



SAVOY ENERGY, L.P.

178 IBLA 313

Decided January 5, 2010



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

SAVOY ENERGY, L.P.

IBLA 2009-289

Decided January 5, 2010

Appeal from a decision of the Deputy State Director – Division of Natural Resources, Eastern States Office, Bureau of Land Management, affirming the termination of a suspension of operations and production for three onshore Federal oil and gas leases. MIES 48779, 50521, 51563.

Affirmed as modified and remanded as to MIES 51563; reversed as to MIES 48779 and 50521.

1. Oil and Gas Leases: Suspensions

A suspension of operations and production for an onshore Federal oil and gas lease granted under section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (2006), terminates by operation of law when lease activity commences.

2. Oil and Gas Leases: Suspensions

The provisions of the second sentence of 43 C.F.R. § 3103.4-4(a) providing for a suspension of operations or a suspension of production for a Federal onshore oil and gas lease by reason of *force majeure*, that is, due to matters beyond the reasonable control of the lessee, apply only to leases that have a well capable of production.

APPEARANCES: James R. Peterson, Esq., Grand Rapids, Michigan, for appellant; Stephen G. Mahoney, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Pittsburgh, Pennsylvania, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEATH

Savoy Energy, L.P., appeals from a decision of the Deputy State Director – Division of Natural Resources, Eastern States Office, Bureau of Land Management (BLM), dated April 27, 2009, affirming the decision of the BLM Milwaukee Field Office (MFO) terminating the suspension of operations and production for Federal oil

and gas leases MIES 48779, MIES 50521, and MIES 51563, previously granted effective September 1, 2003. The termination of the suspension was effective as of May 1, 2009. For the reasons explained below, we (1) affirm the termination of the suspension for Lease 51563, but modify as to the termination date and remand for redetermination of the suspension period and the lease expiration date, and (2) reverse the termination of the suspension for Leases 48779 and 50521.

### *Background*

BLM issued 10-year competitive oil and gas lease MIES 48779 (Lease 48779), covering 1,119 acres in secs. 8 and 9, T. 25 N., R. 1 W., Michigan Meridian, in Crawford County, Michigan, to Meridian Energy Corp., effective August 1, 1997. Administrative Record (AR) File A, Tab 25.<sup>1</sup> This lease, which contains certain stipulations regarding surface use, was assigned to Savoy effective June 1, 2003. AR File A, Tab 21. BLM issued 10-year competitive oil and gas lease MIES 50521 (Lease 50521), covering 280 acres in sec. 7 of the same township, to Catawba Energy, Inc., effective February 1, 2000. AR File B, Tab 23. This lease, which was issued with a no-surface occupancy stipulation, was assigned to Savoy effective April 1, 2000. AR File B, Tab 22. BLM issued 10-year competitive oil and gas lease MIES 51563 (Lease 51563), covering 1,360 acres in secs. 8, 16, and 17 of the same township, to Savoy effective August 1, 2002. AR File C, Tab 18. This lease also included stipulations regulating surface use. Through various assignments, all three leases are owned 73.9 percent by Savoy and 26.1 percent by Aurora Energy Ltd. All three leases are situated on acquired Federal lands within the Huron-Manistee National Forest. The surface is managed by the U.S. Forest Service (USFS) under the Huron-Manistee National Forest Land and Resource Management Plan.

On May 7, 2003, Savoy filed an Application for Permit to Drill (APD) a gas well, the USA & State South Branch #1-8, to be directionally drilled from a surface location on Lease 48779 northwest approximately one-half mile to a bottom hole location on Lease 50521. BLM Case Recordation Serial Register Page for Lease 50521, AR MIES 51521 Lease File, at 1; *see* Statement of Reasons (SOR) Ex. 4 at 6-8. On September 10, 2003, Savoy requested a suspension of operations and production for the three leases under 43 C.F.R. § 3103.4-4. SOR Ex. 1. Savoy explained that it had begun negotiations to communitize portions of the leases with various State leases, and the processing of its APD for the South Branch #1-8 well was delayed significantly due to public controversy about the proposed well's impact on highly valued nearby State land known as the Mason Tract. *Id.* In addition to the APD, Savoy had applied for a drilling permit with the State of Michigan for the South

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<sup>1</sup> In addition to the lease files, documents were assembled into three files, one for each lease: MIES 48779 – File A, MIES 50521 – File B, and MIES 51563 – File C. All of these files are part of the AR.

