

HANCOCK ENTERPRISES

IBLA 83-57

Decided July 27, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, holding that oil and gas lease M 15761-B had expired.

Set aside and remanded.

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

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

APPEARANCES: Jon P. Hudson, General Partner, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Hancock Enterprises (Hancock) appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 9, 1982, holding that oil and gas lease M 15761-B had expired at the conclusion of its 2-year extended term. Lease M 15761-B was issued effective July 1, 1970, for a term of 10 years and was committed to Communitization Agreement NCR-72 effective May 1, 1980. Pursuant to 43 CFR 3107.2, the lease was extended because diligent well completion and testing operations were being conducted over the expiration date within the communitized area, albeit not on the lease itself. The extension was for a period of 2 years, i.e., until June 30, 1982, and for so long thereafter as oil or gas was produced in

paying quantities within the communitized area or on lands within the leasehold. BLM concluded that the lease M 15761-B had expired on June 30, 1982, because the Minerals Management Service (MMS) found that the well in the communitized area was not capable of production in paying quantities as of the expiration date.

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

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 not be less than sixty days after notice by registered or certified mail, within which to place such well in producing status
* * *.

In its statement of reasons, Hancock provides drilling reports and other materials that, it maintains, establish that its well was capable of production in paying quantities on June 30, 1982. Hancock estimates that its well, the #1-29 Haugness in SW 1/4 SE 1/4 sec. 29, T. 36 N., R. 30 E., Principal meridian, Phillips County, Montana, will have an annual net cash flow of \$17,000, after deducting royalty, overriding royalty, and operating costs. Its statement of reasons shows that the well has been drilled in the Bowdoin formation, casing set, and the casing perforated at various depths. In May and June of 1982, the casing was again perforated and the formation fractured. A test, run on June 21-23, 1982, and described by appellant as a "24 hour potential test," showed the well to have a rate of flow of 25,000 cubic feet of gas per day.

Although a copy of appellant's statement of reasons was served on the Field Solicitor, no response has been filed in support of MMS' finding or in opposition to appellant's position. The record thus presents an issue of fact whose resolution will determine whether BLM properly found lease M 15761-B to have expired. If the #1-29 Haugness was a well capable of production in paying quantities, 30 U.S.C. § 226(f) (1976) required BLM to serve a notice on appellant by registered or certified mail, allowing appellant a reasonable time, not less than 60 days after notice, within which to place that well in producing status. Edward L. Coltharp, 58 IBLA 234 (1981); Coronado Oil Co., 42 IBLA 235 (1979); American Resources Management Corp., 40 IBLA 195 (1979); Manhattan Resources, Inc., 34 IBLA 346 (1978); 43 CFR 3107.3-2.

BLM's decision of September 9, 1982, is set aside and the case file is remanded to the State Office to review appellant's statement of reasons. If BLM finds that no well capable of production in paying quantities in the communitized area or on the leasehold existed on or before June 30, 1982, due notice shall be given to appellant advising it of the basis for BLM's decision and stating that appellant may request a hearing before an Administrative Law Judge on this issue. See Universal Resources Corp., 31 IBLA 61 (1977). If a hearing is requested, the case shall be forwarded to the Hearings Division, Office of Hearings and Appeals, for assignment to a Judge who will conduct an evidentiary hearing pursuant to 43 CFR 4.415 and who

will render a decision dispositive of the case, which decision shall be subject to appeal to this Board by a party adversely affected thereby. The burden of going forward with the evidence at the hearing and the ultimate burden of proof is upon appellant. Manhattan Resources, Inc., supra; Universal Resources Corp., supra.

It should be recognized that a well capable of producing oil or gas in paying quantities must actually be physically capable of such production at the time in question. Polumbus Corp., 22 IBLA 270, 271-72 (1975); Carl Losey, A-30153 (Dec. 4, 1964); United Manufacturing Co., 65 I.D. 106, 112-13 (1958). Future expectations as to a well and present assessments regarding potential data are to be distinguished from the present status of the well as capable of production in paying quantities. See Polumbus Corp., supra at 271-73. "Paying quantities" has been defined as such quantities of oil or gas as will pay a profit to the lessee over and above the cost of operating the well and the cost of marketing the product. Polumbus Corp., supra at 271.

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 State Office is set aside and the case remanded for action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

