



RIDGEWAY ARIZONA OIL CORPORATION

181 IBLA 232

Decided July 25, 2011



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

RIDGEWAY ARIZONA OIL CORPORATION

IBLA 2011-44

Decided July 25, 2011

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring a Federal oil and gas lease to have expired due to cessation of production. NMNM 0267786.

Affirmed as modified.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Extensions--Oil and Gas Leases: Production--Oil and Gas Leases: Termination

A noncompetitive oil and gas lease has a primary term of 10 years, and shall continue so long after its primary term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (2006). When production ceases on an oil and gas lease which is in an extended term by reason of production, the lease will terminate unless (1) within 60 days after cessation of production reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of nonproduction, or so long as oil or gas is produced in paying quantities as a result of such operations; (2) an order or consent of the Secretary suspending operations or production on the lease has been requested and issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time of not less than 60 days after notice to do so and thereafter continues production unless and until the Secretary allows production to be discontinued.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Extensions--Oil and Gas Leases: Production--Oil and Gas Leases: Termination

When none of the circumstances set forth in the Mineral Leasing Act, 30 U.S.C. § 226(i) (2006), that could save a lease in its extended term from termination because of cessation of production materializes in the 60 days following cessation of production, the lease terminates by operation of law effective as of the date production ceased, not 60 days after appellant receives the notice BLM has chosen to give lessees under 43 C.F.R. § 3107.2-2.

APPEARANCES: Mary Lynn Bogle, Esq., Roswell, New Mexico, for appellant; Michael C. Williams, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Ridgeway Arizona Oil Corporation (Ridgeway)¹ has appealed from a September 21, 2010, decision of the New Mexico State Office (NMSO), Bureau of Land Management (BLM), declaring oil and gas lease NMNM 0267786 to have expired by cessation of production effective April 19, 2010. As explained below, we affirm BLM's decision as modified.

BACKGROUND

On March 22, 1962, BLM issued lease NMNM 0267786 for a 10-year term, effective June 1, 1962, to O. L. Garretson, the predecessor-in-interest to the present lessees of record, Fina Oil and Chemical Company, Tom Ingram, Permian Resources, Inc., and Union Pacific Oil & Gas Company. Administrative Record (AR) at tab 16.² Lease NMNM 0267786 first produced on February 18, 1965, and has

¹ Ridgeway and EOR Operating Company (EOR) are authorized operators of certain oil and gas property interests in New Mexico, including lease NMNM 0267786. "Ridgeway and EOR are brother/sister corporations, related by a common parent company." Statement of Reasons (SOR) at 2.

² The documents in the AR for lease NMNM 0267786 are marked by numbered tabs. Also, the pages in the AR are numbered in reverse order. We cite only to the tab number.

been in its extended term since May 31, 1972. AR at tab 15. The last production recorded on the lease was in November 2007. *Id.*

On August 22, 2008, EOR submitted a Form 3160-5 Sundry Notice to BLM notifying BLM that Ridgeway was accepting responsibility under a Statewide BLM Bond for lease NMNM 0267786 and taking over as operator of two wells on the lease. AR at tab 7. In February 2009, BLM's Roswell Field Office (RFO) met with representatives of Ridgeway who agreed to submit a plan of development to BLM for lease NMNM 0267786. *See* AR at tab 8, 203. On June 15, 2009, BLM sent Order No. 93-017-09W to Ridgeway requiring Ridgeway to submit "a plan of development to BLM for approval no later than July 13, 2009." *Id.* at 202. BLM explained that a

complete plan of development must include plans for individual wells and facilities. Any locations that have surface compliance issues need a proposed corrective action. The plan must include, on a well-by-well basis, specific plans for bringing shut-in or temporarily abandoned well bores into compliance with Federal regulations (*i.e.*, return to production, casing integrity testing in preparation for temporary abandonment, or plugging and abandonment procedures). Time frames for bringing these wells and surface facilities into compliance must also be specified.

Id. at 203.

On August 1, 2009, Ridgeway submitted to the RFO a "plan of operations" consisting of just over one page. AR at tab 9. Ridgeway stated that in the year since taking over operations, it had "[t]oured and documented surface facilities and surface conditions and itemized areas to correct deficiencies" and to "[t]ag with wire line to establish current depth of well bores and evaluate surrounding production for possible re-completion in the San Andres formation." *Id.* Ridgeway's plan of operations contained what BLM, in its Answer, refers to as "cursory proposals for surface remediation." Answer at 7; *see* AR at tab 9.