Branch #1-8 well and for a surface use permit with USFS. BLM found that there was no clear time frame for either final decisions with regard to necessary permits or resolution of potential litigation regarding such permits. Letter dated Nov. 7, 2003, from the BLM MFO to Savoy, AR File A, Tab 19 (SOR Ex. 2), at 1-2.<sup>2</sup> BLM concluded that “granting such a suspension is warranted when BLM or other Surface Management Agencies need more time to make a decision on an action proposed by a lessee,” and, therefore, that a suspension would be in the interest of conservation. *Id.* at 2. Consequently, on November 7, 2003, BLM granted a Suspension of Operations and Production for all three leases effective September 1, 2003. *Id.*; see also AR File A, Tab 16. The letter granting the suspension prescribed the duration of the suspension as follows:

The Suspension granted shall collectively remain in effect for all three leases until:

- all necessary permits from the BLM, USFS and [the State of Michigan] for the USA State South Branch #1-8, or a similar well, are issued and all environmental disputes and/or legal entanglements related to the above described dispute, or similar disputes, are firmly and finally concluded or,
- all plans to drill the USA State South Branch #1-8, or similar well, are formally abandoned by Savoy Energy, LP or its successors in interest for the USA State South Branch #1-8, or any similar well or,
- other properly permitted wells are drilled on or into one or more of these leases or,
- one or more of these leases are allocated production from wells outside their lease boundaries via a Communitization Agreement, Unit Agreement, Forced Pooling Decision, Compensatory Royalty Agreement or some other form of “Pooling Agreement.”

The Suspension granted shall individually remain in effect for any of the three Federal leases described above that cannot be separately developed due to environmental disputes or legal entanglements

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<sup>2</sup> The documents in AR Files A, B, and C are similar or often identical. When referring to AR File A, the same document will be found in the other two files unless otherwise noted, though not necessarily with the same identifying tab number.

related to Savoy's proposal to drill the USA State South Branch #1-8 well, or similar environmental disputes and/or legal entanglements.

AR File A, Tab 19 (SOR Ex. 2) at 2 (underscored emphasis in original). Lease terms and rental payments were suspended for the duration of the suspension, with the term of each lease extended by the period of the suspension. AR File A, Tab 16.

In August 2004, the USFS issued an environmental assessment (EA) and a biological assessment (BA) which became the basis for issuing a Finding of No Significant Impact (FONSI) for Savoy's proposed drilling project on January 1, 2005. SOR Ex. 4 at 9. On June 8, 2005, various plaintiffs filed suit in the United States District Court for the Eastern District of Michigan against USFS and BLM, asserting they had violated various statutes, including section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C). See *Anglers of the Au Sable v. U.S. Forest Service*, 565 F. Supp. 2d 812 (E.D. Mich. 2008).<sup>3</sup> Meanwhile, on August 4, 2005, BLM, relying on the USFS EA, approved Savoy's APD for the South Branch #1-8 well. 565 F. Supp. 2d at 819; BLM Case Recordation Serial Register Page for Lease 50521 at 1. However, on December 7, 2005, the District Court enjoined the drilling project pending a final decision. SOR Ex. 3; 565 F. Supp. 2d at 820.

Savoy's proposed Communitization Agreement (CA) involving all three Federal leases, CA MIES 051795, apparently has been neither approved nor disapproved and is still pending. In the meantime, however, on July 28, 2006, the MFO approved CA MIES 053742, effective October 1, 2006, whereby 320 acres of land within Lease 51563 were communitized with 320 acres of land owned by the State of Michigan. The unit well for that CA, USA & State Branch #1-16, was located on Lease 51563. AR File C, Tab 8. The APD for the Branch #1-16 well was approved on May 10, 2006. BLM Case Recordation Serial Register Page for Lease 51563, AR MIES 51563 Lease File, at 1. The well was completed as a dry hole on November 20, 2006, and CA MIES 053742 later expired under its own terms on October 1, 2008. AR File C, Tab 7.

