

DAYMON D. GILILLAND

IBLA 87-330

Decided April 5, 1989

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring oil and gas leases U-6821, U-6868, U-0146256, and U-010847 terminated by operation of law for lack of wells capable of producing in paying quantities, and oil and gas lease U-31802 expired as of February 1, 1983.

Affirmed in part, set aside and remanded in part.

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.

2. Hearings -- Notice: Generally -- Oil and Gas Leases:
Termination -- Oil and Gas Leases: Well Capable of
Production -- Rules of Practice: Hearings

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the affected parties are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

APPEARANCES: Daymon D. Gililland, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Daymon D. Gililland appeals from the February 5, 1987, decision of the Utah State Office, Bureau of Land Management (BLM), affirming the decision of the Moab District Manager finding that leases U-6821, U-6868, U-0146256,

and U-010847, in their extended terms by reason of production, no longer contain wells capable of producing oil or gas in paying quantities. The decision also affirmed the requirement to submit plans to abandon the wells on those leases. The BLM decision further noted that, as a result, the leases would be considered to have terminated by operation of law effective December 31, 1986. By follow-up decisions dated February 10, 1987, BLM declared the leases terminated December 31, 1986, due to the lack of a well capable of production in paying quantities. 1/ Additionally, the decision of February 5, 1987, affirmed the District Office order to plug and abandon Well No. 13 on lease U-31802 on the ground this lease expired February 1, 1983. 2/ Record title to the leases is held by the A. Lansdale Trust, and it appears from the record that designation of operator forms naming appellant as the operator of the leases (other than U-31802) were filed in 1984 and 1985. 3/

Lease U-6821 was issued effective September 1, 1968, and has been held by production since 1969 based on Well No. 15 which was completed August 11, 1969, and flow-tested at that time. The well has been shut-in continuously since then and has never been placed in production. Lease U-6868 was issued effective October 1, 1968, and has been held by production since 1969. Well No. 8 on that lease was completed, flow-tested, and shut-in on August 11, 1969. The record indicates that the well was reworked in 1982 and flowed 400 Mcf of gas in a 4-hour test on August 30, 1982, although a sundry notice filed in 1983 indicates some problems with water production. This well remains shut-in and has never been placed in production. Lease U-0146256 was issued in 1965 and classified as held by production since 1969 based on Well No. 1 and Well No. 4, both of which were completed and tested in October 1969. Those wells also were shut-in and have never been placed in production. Lease U-010847 was issued in 1954 and has been held by production since 1962. The only remaining well on this lease is Well No. 3 which was completed and flow-tested in 1962. This well also was shut-in and has not been placed in production.

By letters dated October 7, 1986, the Moab District Office notified appellant that the terms of leases U-6821, U-6868, U-0146256, and U-010847 required that they each contain a well capable of producing leasehold substances, i.e. gas, in paying quantities during their extended terms. Appellant was instructed to make arrangements to test the five shut-in wells

1/ The appeal of the Feb. 5, 1987, decision necessarily encompasses the subsequent decision based thereon declaring the leases terminated for lack of a well capable of production in paying quantities.

2/ There was another aspect of the Feb. 5, 1987, BLM decision which did not involve the leases at issue on this appeal and did not adversely affect the appellant. An order to plug Well Nos. 6 and 2 on lease U-03759 was remanded to the District Office for further review. Appellant has indicated in his statement of reasons for appeal that these wells were subsequently flow-tested and shown productive.

3/ It appears from the record that appellant attempted to have the leases assigned to him. By letter dated June 27, 1986, BLM returned the assignments unapproved because appellant had failed to provide the required bond.

order to demonstrate current productivity. BLM suggested that the wells be flowed for two or three days, the produced fluids measured and monitored, and the pressures recorded. BLM stated that the tests had to be approved and witnessed by BLM personnel and completed within 60 days of receipt of the letters or steps would be taken to terminate the leases. Also by letter dated October 7, 1986, the Moab District Office told appellant that lease U-31802 had expired on January 31, 1983, but that Well No. 13 on that lease had not been plugged or abandoned. BLM requested appellant make arrangements to plug the well within 90 days, and noted that the plugging procedure had to be approved and witnessed by BLM personnel.

On January 5, 1987, ^{4/} the Moab District Office informed appellant by letters that, since appellant had failed to take any action required by the October 7, 1986, letters, he must now submit for BLM approval plans to plug and abandon the wells and reclaim the well sites. Appellant was notified that the District Office was recommending that the leases be terminated for lack of wells capable of production in paying quantities.

By letter dated January 21, 1987, appellant requested technical and procedural review of the District Office decisions. Appellant contended that the requirements of the letters of October 7, 1986, were excessive and unreasonable and that, as a result, he had held meetings with BLM District Office personnel regarding procedures for compliance. ^{5/} Appellant asserted that the testing requirements were modified as a result of the meetings and that he expected further notice of procedures for compliance. Further, appellant submitted technical data in support of his contention that the wells were capable of production in paying quantities.