On February 22, 2010, the RFO accepted Ridgeway's plan of operations "for a period of 60 days ending April 23, 2010." AR at tab 11. However the RFO identified two major deficiencies in Ridgeway's plan of development: (1) the two wells on lease NMNM 0267786 were in "Temporary Abandoned" status without the requisite BLM approval; and (2) the plan did not address the requested mechanical integrity tests of the down-hole equipment on these wells to establish the condition of each wellbore. *Id.* The RFO informed Ridgeway that it

must place at least one of the wells on continuous production for a minimum of sixty (60) days (43 CFR 3107.2-3) on or before April 23, 2010. If reworking or drilling operations have not commenced or one well is not placed on continuous production by April 23, 2010, the lease NM-0267786 will be subject to termination by a 60 day letter sent by certified mail.

Id.

On March 5, 2010, the RFO received a letter from Ridgeway requesting an extension of time to implement “a revised 10 month plan of reactivation starting March 1, 2010 through December 31, 2010.” AR at tab 12. By letter dated April 15, 2010, the RFO denied Ridgeway’s request for an extension because there was still no well capable of production in paying quantities on the lease. AR at tab 13.³ In this letter, the RFO informed Ridgeway that it had 60 days from receipt of the letter to commence testing, reworking, or drilling operations on the leasehold and warned that failure to do so would result in automatic termination of lease NMNM 0267786 effective on the date of receipt of the letter. *Id.* The letter further stated that lease NMNM 0267786 would remain in full force and effect if approved operations were commenced and were conducted with reasonable diligence during the period of non-production. Ridgeway received the letter on April 19, 2010, and thus had until June 19 to restore production in paying quantities. *Id.* The RFO explained that “the subject lease is in its extended term by production and can only remain in full force and effect so long as oil or gas is being produced in paying quantities under 43 CFR 3107.2-1.” *Id.*

In a Sundry Notice–Notice of Intent, dated May 17, 2010, Ridgeway provided notice to the RFO that it intended to restore production to the Garretson #1 well on lease NMNM 0267786. *See* AR, Garretson #1 well sub-file at tab 2. Ridgeway estimated it would commence work by June 1, 2010, stating that it would need to repair downhole failure and reactivate the pumping unit, to add tanks/vessels, and to complete other construction on the existing Garretson production facility. *Id.* The RFO accepted this Notice of Intent on June 4, 2010, subject to Ridgeway’s completing all the specified work and returning the well to production by September 2, 2010. AR at tab 16. The record does not show that BLM received any subsequent report from Ridgeway stating whether Ridgeway had completed the construction work projected in its May 17, 2010, Notice of Intent. *Id.*

³ In its Answer, BLM states that “[l]ease NMNM 0267786 is not part of any present unit or the subject of any pending request by Ridgeway for unitization.” Answer at 8.

In another Sundry Notice–Notice of Intent, dated August 19, 2010, Ridgeway informed the RFO of its intent to recomplete the Garretson #1 well on lease NMNM 0267786 starting October 1, 2010. AR, Garretson #1 well sub-file at tab 3. The Notice stated that Ridgeway had “rigged up, ran a wireline and tagged plugged back total depth at 9085 feet, and rigged down on August 19.” *Id.*; *see* AR at tab 15.

On September 8, 2010, the RFO denied Ridgeway’s Notice because Ridgeway had failed to commence diligent operations on the Garretson #1 well. *Id.* On September 10, 2010, the RFO inspected lease NMNM 0267786 and took photographs of the Garretson #1 and #2 wells showing that both wells lacked a pump jack over the wellbore needed for production. AR, sub-file for Garretson #1 well at tab 4. The Garretson #1 and #2 wells each consisted of only one cement slab and an open hole with a bull plug.⁴ *Id.* In addition, both well sites were littered with corroded pipes, a tank battery in disrepair, and unknown leaky rusty fluids indicating that production was not occurring. *Id.* at 58-61; *see also* AR at tab 19 (showing the location of the two wells). In its Answer, BLM states that “[t]he photographs further show that Ridgeway never added ‘tanks/vessels’ to the facility as Ridgeway claimed it would do in its May 19, 2010 Notice of Intent.” Answer at 9; *see* AR, sub-file for the Garretson #1 well at tab 2.

