

**Editor's note: Reconsideration denied by order dated Sept. 12, 1979**

JOHN S. PEHAR

IBLA 78-249

Decided June 22, 1979

Appeal from a decision of the California State Office, Bureau of Land Management, holding oil and gas leases (Sacramento 036249-A and 036249-B) to have terminated by operation of law for cessation of production.

Affirmed.

1. 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.

APPEARANCES: John S. Pehar, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

John S. Pehar has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 13, 1978, 1/ holding his oil and gas leases (Sacramento 036249-A and 036249-B) to have terminated for cessation of production, effective March 31, 1976. The leases had been extended beyond their primary term by reason of production.

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1/ The record before the Board was completed on March 12, 1979.

BLM bases its decision on a memorandum from the United States Geological Survey (Survey), dated August 26, 1977, recommending that the leases be terminated. Survey reported that on January 28, 1977, it had notified appellant by certified and regular mail, at appellant's address of record, that it considered that the leases might no longer have wells capable of producing oil or gas in paying quantities and that appellant had 60 days to (1) "submit adequate well test, geologic, engineering, and economic data to show that the lease[s] [were] capable of production in paying quantities," (2) to "commence reworking or drilling operations and continue such operations with reasonable diligence until paying production [was] restored," or (3) to "return the lease[s] to sustained production."

The certified letter was returned marked "Unclaimed." Appellant has not contested that the letter sent by regular mail was received.

On July 28, 1977, Survey again notified appellant by certified and regular mail requiring him either to submit the appropriate data and commence reworking or drilling operations or to return the leases to sustained production. Appellant was given an additional 2 weeks to comply. Again, the certified letter was returned, although it had also been sent to appellant's address of record. Appellant acknowledges that the letter sent by regular mail was received.

An oil and gas lease in its extended term by reason of production terminates by operation of law when paying production ceases on the lease subject only to three statutory exceptions. Emily H. Obien, 25 IBLA 193 (1976); Steelco Drilling Corporation, 64 I.D. 214 (1957). The controlling statute, 30 U.S.C. § 226(f) (1976), provides that no lease shall terminate for cessation of production: (1) during diligent reworking or drilling operations commenced within 60 days after cessation of production or so long as paying quantities of oil or gas are produced as a result thereof; (2) where operations or production have been suspended under any order or with the consent of the Secretary; or (3) where there is a well capable of producing oil or gas in paying quantities and the lessee places the well in production within 60 days after receipt of notice by registered or certified mail to do so.

Appellant, in his statement of reasons for appeal, contends that the cessation of production was due to a law suit between the operator of the leases and the company engaged in the actual drilling operations. The wells were "shut in" at that time. During the latter part of 1976 and early 1977 "steamline piping" was installed and "dewatering ditches" were constructed. At the time appellant received the July 28, 1977, letter from Survey he "started expediting the operation of the leases." In August 1977 Pacific Gas and Electric received a survey bond for electric service, but due to a "clerical error" service to appellant's leaseholds did not resume until December 1977. In October 1977 a new operator cleaned the existing wells and

readied them for pumping. During ten days, apparently in December-January, appellant "produced about 300 to 400 barrels of oil."

Appellant does not contend that his operations or production were suspended under any order or with the consent of the Secretary.

[1] No reworking or drilling operations were commenced within 60 days of March 31, 1976, when Survey determined that production had ceased, nor were any such operations diligently prosecuted. Neither were such operations commenced within 2 weeks of attempted delivery of the July 28, 1977, letter.

It has not been shown that, during the period set forth in the statute, there were any wells on appellant's leases capable of producing oil or gas in paying quantities under the marketing conditions at the time. Therefore, appellant's status does not fall within the third statutory exception.

Even if we were to assume the presence of a well capable of producing in paying quantities, appellant does not satisfy the requirements of 43 CFR 3107.3-2. Survey's certified letter dated January 28, 1977, sent to appellant's address of record, served as the requisite notice. It informed appellant that he had 60 days after receipt of the notice to "return the lease[s] to sustained production or take other specified action." Such notice was received despite the fact that the letter was returned marked "Unclaimed." A notice sent by certified mail will be deemed to have been received if it was delivered to the addressee's last address of record, "regardless of whether it was in fact received by him." 43 CFR 1810.2(b); John Oakason, 13 IBLA 99 (1973). A stamp on the returned letter indicates that the first attempt to deliver it was on January 29, 1977. Other than references to the earlier advice of an attorney to shut in, appellant does not explain his failure to respond to the notice of January 28, 1977.

Appellant has not contested that he did not return the lease to sustained production within 2 weeks after the July 28, 1977, letter. It was not until August 1977, that appellant submitted a surety bond for electric service to Pacific Gas and Electric. Subsequent delays in starting production are irrelevant. No production was obtained until December or January, and there is as yet no proof of paying quantities. Appellant had waited too long. The 60-day period from receipt of notices to begin production had passed. Accordingly, appellant's oil and gas leases must be held to have terminated upon the cessation of production, March 31, 1976, none of the statutory exceptions having been satisfied. Universal Resources Corporation, 31 IBLA 61 (1977). There is no clear allegation of facts, which if proved, would show compliance with the statute and prevent the lease from expiring. Thus, no hearing is warranted here. Cf. Vern H. Bolinder, 40 IBLA 164 (1979).

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.

Joseph W. Goss  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joan B. Thompson  
Administrative Judge