On July 10, 2008, the District Court in *Anglers of the Au Sable* declared that the USFS' Decision Notice, EA, and FONSI for the South Branch #1-8 well project were inadequate under NEPA in several respects, and enjoined USFS and BLM from relying on them. 565 F. Supp. 2d at 815-16, 840.<sup>4</sup> Based upon the court's ruling, BLM rescinded the approval of the APD for the South Branch #1-8 well on January 9,

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<sup>3</sup> SOR Ex. 4 is a copy of this opinion.

<sup>4</sup> USFS and BLM appealed the District Court decision but later withdrew the appeal. Answer at 8.

2009, and provided Savoy 30 days to notify BLM whether Savoy would pursue further processing of the APD. SOR Ex. 5.<sup>5</sup> By letter dated February 4, 2009, Savoy advised BLM it desired to continue the processing of the APD for the South Branch #1-8 well. SOR Ex. 6.

On February 26, 2009, Savoy requested confirmation that the suspension was still in effect for the three leases. SOR Ex. 7.<sup>6</sup> On March 12, 2009, BLM responded, stating simply: “[T]he reasons for granting the Suspension no longer apply. Consequently, the Suspension for Federal leases MIES 048779, MIES 050521 and MIES 051563 is hereby terminated, effective May 1, 2009.” AR File A, Tab 7.

On April 10, 2009, Savoy requested State Director review under 43 C.F.R. § 3165.3(b), asserting that BLM’s March 12 decision lacked a rationale or support for its summary conclusion. AR MIES 50521 Lease File; SOR Ex. 9. Savoy argued that the *Anglers of the Au Sable* litigation forestalled its beneficial use of the leases and put the matter of environmental review back in the sole jurisdiction of BLM and USFS and beyond Savoy’s control. SOR Ex. 9 at 2. Savoy further emphasized that it had repeatedly advised BLM that Savoy wants BLM to process the APD. *Id.* at 3.

On April 27, 2009, the Deputy State Director – Division of Natural Resources, Eastern States Office, BLM, upheld the MFO’s termination of the suspension for all three leases. AR File A, Tab 6. He determined that the drilling of the Branch #1-16 well on Lease 51563 terminated the suspension of operations for that lease. He noted that the November 7, 2003, suspension was to collectively remain in effect for all three leases until one of four contingencies occurred, the third of which was “[o]ther properly permitted wells are drilled on or into one or more of these leases.” *Id.* at 1. He concluded that drilling the well on Lease 51563 terminated the suspension for that lease as well as the suspensions for the other two leases. *Id.* at 2. Noting Savoy’s desire to pursue the APD for the South Branch #1-8 well, the Deputy State Director said that notwithstanding efforts by the MFO to schedule a meeting, no meeting had occurred. He further stated that with the dismissal of the judicial case pertaining to the South Branch #1-8 well, there were “no longer any legal entanglements preventing the development” of Leases 48779 and 50521. *Id.* He affirmed the termination of the suspensions effective May 1, 2009, and set new expiration dates based on the assumption that the primary term of each of the leases resumed running on May 1, 2009. *Id.* Savoy then appealed to this Board.

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<sup>5</sup> The document was erroneously dated Jan. 9, 2008.

<sup>6</sup> We did not find a copy of the Jan. 9, 2009, Feb. 4, 2009, and Feb. 26, 2009, letters in any of the files in the AR that BLM submitted.

On July 24, 2009, USFS notified BLM that USFS “will pursue completion of an EIS [environmental impact statement] to document and disclose potential effects” of the proposed South Branch #1-8 well. Answer Ex. B.

The questions before us are whether BLM properly terminated the collective suspension for all three leases and the individual suspension for each of the leases, and, if so, whether the effective date of the terminations was correct.

### *Analysis*

#### *I. The Collective Suspension of the Three Leases and the Suspension of Lease 51563 Terminated When Activities on that Lease Began.*

Section 39 of the Mineral Leasing Act (MLA) provides in relevant part:

In the event the Secretary of the Interior, *in the interest of conservation*, shall direct or shall assent to the suspension of *operations and production* under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. *The provisions of this section shall apply to all oil and gas leases issued under this chapter*, including those within an approved or prescribed plan for unit or cooperative development and operation.

