

ENERGY TRADING INC.

IBLA 80-472

Decided September 5, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, holding oil and gas lease U-8939 terminated by operation of law.

Affirmed.

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

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

2. Oil and Gas Leases: Drilling--Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination--Oil and Gas Leases: Unit and Cooperative Agreements

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved

unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

3. Administrative Authority: Estoppel--Estoppel--Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

APPEARANCES: Richard G. Allen, Esq., Senior and Senior, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Energy Trading, Inc., appeals from a letter of the Utah State Office, Bureau of Land Management (BLM), dated January 25, 1980, which stated that oil and gas lease U-8939 had terminated by operation of law on July 31, 1979.

Lease U-8939 is a noncompetitive oil and gas lease embracing all of sec. 12 and part of sec. 14, T. 6 S., R. 4 W., Uintah special meridian, Duchesne County, Utah. Energy Trading, Inc., is the assignee of U-8939 under unapproved assignments dated June 19, 1979, from Phoenix Resources Co. and Natural Resources Corp. Lease U-8939 was issued effective August 1, 1969, for a 10-year term. Shortly prior to the completion of this term, the lease was committed to the Antelope Canyon Unit Agreement, and this agreement was approved by the Acting Oil and Gas Supervisor, Northern Rocky Mountain Area, Geological Survey (GS), on June 15, 1979.

Among the leases committed to the Antelope Canyon Unit were the U-8894-A and the U-8897-A. In 1977, prior to formation of the unit, a producible well was drilled on each of these two leases. The Burton-Hawks No. 5-1 Nutters Ridge Federal, located on lease U-8894-A, produced 400 MCFGPD and 33 BOPD before being shut in by order of the State of Utah because of excessive flaring of gas. The Burton/Hawks No. 25-1 Right Fork Antelope Canyon, located on lease U-8897-A, found three gas pay zones before being shut in, awaiting a pipeline hookup. Appellant notes that neither of these leases was terminated despite their having the same expiration date as U-8939.

By decision of January 25, 1980, the Chief, Minerals Section, informed Natural Resources Corp. that GS reported no drilling activities being conducted under the unit plan over the lease expiration date of U-8939, July 31, 1979. Accordingly, the Chief held lease U-8939 to have terminated by operation of law on that date.

Energy Trading, Inc., filed a timely notice of appeal from this decision and presents a number of arguments in its statement of reasons. Appellant's chief argument is that lease U-8939 was extended by production in paying quantities under the unit agreement prior to the July 31, 1979, expiration date of the lease. The effect of such production is set forth in 30 U.S.C. § 226(j) (1976) 1/ which states in part:

Any other lease [than a 20-year lease] issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease.

Appellant contends that the Burton/Hawks No. 5-1 and No. 25-1 satisfy the requirement of production in paying quantities despite their present shut-in status. In support thereof, appellant points to Corrine Grace, 30 IBLA 296 (1977), where this Board held that 30 U.S.C. § 226(j) (1976) at a minimum requires "the successful completion of a well capable of producing unitized substances in paying quantities on the Unit" (emphasis supplied) to justify the extension of a lease. Appellant alleges that the Burton/Hawks No. 5-1 and No. 25-1 remain capable of producing unitized substances in paying quantities. Inasmuch as these wells are alleged to have produced in paying quantities prior to the expiration date of U-8939, Energy Trading maintains that this lease continues in force and effect so long as the lease remains subject to the unit agreement.

[1] While plausible, appellant's argument is inconsistent with the term of section 11 of the unit agreement. That section states in part:

11. PARTICIPATION AFTER DISCOVERY. Determination as to whether a well completed within the Unit Area prior to the effective date of this agreement is capable of producing unitized substances in paying quantities shall be deferred until an initial Participating Area is established as the result of the completion of a well for production in paying quantities, in accordance with Section 9 hereof. Upon completion of a well capable of producing unitized substances in paying quantities or as soon thereafter as required by the Supervisor, the Unit Operator shall submit for approval

---

1/ The substance of 30 U.S.C. § 226(j) (1976) appears in section 18(e) of the Antelope Canyon Unit Agreement and in the regulations at 43 CFR 3107.4-2.

by the Supervisor a schedule \* \* \* of all land then regarded as reasonably proved to be productive in paying quantities; all lands in said schedule on approval of the Supervisor to constitute a participating area, effective as of the date of completion of such well or the effective date of this unit agreement, whichever is later.