On September 1, 2010, the RFO sent Ridgeway Order 04-081-10W, a “five day start up notification” pursuant to 43 C.F.R. § 3162.4-1(c), giving Ridgeway 5 days to begin production on lease NMNM 0267786 and requiring Ridgeway to give the RFO 48 hours’ notice prior to any sales from the lease. AR at tab 14. On September 9, 2010, the RFO sent the NMSO a memorandum stating that lease NMNM 0267786 expired on April 19, 2010, the day Ridgeway received the RFO’s 60-day letter. AR at tab 15. On September 21, 2010, the NMSO sent the lessees of record its decision that “without production or other activity to extend it, Oil and Gas lease NMNM 0267786 is considered to have expired April 19, 2010, the day the certified letter was received by Ridgeway.”⁵ AR at tab 16.

⁴ In its Answer, BLM explains that a “bull plug” is a “threaded pipe fitting nipple with a rounded closed end that forms a cap. A bull plug is used to close a pipe.” Answer at 9 (quoting Norman J. Hyne, *Dictionary of Petroleum Exploration, Drilling & Production* (1991)).

⁵ On Oct. 7, 2010, the RFO issued an order requiring Ridgeway to submit a Plugging Plan for its wells. AR at tab 17. The RFO subsequently stayed its decision requiring a Plugging Plan pending the Board’s decision in this appeal.

Documents submitted by Ridgeway show that on September 27, 2010, Ridgeway mailed a Notice of Appeal of the NMSO's September 21, 2010, decision to the NMSO, with a copy to the Board and to the Field Solicitor.⁶

ARGUMENTS OF THE PARTIES

In its SOR, Ridgeway provides reasons for appealing three decisions in which the NMSO declares three separate leases⁷ to have expired for cessation of production. Ridgeway asserts that they comprise “the third case in a series of orders issued” by the RFO “which reflect inconsistencies and arbitrariness in the management of the subject leases by the Roswell office of BLM.” SOR at 1. Ridgeway provides little individual discussion of the circumstances leading to BLM's September 21, 2010, decision declaring lease NMNM 0267786 to have expired due to cessation of production. Rather, Ridgeway describes the plans of Ridgeway and EOR to “develop and construct a CO₂ pipeline to transport CO₂ from Ridgeway's St. John's Field Unit in Apache [C]ounty[,] Arizona[,] and from its Cottonwood Canyon Unit in Catron

⁶ On Oct. 29, 2010, Ridgeway filed with the NMSO a document styled “Request for Administrative Review by the State Director and Immediate Stay of BLM Order Pending Appeal,” stating that it was requesting review of the NMSO's Sept. 21, 2010, Decision “canceling” Lease NMNM 0267786. As noted, the Decision at issue does not state that Lease NMNM 0267786 was being cancelled, but that the Lease was deemed to have expired due to cessation of production. Ridgeway stated that it was filing this request pursuant to 43 C.F.R. § 3165.3(b), the regulation providing for state director review (SDR) of a “notice of violation or assessment of an instruction, order, or decision of the authorized officer issued under the regulations in this part [Part 3160–Onshore Oil and Gas Operations].” By Notice dated Oct. 7, 2010, the RFO had issued an Order pursuant to 43 C.F.R. § 3162.3-4 directing Ridgeway to “submit a Plugging Plan including surface reclamation for the remaining liabilities on the leasehold . . . within 60 days of receipt of this Order of the Authorized Officer.” Ridgeway's statement that its Request for SDR pertains to the NMSO's Sept. 21, 2010, Decision canceling lease NMNM 0267786 appears to have been in error, since a decision declaring an oil and gas lease to have terminated due to cessation of production is not subject to SDR. *See Arjay Oil Co.*, 138 IBLA 22, 24 n.5 (1997). The Order directing Ridgeway to submit a Plugging Plan would be subject to SDR under 43 C.F.R. § 3165.3(b). *Id.* In any event, Ridgeway's Notice of Appeal of the NMSO's Sept. 21, 2010, decision was timely. Moreover, BLM states that it “subsequently stayed its decision requiring a Plugging Plan pending the Board's decision in this appeal.” Answer at 10.

