

JOHN G. SWANSON

IBLA 81-852

Decided August 13, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding oil and gas lease to have terminated by operation of law. W-25836.

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 by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

APPEARANCES: Richard A. DeZengremel, Esq., Englewood, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John G. Swanson has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 15, 1981, holding oil and gas lease, W-25836, to have terminated by operation of law as of July 31, 1979.

Effective February 28, 1977, the Geological Survey (Survey) terminated the Summerville II Unit Agreement (No. 14-08-0001-16027), thereby releasing oil and gas lease W-25836 from commitment to the unit agreement. Pursuant to section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976) and 43 CFR 3107.5, the lease was to continue in effect until February 28, 1979, and so long thereafter as oil or gas was produced in paying quantities. Appellant is the operator of the John Swanson Well No. 2 on the lease, the rights to which are held by Sun Oil Company, Phillips Petroleum Company, and Davis Oil Company.

On November 2, 1978, Survey approved an application for a permit to drill a well, submitted by appellant. By memorandum dated March 16, 1979, Survey notified BLM that, based on tests conducted on February 26, 1979,

the John Swanson Well No. 2 had been completed as a producing well. Tests indicated an initial potential of 40 barrels of oil per day (BOPD). ^{1/} In addition, Survey recommended that a decision as to termination of the lease be held in abeyance until a determination could be made as to whether the well would produce in paying quantities.

On March 27, 1979, pursuant to a written request from Swanson, Survey granted permission to shut down production until April 30, 1979, due to the winter conditions. On May 4 and 5, 1979, Swanson informed Survey that the well would not produce and requested permission to clean out sand from the well bore and run tubing, pump and rods.

On May 24, 1979, Survey ordered Swanson to either commence workover by June 30, 1979, pursuant to 43 CFR 3107.3-1, or to restore production by July 23, 1979, pursuant to 43 CFR 3107.3-2. ^{2/} This notice was sent certified mail as required by 30 U.S.C. § 226(f) (1976). Subsequently, on June 28, 1979, appellant requested permission to "frac pack" to seal out sand production. This was approved the next day though appellant was again advised that he was required to restore production by July 23, 1979.

On July 21, 1979, appellant submitted notices to Survey indicating well production of 10 barrels of oil and 132 barrels of water during a 10-hour swab test. No other evidence of production was submitted by appellant. In October 1979, the lease was inspected by a Survey technician who found that a pumping unit with a 400 barrel frac tank had been set, but there was no production and apparently had been none for some time. By memorandum dated November 28, 1979, Survey notified BLM that the district engineer had determined that lease W-25836 was "no longer capable of producing oil and/or gas after July 1979" and that no approved operations to restore production were thereafter begun within 60 days, as allowed by 43 CFR 3107.3-1, and, therefore, the lease terminated by operation of law as of July 31, 1979. A subsequent Survey memorandum, dated December 6, 1979, notified BLM that a Survey technician had inspected the lease and found production equipment, but no operations, and that the lessees had orally advised Survey that they "would probably abandon the well."

By decision dated December 21, 1979, BLM held lease W-25836 to have terminated as of July 31, 1979. In John Swanson, 51 IBLA 239 (1980), the Board set aside the December 1979 BLM decision, holding that appellant had raised an issue of fact as to whether the John Swanson Well No. 2 was capable

^{1/} On Mar. 26, 1981, Sunmark Exploration Company, a division of Sun Oil Company, submitted a letter signed by James W. Shelton, District Engineer, Survey, dated Dec. 28, 1979, which states that the "only 1979 production reports" regarding lease W-25836 indicate the production of 58 barrels of oil and 17 barrels of water for 1-1/2 days in February and 41 barrels of oil and 12 barrels of water for 3 days in March.

^{2/} This order was designed to cover two discrete circumstances. If there was no longer a well capable of producing in paying quantities, it allowed 60 days to begin reworking the well. This period, however, would run from the point of unauthorized cessation of production, i.e., May 1, 1979, since cessation had been authorized through April 30, 1979. On the other hand, assuming there was a well capable of production, this Order provided 60 days, running from its date, to restore production pursuant to 43 CFR 3107.3-2.

of producing oil or gas in paying quantities as of February 28, 1979, the expiration date of the lease. We relied on the fact that "the Survey recommendation and BLM decision terminating the lease as of July 31, 1979, rather than at the end of the lease term on February 28, 1979, support the suggestion that there was a well capable of production in paying quantities at one time." John Swanson, *supra* at 241. We remanded the case to BLM for referral to Survey for a further review of appellant's evidence of the well's productive capacity. Upon an adverse determination, we accorded appellant the right to a hearing before an Administrative Law Judge.