The effect of this paragraph is to defer consideration of the producing status of wells completed prior to the effective date of the Antelope Canyon Unit (June 15, 1979), such as the Burton/Hawks No. 5-1 and No. 25-1, until a well capable of producing unitized substances in paying quantities is completed under the unit. Completion under the unit requires completion of a well on unit lands subsequent to the effective date of the unit, which well is capable of producing unitized substances in paying quantities. No such well was completed during the brief interval from the effective date of the unit to the July 31, 1979, expiration date of lease U-8939. Accordingly, BLM properly disregarded the Burton/Hawks No. 5-1 and No. 25-1 in holding that lease U-8939 was not extended by production elsewhere on the unit.

It is a well-established view of the Department that actual production anywhere on a unit is constructive production everywhere on a unit. Solicitor's Opinion, M-36629, 69 I.D. 110 (1962). This principle retains its validity so long as production in paying quantities is obtained under the unit. Our interpretation of this traditional view is supported by the terms of 30 U.S.C. § 226(j) (1976), quoted above, providing for extension of a lease so long as "production is had in paying quantities under the plan prior to the expiration date of the term of such lease." (Emphasis added.) In addition, section 18(b) of the unit agreement reinforces this interpretation:

(b) Drilling and producing operations performed hereunder upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced. [Emphasis supplied.]

Production on leases U-8894-A and U-8897-A prior to the effective date of the Antelope Canyon Unit Agreement is sufficient, however, to extend these leases, which bear the identical expiration date as U-8939. This conclusion follows from the terms of 30 U.S.C. § 226(e) (1976) which provide that an oil and gas lease shall continue so long after its primary term as oil or gas is produced in paying quantities. As these wells remain capable of production in paying quantities, any termination thereof must be in accordance with 30 U.S.C. § 226(f) (1976) providing for notice to the lessee prior to termination. Universal Resources Corp., 31 IBLA 61 (1977).

[2] Appellant presents a second argument on appeal contending that lease U-8939 is entitled to a 2-year extension by reason of

actual drilling operations on the lease. Appellant here is invoking the provisions of 30 U.S.C. § 226(e) 2/ which state in part:

Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, 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 two years and so long thereafter as oil or gas is produced in paying quantities.

Appellant alleges that drilling operations were begun on lease U-8943-A in the Antelope Canyon Unit on June 29, 1979. This drilling resulted in a dry hole, which was plugged on July 6, 1979. Thereafter, appellant's drilling efforts took place in other units. Appellant maintains that its drilling operations during the June 29 through July 6, 1979, interval are sufficient to extend lease U-8939 bearing an expiration date of July 31, 1979.

Appellant is incorrect in this assertion. To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well. D. L. Cook, 20 IBLA 315 (1975). The evidence here cannot support such a showing.

[3] Lastly, Energy Trading argues that the unit operator, in a telephone conversation with the GS District Engineer, Salt Lake City, understood the District Engineer to have agreed that drilling operations on the Antelope Canyon Unit immediately prior to June 30, 1979, would prevent lease U-8939 from expiring on July 31, 1979. In support thereof, appellant submits a copy of a letter addressed to the District Engineer which purports to summarize this conversation. The letter is dated May 30, 1979, 1 day after the conversation.

Assuming, arguendo, that the facts are as appellant states, reliance upon erroneous or incomplete information or opinions provided by any officer, agent or employee of this Department cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c); Claire R. Caldwell, 42 IBLA 139 (1979). The law as set forth in numerous decisions of this Board requiring actual drilling operations to be performed on the last day of the lease with a bona fide intent to complete a producing well is clear. This appellant clearly failed to do.

---

2/ The substance of 30 U.S.C. § 226(e) (1976) appears in section 18(e) of the Antelope Canyon Unit Agreement and in the regulations at 43 CFR 3107.2-3.

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 affirmed.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

Frederick Fishman  
Administrative Judge

---

James L. Burski  
Administrative Judge