⁷ The first lease is the subject of the present opinion. The second is NMNM 0127782, at issue in IBLA 2011-45, and the third is NMNM 0117529, at issue in IBLA 2011-62.

County[,] New Mexico[,] to inject into the respective fields they operate.” *Id.* at 2. Ridgeway states that lease NMNM 0267786 is included in those plans. Ridgeway indicates that it “commenced its right of way acquisition efforts in 2009,” and that “[t]hose efforts are ongoing and extensive.” *Id.*

Ridgeway attributes the poor condition of the fields where the leases are located to BLM’s inaction. Ridgeway explains that “[t]he fields at issue are extremely run down,” and “have not been productive for some time.” SOR at 3. Ridgeway asserts that “BLM has neglected the fields for many years, and has not required the predecessor operators to properly maintain the fields,” and that BLM “recognizes that the problems with the field existed ‘long before Ridgeway acquired the properties.’” *Id.* (quoting SOR, Ex. 1 (Decision of NMSO dated Dec. 9, 2009, at 8)). Ridgeway states that its initial plan of development (POD), submitted to BLM in 2009, “established that Ridgeway engaged in many actions to remediate the long neglected surface of many of the leases it acquired.” *Id.* Ridgeway explains:

These efforts commenced with inventories of the surface facilities, removal of many truckloads of trash and junk that had been left in the fields by previous operators, placing signs and stickers on each location, capping abandoned wellbores, remediation of environmental issues, and upgrading of many of the well locations. In addition, by 2009, Ridgeway spent significant sums of money (\$826,000) reactivating 12 producing wells, 1 injection well and 1 production facility on one of the units. The tentative plans of development show that Ridgeway and EOR also plan to engage in significant water flooding and CO₂ enhanced recovery operations for all properties. Also by August 2009, Ridgeway had undertaken casing repairs on fifty three (53) wells within one unit. *See*, Statement of Reasons and Brief filed August 11, 2009, attached as Exhibit 3.

Id. at 3-4.

Ridgeway points to a June 10, 2009, Order of the RFO requiring Ridgeway to undertake certain remediation measures and to increase its bond level from \$25,000 to \$800,000 to cover operations on the 14 leases enumerated by Ridgeway. Ridgeway emphasizes that on SDR of that Order, the NMSO reduced the bond amount to \$200,000, acknowledging that “[t]he problems with the properties existed before Ridgeway acquired the two units and the individual leases,” and that “Ridgeway is working in good faith to eliminate several of the environmental and

operational problems on the properties.” *Id.* at 5 (citing SOR, Ex. 1 at 8).⁸ Ridgeway asserts that it “completed the surface remediation measures required by the order at issue in the related case, all attributable to field conditions which BLM had allowed to exist and become exacerbated for many years prior to Ridgeway’s acquisition of the properties at issue.” *Id.* at 5.

Ridgeway also relies upon a November 18, 2010, Decision of the NMSO following SDR of a written Order of the RFO requiring Ridgeway to return to production, or plug and abandon, 33 wells located on lease NMNM 83197. SOR, Ex. 2. While NMNM 83197 is not the lease at issue in this appeal, Ridgeway apparently invokes the SDR proceeding involving that lease as evidence of Ridgeway’s efforts to develop a long-term plan to develop all of the leases it acquired in 2008. In its Decision, the NMSO reviewed the evidence and testimony presented by Ridgeway at its September 10, 2010, oral presentation. The NMSO acknowledged “decades of neglect” of the leases at issue, and directed the RFO to review Ridgeway’s plans for individual wells and facilities. SOR, Ex. 2 at 6. Ridgeway offers its participation in this SDR proceeding, and the fact that it has returned three of the leases to production, as evidence of Ridgeway’s desire to

⁸ In a Dec. 9, 2009, Decision, the NMSO affirmed the RFO’s order requiring Ridgeway to increase its bond level, but modified the bond amount to \$200,000, acknowledging the “steps Ridgeway has taken to remediate some of the well sites and facilities, and to reduce its liabilities,” including lease NMNM 0267786, in Roosevelt and Chaves Counties, New Mexico. SOR, Ex. 1 at 9. However, the NMSO stated that “[t]his bond level may be decreased or increased in the future, depending upon Ridgeway’s progress in completing the work necessary to restore the leases/units to production, or to further reduce its liabilities.” *Id.* We note the following statement by the NMSO regarding well status:

We remain concerned that merely “capping” a well is an insufficient measure to prevent future surface and/or downhole contamination. If wells have no known future value, they should be properly plugged and abandoned. *Leases that are past their primary term and have no production shall be terminated.* Ridgeway will be responsible for all down hole plugging and surface reclamation remaining on the properties.

