

HOOVER & BRACKEN ENERGIES, INC.

IBLA 80-277

Decided March 17, 1983

Appeal from a decision of the Acting Deputy Commissioner, Bureau of Indian Affairs, affirming a decision of the Anadarko Area Director holding that oil and gas lease No. 14-20-205-6217 had expired at the end of its primary term.

Reversed.

1. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Well Capable of Production -- Words and Phrases

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

APPEARANCES: James Weber, Esq., and Sheryl Stevens, Esq., Oklahoma City, Oklahoma, for appellant; Benno G. Imbrock, Esq., Clifford G. Birdshead, Frank Boyd, Anadarko, Oklahoma, for the Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Hoover & Bracken Energies, Inc. (Hoover), appeals from a decision of the Acting Deputy Commissioner, Bureau of Indian Affairs (BIA), dated November 7, 1979, affirming a decision of the Anadarko Area Director, BIA, holding that oil and gas lease No. 14-20-205-6217 had expired at the end of its primary term. The Acting Deputy Commissioner based his decision upon a finding that well No. 1-17 had failed to qualify the lease for an extension by production of oil or gas in paying quantities.

Lease No. 14-20-205-6217 was issued as an oil and gas mining lease on December 3, 1973, for allotted Indian lands in NW 1/4 sec. 17, T. 13 N., R. 14 W., Custer County, Oklahoma. Appellant is the operator of this lease. The term of the lease was 5 years and "as much longer thereafter as oil and/or gas is produced in paying quantities from said land." Shortly before the end of its primary term, the lease was communitized with two other leases to develop and produce gas and gas condensate (oil) more efficiently from the Springer formation in sec. 17. The term of the communitization agreement was equal to the "primary term of the restricted Indian leases, or for a period of one year, [whichever] is the lesser, and so long thereafter as any communitized substance is produced from any part of said communitized area in paying quantities." On September 27, 1978, this agreement was approved by the Department.

The above-quoted passages from the lease and the communitization agreement each provide for continuation of the lease so long as oil or gas is produced in paying quantities. This language, in the nature of a habendum clause, echoes that found in section 17(j) of the Mineral Leasing Act, 30 U.S.C. § 226(j) (1976). See Yates Petroleum Corp., 67 IBLA 246, 253 (1982).

According to appellant's completion reports, drilling began on October 4, 1978, in the NE 1/4 sec. 17 and was finished on November 29, 1978. Completion was achieved on February 6, 1979. By the terms of the communitization agreement, commencement, completion, continued operation, or production of a well for communitized substances on the communitized area shall be construed as commencement, completion, continued operation or production from each and all of the lands within the communitized area. In addition, lease No. 14-20-205-6217 provides that if the lessee shall commence to drill a well within the term of the lease, the lessee shall have the right to drill such well to completion with reasonable diligence. If oil or gas is found in paying quantities, the lease will continue in force with like effect as if such well had been completed within the primary term. Id. at paragraph 1.

By order of February 13, 1981, this Board ordered a hearing to determine whether there was production in paying quantities from the Springer formation of well No. 1-17 at the end of the primary term of the lease in question. The burden of going forward with the evidence and the ultimate burden of proof were assigned to appellant. On October 29, 1981, a hearing was held in Oklahoma City, Oklahoma, by Administrative Law Judge Sam E. Taylor.

Judge Taylor found that the production of gas and gas condensate from well No. 1-17 in the Springer formation was sufficient to pay all of the average monthly expenses of the well. The Judge also received testimony that other wells in the vicinity with production as small as that produced by well No. 1-17 from the Springer formation were being pumped by the producers in paying quantities. The recommended decision of Judge Taylor concluded with a statement that the decision of the Acting Deputy Commissioner be overruled. We agree.

At the hearing, evidence was received that well No. 1-17 produces gas and gas condensate from both the Atoka and Springer formations (Tr. 10;

Exh. A). By testing the Atoka formation alone and subtracting this production from the production attributable to both the Atoka and Springer formations, the production from the Springer formation was determined (Tr. 10).

Exhibit A was offered by appellant at the hearing. This exhibit shows that from January 1979, when production was first achieved, until May 1980, when a pipeline was hooked up to transport gas, the value of the production from gas condensate alone substantially exceeded the costs attributable to pumping and labor (production foreman), gross production taxes, and royalty (Tr. 51). ^{1/} From May 1980 to August 1981 when figures were last available, production from gas and gas condensate similarly exceeded all relevant costs.

[1] In Yates Petroleum Corp., *supra* at 258, this Board held that for the purposes of the extension provision of 30 U.S.C. § 226(j) (1976), production in paying quantities requires that the well drilled be able to produce sufficient hydrocarbons for the lessee to recover the costs of operating and marketing but not to recoup the costs of drilling. A similar interpretation is applicable, we hold, to the habendum clause in the instant communitization agreement and lease.

Although the record discloses that appellant originally reported well No. 1-17 to be dry in the Springer formation ^{2/} and thereafter altered this finding in a report inaccurately alleging a workover to have occurred, appellant's evidence at the hearing persuades us that production of gas condensate in paying quantities was achieved so as to extend lease No. 14-20-205-6217. Indeed, its evidence at the hearing was un rebutted.

The record is silent whether BLM or Geological Survey considered whether well No. 1-17 was capable of production of oil or gas in paying quantities. Though our holding above makes discussion of this issue superfluous, we point out that if lease No. 14-20-205-6217 contained a well capable of production in paying quantities at the end of its primary term, the lease would not terminate by reason of production unless the lessee was given a reasonable time, pursuant to notice, within which to place well No. 1-17 in producing status. 30 U.S.C. § 226(f) (1976). Given the absence of a pipeline for some 15 months following completion of well No. 1-17, consideration of the well's ability to produce was relevant. John G. Swanson, 66 IBLA 200, 202 (1982); American Resources Management Corp., 40 IBLA 195, 201 (1979). See also 1954 U.S. Code Cong. & Ad. News 2700.

^{1/} The costs against which production was measured were attributable to both the Atoka and Springer formations (Tr. 32, 57). In light of the fact that the value of production exceeded these costs, we need not decide whether the costs should have been broken down between the Atoka and Springer formations.

^{2/} The decision of the Anadarko Area Director relied upon these completion reports, dated Mar. 5 and Apr. 10, 1979, to the Oklahoma Corporation Commission in holding that there had been no production from the Springer formation within the primary term of the lease.

Therefore, 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 Acting Deputy Commissioner is reversed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

