information other than appellant's assertions and the statements in Survey's memorandum, unaccompanied by copies of its records.

Where lessees have asserted that a lease has not terminated because there was a well capable of producing oil or gas in paying quantities on the lease, we have remanded cases for further consideration to determine the facts, including a hearing, if necessary, to resolve factual disputes between a lessee and Survey. Universal Resources Corporation, supra; Emily H. Oien, supra. The same reason for holding factual inquiries in those cases applies here to determine whether the lease continued under the reworking or drilling provision.

Accordingly, this case is remanded to BLM for further consideration with Survey and substantiation of the record. Appellant should furnish information to support his position that he began reworking or drilling operations within 60 days after cessation of production and diligently prosecuted such operations thereafter. Such information and other information available to Survey should be reviewed and a determination made on whether the conditions of 30 U.S.C. § 226(f) were met to prevent lease termination. If there remains a factual dispute which cannot be resolved on the record, then appellant is entitled to a hearing. Any future decision should be substantiated by documentary evidence and an analysis of the facts.

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 set aside and the case remanded for further proceedings consistent herewith.

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Joan B. Thompson  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