Id. at 8 (emphasis added).

“work with the BLM holistically with respect to the properties at issue, and to develop a long-term overall plan with respect to the leases.” SOR at 8.⁹

⁹ At Ridgeway’s oral presentation on Sept. 10, 2010, before the NMSO, Andy Chalker, Ridgeway’s Operations Manager, described his efforts to contact and meet with RFO staff, stating that “there were tremendous problems on each lease—junk, lack of well signs, etc., but that the RFO wanted Ridgeway to commit to resolving downhole problems as well,” and that “before Ridgeway can get production going, it needs to repair tanks, flow lines, and facilities.” SOR, Ex. 2 at 2. Barry Lasker, Chief Executive Officer of Ridgeway, stated that Ridgeway has a 5-year plan for the fields it acquired and that “[h]is plans are long term—he wants BLM to think long-term, too.” *Id.* at 3. He stated that “he would like the RFO to ‘back off,’” offering the following summary:

Ridgeway is receiving documents and demands from the RFO daily. Ridgeway is a small company, and he would like to work together with the BLM. He asks if the BLM can consider a long-term, overall plan irrespective of individual leases. The Division of Minerals Geologist responded that unless, the area is unitized, each lease has to individually be capable of production in paying quantities. Mr. Lasker said that Ridgeway can do this; Ridgeway can not plug 33 wells in a month, but can restore each lease to production. Mr. Chalker added that he is working to restore eight of the leases to production, and has done so on three leases. He would like an extended period of time to take on the 200 or so wells—perhaps one and a half years.

SOR, Ex. 2 at 4-5.

In its Decision, the NMSO stated that its disagreement with Ridgeway’s point of view is that “*each property* must be considered on its own.” *Id.* at 5 (emphasis in original). Citing 43 C.F.R. § 3107.2-1, which provides that “[a] lease shall be extended so long as oil or gas is being produced in paying quantities,” the NMSO stated that “*each lease* in its extended term must be held by production, or be capable of production in paying quantities to prevent termination.” *Id.* The NMSO stated that it understood that one well in lease NMNM 83197 had been brought into production, and that “[i]f this well is capable of production in ‘paying quantities’—which is defined as quantities sufficient to exceed its monthly operating costs—the lease will be held by that production.” *Id.*

We note that, pursuant to 30 U.S.C. § 226(m) (2006), lessees on any “oil or gas pool, field, or like area . . . may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation.” Federal lands committed to an approved unit agreement are treated as a single lease for various statutory requirements, including

(continued...)

With regard to lease NMNM 0267786 specifically, Ridgeway recites the relevant facts, consistent with our presentation of those facts previously set forth, but adds that “invoices supplied by Ridgeway in this matter show that on June 7, 2010, Ridgeway commenced work on the location by bleeding out the well and installing new floats and switches,” and “confirm that the total depth check occurred on August 19, 2010.” SOR at 12; *see* SOR, Ex. 6-B.

Ridgeway argues BLM’s decision declaring lease NMNM 0267786 expired due to cessation of production is arbitrary and capricious. Ridgeway’s primary authority for this argument is *Coronado Oil Co. v. U.S. Dep’t of the Interior (Coronado v. U.S.)*, 415 F. Supp. 2d 1339, 1348-49 (D. Wyo. 2006), in which the U.S. District Court for the District of Wyoming, according to Ridgeway, “reversed a determination by this Board and concluded that [30 U.S.C. § 226(i) (2006)] allows the Secretary to consent to a cessation of production, accept a new period of nonproduction, and grant a new period to begin reworking or redrilling operations.” SOR at 15. Ridgeway states that the *Coronado* court “found that section 226(i) specifically granted the agency the power to grant a new period to begin reworking or drilling operations pursuant to the . . . language . . . of section 226(i).” *Id.* at 15-16. Ridgeway argues that the following holding from *Coronado v. U.S.* supports its position that BLM should grant Ridgeway additional time in which to bring its leases into production: “The Secretary’s power to consent to a cessation of production, as exercised through her authorized officers, allows her to accept a prior period of nonproduction and grant a new period to begin reworking or drilling operations. To hold otherwise is to ignore the plain language of section 226(i).” 415 F. Supp. 2d at 1348-49.