In the decision under appeal, the BLM State Office found that leases U-6821, U-6868, U-0146256, and U-010847 were in their extended terms with no reported production. BLM concluded that the Moab District Manager correctly required acceptable showings that those leases contained wells capable of production in paying quantities within 60 days and, further, that appellant's failure to test the wells was a tacit admission that the wells were incapable of paying production. BLM affirmed the January 5, 1987, notices requiring plugging of the wells on those leases and stated that lease terminations by operation of law effective December 31, 1986, would proceed. As to lease U-31802, BLM determined that the lease had expired on February 1, 1983, and that appellant was required to submit requests for approval to permanently plug and abandon Well No. 13 on that lease within the 90-day time frame originally allowed.

In his statement of reasons for appeal, appellant incorporates the arguments made in his request for technical and procedural review and

^{4/} The letters were actually misdated as Jan. 5, 1986.

^{5/} The record indicates that by the terms of the Oct. 7, 1986, District Office letters appellant was simultaneously ordered to test seven separate wells within 60 days. The wells included five on the leases held to have terminated and two on lease U-03759 which was remanded by the State Office decision. See note 2, *supra*.

asserts that it was impossible for him to comply with the requirements imposed on him. He alleges that, while the October 7, 1986, letters suggested flowing the wells for 2 or 3 days, he was told by a BLM representative that he would have to flow the wells for 4 days as a minimum. He further states that he was informed that BLM personnel would only be available to observe the tests during the normal work week. He notes that he was in frequent contact with BLM trying to obtain permission to test the wells in a reasonable manner, and that in November 1986, he met with BLM personnel to discuss the requirements for testing the wells. He contends that he was told BLM would contact him further to advise him what exactly he was required to do, but BLM failed to do so. Appellant further asserts that the wells are capable of producing gas in paying quantities. Furthermore, appellant states that the two wells on lease U-03759 which he was allowed to test as a result of the State Office remand had favorable results, and that the wells at issue here are far superior to the tested wells. Appellant asks that he be allowed to demonstrate that wells are capable of producing gas in paying quantities.

As a threshold matter, we note that lease U-31802 was issued as a competitive lease for a term of 5 years effective February 1, 1976. The record reflects that the term of the lease was extended for 2 years until January 31, 1983, by drilling over the initial expiration date. See 43 CFR 3107.1. The resulting well No. 13 was never determined to be capable of production in paying quantities. Hence, by decision of the Utah State Office, BLM, dated September 20, 1983, the lease was held to have expired at the end of the extended term for failure to establish a well capable of production in paying quantities. There is no indication in the record that this decision was appealed. Accordingly, the BLM decision of February 5, 1987, requiring that the well be plugged and abandoned must be affirmed on the ground no timely appeal was filed from the 1983 decision holding the lease to have expired for failure to establish production and, hence, this Board has no jurisdiction now to review that issue. 43 CFR 4.411; Ilean Landis, 49 IBLA 59, 61-62 (1980).

[1] An oil and gas lease 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 after the cessation of production. 30 U.S.C. § 226(f) (1982); see John Swanson, 51 IBLA 239 (1980); Robert Hawkins, 45 IBLA 105 (1980); Universal Resources Corp., 31 IBLA 61 (1977). If BLM properly determined that none of the wells on the leases at issue here was capable of producing gas in paying quantities, then its decisions requiring plugging of the wells and terminating the leases must be affirmed.

BLM properly notified appellant of its questions concerning the current productive status of appellant's wells, and instructed appellant to test the wells to demonstrate their current productivity. 6/ It appears

6/ BLM did not demand that appellant actually place the wells into production. In fact, in the Oct. 7, 1986, letters, BLM stated that if the

that appellant responded to the notices by contacting BLM officials and seeking to work out details for the tests. It further appears that there was some difference of opinion among BLM personnel as to what was required to comply with the test procedures. Appellant has presented technical data in support of his contention that the wells at issue are capable of production in paying quantities. It now appears that appellant is prepared to test these wells and, indeed, that tests permitted by BLM on remand for the wells on U-03759 indicated that they were capable of production.

[2] The Board has held that upon a determination that production has ceased on an oil and gas lease in its extended term by reason of no production because the well on the lease is no longer capable of production in paying quantities, the affected parties, including the lease operator and the lessees of record, are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well. John Swanson, supra; Universal Resources Corp., supra. In this case we find it appropriate to remand to BLM to allow appellant additional time to test the wells. Any time constraints set by BLM should be strictly adhered to by appellant on remand. If, after reviewing the test results and any additional evidence submitted by appellant, BLM determines that there is no well capable of production in paying quantities on the leases, notice should be given to appellant (and the lessee) by BLM advising them of the basis of the determination and informing them that they may request a hearing before an Administrative Law Judge regarding the existence of a well capable of producing in paying quantities. If a hearing is requested, the case shall be transmitted to the Hearings Division, Office of Hearings and Appeals. If a hearing is held, appellant will have the burden of going forward with the evidence and the ultimate burden of establishing the existence of a well capable of producing gas in paying quantities. See John Swanson, supra at 242.

Accordingly, 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 to lease U-31802, and set aside and remanded as to leases U-6821, U-6868, U-0146256, and U-010847.

C. Randall Grant
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

fn. 6 (continued)

well tests were successful, BLM would then be able to approve appellant's requests for temporary abandonment of the wells for several more years or until the market changed.