By letter dated March 13, 1981, Survey requested appellant to submit evidence of production in the form of well tests, production history, and monthly reports of operations. By memorandum dated April 21, 1981, Survey notified BLM that appellant had provided monthly reports of production for the period from May 1979 to February 1981 "which show no production for this well," and that a recent field inspection found no production equipment. Survey stated that it had determined that the lease "does not contain a well capable of production in paying quantities." In its June 1981 decision, BLM again held lease W-25836 to have terminated as of July 31, 1979. This appeal followed.

In his statement of reasons for appeal, appellant reiterates the arguments made in his original appeal. He states that two swab tests have been done on the John Swanson Well No. 2, which "were termed satisfactory by the field men" and that the well "could be quite profitable if treated properly."

[1] Under section 17(f) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(f) (1976), an oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or redrilling operations are commenced within 60 days of the cessation of production and continued with reasonable diligence. John Swanson, *supra*, and cases cited therein; Michael P. Grace, 50 IBLA 150 (1980); *see* 43 CFR 3107.3-1 and 3107.3-2.

In order for a well to be considered capable of production in paying quantities it must be physically capable of such production at the particular time in question, *i.e.*, "where there has been production or where production can clearly be obtained but is not because there is a 'lack of pipelines, roads, or markets for the oil and gas.'" American Resources Management Corp., 40 IBLA 195, 201 (1979). Actual production is not necessary in order for a well to be considered capable of production in paying quantities. On the other hand, the mere presence of a well will not suffice. *Id.* Not only must a well be physically capable of production, Arlyne Lansdale, 16 IBLA 42 (1974), it must also be capable of producing "in paying quantities," *i.e.*, sufficient quantities to yield a reasonable profit to the lessee over and above the cost of operating the well and of marketing the product. Amoco Production Co., 41 IBLA 348, 351 (1979); The Polumbus Corp., 22 IBLA 270 (1975); Kerr-McGee Oil Industries, 73 I.D. 110 (1966).

Survey, in effect, gave appellant alternative choices. If appellant's well was capable of production, he was required to place it in production within 60 days after he received notice on May 24, 1979. 30 U.S.C. § 226(f) (1976); 43 CFR 3107.3-2. If, on the other hand, the well was no longer capable, he was required to commence reworking of the well and continue with

reasonable diligence. 43 CFR 3107.3-1. Indeed, it is now clear that Survey gave appellant the benefit of the doubt, despite his repeated failures to file the necessary information. Thus, upon the passage of the 60 days allotted to resume production under 43 CFR 3107.3-2, Survey did not declare the lease terminated. Rather, it chose to give appellant an additional 60 days in which to commence reworking. ^{3/} It is uncontested that appellant took no action with respect to reworking after July 31, 1979.

While our original decision afforded a hearing, none was had. Appellant has not requested one here, and, in view of the factual milieu of this appeal one would not be in order. If appellant were able to show that he had a well capable of production as of July 1979, his lease would terminate for failing to put the well into production as required by 43 CFR 3107.3-2. If, on the other hand, the well was no longer capable of production as of July 1979, the lease would terminate because reworking operations were not commenced and diligently prosecuted within 60 days as required by 43 CFR 3107.3-1. Thus, even if appellant could prove that there was now a well capable of producing, this would in no way affect the finding of termination. ^{4/}

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 as modified.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

^{3/} In a memorandum from the Oil and Gas Supervisor, Northern Rocky Mountain Area, to the Chief, Oil and Gas Operations of the Wyoming State Office, BLM, dated Nov. 28, 1979, Survey stated:

"Our district engineer has determined that lease W-25836 was no longer capable of producing oil and/or gas after July 1979.

"No approved operations to restore production were commenced within the 60 days thereafter as allowed under 43 CFR 3107.3-1.

"Therefore, we believe lease W-25836 terminated by operation of law as of midnight July 31, 1979."

^{4/} Appellant also states that he is in reorganization under Chapter 11 of the U.S. Bankruptcy Code and that any proceeding terminating the lease would be in contravention of 11 U.S.C. § 362(a)(1) (1976). Such a proceeding, however, has no bearing on the present administrative action where the instant lease W-25836 terminated by operation of law under 30 U.S.C. § 226(f) (1976) upon the occurrence of the above-described events. See In re Trigg, 630 F.2d 1370 (10th Cir. 1980).