30 U.S.C. § 209 (2006) (emphasis added).<sup>7</sup> BLM regulations at 43 C.F.R. § 3103.4-4(a) likewise provide in relevant part:

A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources.

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<sup>7</sup> The MLA applies to public domain lands and does not authorize leasing on acquired lands. *E.g.*, *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 65 (1966); *Kerr-McGee Corp. v. United States*, 32 Fed. Cl. 43, 44 (1994). Acquired lands, such as those involved here, are leasable under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-360 (2006), “under the same conditions as contained in the leasing provisions of the mineral leasing laws . . . .” 30 U.S.C. § 352 (2006); *Kerr-McGee Corp. v. United States*, 32 Fed. Cl. at 44. Thus, the suspension provisions of section 39 of the MLA apply to the leases in the instant case. The BLM onshore oil and gas leasing regulations at 43 C.F.R. Part 3100 apply to acquired lands. 43 C.F.R. § 3100.0-3(b).

As noted above, when BLM granted the suspension to Savoy effective September 1, 2003, BLM found that it was in the interest of conservation. AR File A, Tab 19 (SOR Ex. 2) at 2. BLM regulations at 43 C.F.R. § 3165.1(c) further provide:

If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer. Suspensions will terminate when they are no longer justified in the interest of conservation, when such action is in the interest of the lessor, *or as otherwise stated by the authorized officer in the approval letter.* [Emphasis added.]

BLM argues that the suspension was properly terminated under its terms for Lease 51563 because the Branch #1-16 well was an “other properly permitted well[]” and was drilled on that lease. Answer at 12.

By its terms, as stated in the approval letter quoted above, the suspension “shall collectively remain in effect for all three leases until: . . . other properly permitted wells are drilled on or into one or more of these leases . . . .” The Branch #1-16 well clearly was a properly permitted well, and was drilled on Lease 51563, one of the three leases involved. Drilling that well therefore terminated the collective suspension of the leases.

Further, the “environmental disputes and legal entanglements” involving the South Branch #1-8 well did not prevent exploration on Lease 51563 through the Branch #1-16 well. Thus, the provision in the suspension approval letter that the suspension “shall individually remain in effect for any of the three Federal leases described above that cannot be separately developed” due to those environmental disputes or legal entanglements does not apply to continue the suspension for Lease 51563.<sup>8</sup> Accordingly, we affirm the termination of the collective suspension and the suspension for Lease 51563.

However, the May 1, 2009, effective date of BLM’s termination of the collective suspension and of the suspension for Lease 51563 is inconsistent with both the terms of the suspension approval and established legal principles. The collective suspension was to remain in effect “*until*: . . . other properly permitted wells are drilled on or into one or more of these leases.” (Emphasis added.) By its own terms, the collective suspension terminated not later than November 20, 2006, when the

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<sup>8</sup> Nor did the individual lease suspension revive simply because the Branch #1-16 well was a dry hole.

Branch #1-16 well was completed, not on a date that BLM selected years after the fact.<sup>9</sup>

[1] Moreover, a suspension of operations and production under section 39 of the MLA cannot be used to expand the actual period prescribed by Congress for which beneficial use of a lease is granted to the lessee. No operations are allowed during the time a suspension of operations and production is in effect. *See Sol. Op. M-36953, Oil & Gas Lease Suspension*, May 31, 1985, 92 I.D. 293. As the Solicitor explained:

We conclude that a “suspension of operations and production” under section 39 of the Act [the MLA] means just that--no operations are allowed and no production is allowed. Section 39 was enacted to provide extraordinary relief when lessees are denied beneficial use of their leases. No Congressional statement or Departmental precedent recognizes section 39 as granting a lessee relief from lease expiration while at the same time allowing the lessee to conduct operations he should have completed during the primary term or the extensions authorized by the Act. Therefore, if a lease is suspended under section 39 of the Act, the lessee may not conduct activity on the leased lands which would otherwise be beneficial use authorized under the terms and conditions of the lease.

*Id.* at 298-99 (footnote omitted).<sup>10</sup> The Solicitor went on to conclude:

In the future, a suspension of operations and production should prohibit all beneficial use of the lease. No lessee should be allowed to conduct access road construction on the leased lands, site preparation, well repair, drilling, or similar activity while a lease is suspended as to both operations and production or as to operations. *Thus, a suspension ends when lease activity, not just actual drilling, commences.*

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<sup>9</sup> It is unclear whether the language “until: . . . other properly permitted wells are drilled” refers to the commencement of drilling or the completion of the well drilled. However, in light of the principle discussed below that suspensions of operations and production under section 39 of the MLA terminate by operation of law when lease activity begins, it is not necessary to resolve this issue.

<sup>10</sup> Solicitor’s M-Opinions are binding on this Board. *See, e.g., United States v. Rannels*, 175 IBLA 363, 377 n.14 (2008) (citing *Sol. Op. M-37003, Binding Nature of Solicitor’s Opinions on the Office of Hearings and Appeals* (Jan. 18, 2001) (Secretary Babbitt concurring)).

*Id.* at 304. It follows that the suspension for Lease 51563 terminated by operation of law when activities on that lease began.<sup>11</sup>

Accordingly, while affirming the termination of the collective suspension and the suspension for Lease 51563, we modify the effective date to the date that activities on that lease began. That date is not identified in the record, but certainly was before November 20, 2006, when the well was completed as a dry hole. We therefore will remand to BLM to redetermine the suspension termination date and the new expiration date of Lease 51563.<sup>12</sup>

II. *The Individual Lease Suspensions for Leases 48779 and 50521 Continued by Operation of the Suspension's Terms.*

Savoy argues that the drilling of the Branch #1-16 well on Lease 51563 does not affect the suspension of Leases 48779 and 50521 because of the provision in the suspension approval that it “shall individually remain in effect for any of the three Federal leases described above that cannot be separately developed due to environmental disputes or legal entanglements” related to the proposal to drill the South Branch #1-8 well. SOR at 5. Savoy maintains that the “legal entanglements” preventing it from developing those leases “are not resolved simply because the lawsuit is over.” *Id.* Savoy argues that the APD was rescinded based upon the court’s ruling that the EA and FONSI were inadequate. Whether and when adequate environmental review will be completed, Savoy argues, is “solely within BLM’s and USFS’ control,” and, thus, the “legal entanglements” preventing beneficial use and development of the leases are not resolved. *Id.*

BLM argues that the drilling of the South Branch #1-16 well on Lease 51563 terminated the suspension for Leases 48779 and 50521. BLM also reasons that “MIES 48779 and 50521 were the subject of the *Anglers of the Au Sable* litigation and therefore were subject to an environmental dispute and legal entanglement, however,

<sup>11</sup> The *BLM Manual* correctly states: “When all operations and production are suspended, the commencement of operations (as defined in the Glossary) or production shall be regarded as terminating the suspension . . . .” *BLM Manual* § 3160-10.21.A.1.

<sup>12</sup> Savoy argues that termination of the suspension was wrong because “the facts underlying the BLM’s November 7, 2003 finding that the suspension was in the interest of conservation have not changed.” SOR at 4. Assuming, *arguendo*, that this is so, it does not overcome the termination of the collective suspension by its express terms. However, if it wishes to do so, Savoy is free to request another suspension of operations and production for Lease 51563 on the basis that such a suspension would be in the interest of conservation.

that case is over and the appeal was dismissed.” Answer at 12. BLM contends that the suspension was granted because of the now-ended legal dispute and not to conduct environmental studies, and asserts that the likelihood that any subsequent environmental review will result in further litigation is speculative at this time. *Id.*

The question is whether either “environmental disputes” or “legal entanglements” continue to prevent development of Leases 48779 and 50521. While the *Anglers of the Au Sable* litigation has ended, it is unclear whether that means the end of “legal entanglements.” In any event, however, it does not appear to us that “environmental disputes” preventing development of those two leases ended with the District Court’s decision and the Government’s withdrawal of its appeal. The environmental disagreement between the parties has not been resolved. BLM is now preparing an EIS for Savoy’s APD for the South Branch #1-8 well. It is not possible to know whether preparation of the EIS will resolve the disagreement or dispute between the parties until the EIS is completed, particularly in view of the controversy surrounding the potential effects of the drilling proposal on lands within the Mason Tract. If the plaintiffs in the earlier litigation or other interested parties regard the EIS as inadequate, they may challenge it either administratively or judicially. But we cannot simply assume at this point that they will accept the EIS and acquiesce in approval of the APD. Therefore, the environmental dispute continues to prevent approval of the APD and development of the leases pending completion of the EIS and resolution of whatever challenges to the EIS that may be asserted. The individual lease suspensions for Leases 48779 and 50521 therefore continue in effect under the terms of the suspension.

*III. Continuing the Individual Lease Suspension for Leases 48779 and 50521 Is Consistent with Cases Interpreting Section 39 of the MLA.*

The Board has construed section 39 of the MLA as providing for suspension of Federal onshore oil and gas leases either:

- (1) where some act, omission, or delay by a Federal agency, beneficial use of the lease has been precluded, such as where delays imposed upon the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee “timely access” to the property; or
- (2) in the interest of conservation, that is to prevent damage to the environment or loss of mineral resources.

*Harvey E. Yates Co.*, 156 IBLA 100, 105 (2001) (quoting *Robert D. St. John*, 141 IBLA 147, 151-52 (1997)), and cases cited. In this case, as described above, BLM determined that both reasons applied. It identified the barriers to beneficial use of the leases and suspended the leases pending resolution of the delays in approving the

APD resulting from the environmental disputes, finding that doing so was in the interest of conservation. AR File A, Tab 19 at 1-2.

It is still the case that all necessary permits for the South Branch #1-8 well have not been issued. The APD for the South Branch #1-8 well remains pending, and approval of the APD awaits the additional environmental review required under the District Court's decision in *Anglers of the Au Sable* that is now in progress. Effectively, Leases 48779 and 50521 are in the same position they were in when the suspension originally was granted. In the words of *Harvey E. Yates Co. and Robert D. St. John*, quoted above, this would seem to come within "delays imposed upon the lessee due to administrative actions addressing environmental concerns [which] have the effect of denying the lessee 'timely access' to the property."

Thus, continuing the individual suspensions for Leases 48779 and 50521 as the terms of the suspension require is consistent with the Department's longstanding interpretation of section 39 of the MLA. Accordingly, we reverse BLM's decision terminating the suspension of these two leases.

IV. *The Force Majeure Provisions of 43 C.F.R. § 3103.4-4(a) Do Not Apply.*

[2] The BLM suspension rule at 43 C.F.R. § 3103.4-4(a) further provides, in the second sentence:

A suspension of operations *only* or a suspension of production *only* may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. [Emphasis added.]

Savoy argues that this case is a "classic example of a *force majeure* situation." SOR at 4. Savoy argues that the injunction entered in the *Anglers of the Au Sable* case and the Court's determination that the EA and FONSI were inadequate—matters which are beyond Savoy's control—have prevented Savoy from the beneficial use of its leases. Thus, it argues, the suspension (for all of the leases) never should have been terminated. *Id.*

Savoy misunderstands the rule. The instant case involves a suspension of operations *and* production under 30 U.S.C. § 209 (2006) and the first sentence of 43 C.F.R. § 3103.4-4(a), quoted previously.<sup>13</sup> The second sentence of the rule,

<sup>13</sup> *I.e.*, "[a] suspension of all operations and production may be directed or consented (continued...)

quoted immediately above, providing for a suspension of operations only or a suspension of production only, implements a different statutory suspension authority, namely, section 17(i) of the MLA, 30 U.S.C. § 226(i) (2006). Section 17(i) provides in pertinent part: “No lease issued under this section shall expire because *operations or production* is suspended under any order, or with the consent, of the Secretary.” (Emphasis added.)<sup>14</sup>

Before amendments to the MLA in 1987, section 17(i) was codified as section 17(f).<sup>15</sup> In 1985, in Sol. Op. M-36953, in connection with reviewing the history of this language, the Solicitor explained:

Section 17(f) was added to the Act [the MLA] in 1954 principally to provide relief for lessees *who have a well capable of production but are not actually producing* and to expand the then-existing provision for relief from lease expiration when production ceases but drilling operations are being conducted by allowing 60 days for diligent drilling or reworking to commence to reestablish production.

92 I.D. at 299 (emphasis added).

The regulation discussed above, 43 C.F.R. § 3103.4-4, was promulgated in 1988 as section 3103.4-2. 53 Fed. Reg. 17340, 17354 (May 16, 1988).<sup>16</sup> The preamble to the proposed rule, 52 Fed. Reg. 22592 (June 12, 1987), explained:

The proposed rulemaking would amend § 3103.4-2 which sets out the policy and procedure for the suspension of oil and gas leases. An opinion of the Solicitor (M-36953, 92 I.D. 293 (1985)) provides the

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<sup>13</sup> (...continued)

to by the authorized officer only in the interest of conservation of natural resources.”

<sup>14</sup> Section 17(j) also provides that no lease shall be terminated for cessation of production as long as reworking or drilling operations begin within 60 days after cessation of production and are conducted with reasonable diligence. It further provides that no lease with a well capable of producing oil or gas in paying quantities shall expire because of failure to produce unless the lessee is allowed not less than 60 days after notice to place the well in producing status.

<sup>15</sup> Subsection (f) was redesignated as subsection (i) by section 5102(d)(1) of the Federal Onshore Oil and Gas Leasing Reform Act, Pub. L. No. 100-203, 101 Stat. 1330-257 (Dec. 22, 1987).

<sup>16</sup> It was redesignated as section 3103.4-4 at 61 Fed. Reg. 4748, 4750 (Feb. 8, 1996).

following interpretation of the lease suspension provisions contained in sections 39 and 17(f) of the Mineral Leasing Act (30 U.S.C. 209; 226(f)): . . . . The opinion further notes that section 17(f) contains no standard for the granting of a suspension of operations or of production. . . . Under the proposed change, a suspension of operations or of production would be directed or approved where the lessee, despite the exercise of due care and diligence, is prevented from producing or operating by reason of *force majeure*, *i.e.*, by matters beyond the reasonable control of the lessee. This would include events such as strikes, acts of God and unforeseeable administrative delay which would not qualify<sup>17</sup> the lease for a section 39 suspension “in the interest of conservation.”

52 Fed. Reg. at 22595. Thus, the *force majeure* suspension provisions in the second sentence of 43 C.F.R. § 3103.4-4(a) implement section 17(i) of the MLA, which pertains to leases that have a well capable of production. It does not apply to leases on which there has been no drilling, or to suspensions of operations *and* production for such leases under section 39 of the MLA. As we noted in *Paco Production Co.*, 145 IBLA 327, 332 (1998):

Where there has been no commencement of operations and no production, as here, however, a lease may not be suspended under this provision [the second sentence of 43 C.F.R. § 3103.4-4(a)] by the existence of *force majeure* conditions. *See, e.g., Alfred G. Hoyle*, 123 IBLA 169, 188 (1992).

Therefore, the *force majeure* suspension provisions do not apply in this case, and Savoy’s reliance on them is misplaced.

#### *Conclusion*

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, and for the reasons discussed above, we affirm the termination of the collective suspension for all three leases and the individual lease suspension for Lease 51563, but remand to BLM to redetermine the

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<sup>17</sup> So in original; should read “qualify.”

effective date of the termination and the expiration date of Lease 51563. We reverse the termination of the individual lease suspensions for Leases 48779 and 50521.<sup>18</sup>

\_\_\_\_\_/s/  
Geoffrey Heath  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
R. Bryan McDaniel  
Administrative Judge

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<sup>18</sup> Savoy requested a hearing before an administrative law judge “on issues of fact, or on any other issues deemed appropriate” under 43 C.F.R. § 4.415. SOR at 6. Section 4.415 allows parties to request a hearing on issues of fact. There being no disputed issue of fact that is material to the outcome of this appeal, Savoy’s request is denied.