In applying *Coronado v. U.S.* to its leases, Ridgeway argues that BLM “consented to a 150 days of cessation of production in its conversations with Ridgeway,” and that “in reliance on that agreement, Ridgeway continued reworking operations to bring the wells back into production.” SOR at 16 (citing AR at tab 16). Ridgeway complains that “BLM made a subjective determination that Ridgeway had not exercised diligence in conducting its operations to rework the leases, . . . and denied Ridgeway’s request . . . for an approximate one month extension to resume production on the Garretson lease.” SOR at 17. Ridgeway states that “[i]n the context of these fields, long neglected by BLM, the denial of Ridgeway’s request constitutes an abuse of discretion.” *Id.* Ridgeway concludes that “the record contains no rational basis for RFO’s conclusion that it was not diligently pursuing reworking

⁹ (...continued)

those that extend a lease beyond its primary term. *See, e.g., Yates Petroleum Corp.*, 62 IBLA 246, 256 (1982). Ridgeway’s leases were included in no such plan.

operations, and that, to the contrary, the record affirmatively shows that Ridgeway was diligently pursuing reworking operations.” *Id.* at 18.

BLM responds by placing Ridgeway’s appeal into its legal context. BLM states that “[a]s a general rule, oil and gas leases in their extended term by reason of production terminate by operation of law when paying production ceases on the lease.” Answer at 14 (citing 30 U.S.C. § 226(e) (2006); 43 C.F.R. § 3107.2-1; *Stove Creek Oil, Inc.*, 162 IBLA 97, 104-05 (2004)). BLM states that the Mineral Leasing Act (MLA), 30 U.S.C. § 226(i) (2006), provides three exceptions to the automatic termination of the lease during its extended term for lack of production, and that those three exceptions, set forth in *Steelco Drilling Corp.*, 64 I.D. 214 (1957), have been restated in numerous decisions of the Board:

Under the [MLA,] if production ceases on a lease which is in an extended term by reason of production, the lease terminated by operation of law unless: (1) within 60 days after cessation of production, reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of nonproduction; or, (2) an order or consent of the Secretary suspending operations or production on the lease has been issued; or (3) the lease contains a well capable of producing, oil or gas in paying quantities and the lessee places the well in a producing status within a reasonable time, not less than 60 days after notice to do so, and thereafter continues production unless and until the Secretary allows suspension.

Max Barash, 6 IBLA 179, 181-82 (1972); *accord Robert W. Willingham*, 164 IBLA 64, 67 (2004); *Great Plains Petroleum, Inc.* 117 IBLA 130, 132 (1990). BLM emphasizes that “[i]f none of the three circumstances listed in the MLA exist, the lease terminates by operation of law effective as of the date production ceased.” SOR at 16 (citing *Two Bay Petroleum, Inc.*, 166 IBLA 329, 336-37 (2005), *aff’d*, *Two Bay Petroleum, Inc. v. U.S. Dep’t of the Interior*, No. 2:05-CV-2335, 2007 WL 2028192 (E.D. Calif. July 10, 2007)).

BLM argues that “Ridgeway cannot establish that it satisfies any one of the three MLA exceptions.” Answer 18. As discussed below, we agree with BLM.

ANALYSIS

[1] Under the MLA, 30 U.S.C. § 226(e) (2006), a noncompetitive oil and gas lease has a primary term of 10 years. Each lease “shall continue so long after its primary term as oil or gas is produced in paying quantities.” *Id.*; *see* 43 C.F.R. § 3107.2-1. That section of the MLA further provides that “[a]ny lease issued under

this section for land on which . . . actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.”

In § 226(i), the MLA provides:

No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. 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 or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

30 U.S.C. § 226(i) (2006).

This provision had its genesis in the amendments of July 29, 1954 (1954 amendments), as described in *Steelco Drilling Corp.*, 64 I.D. 214 (1957), the Department’s first decision interpreting those amendments.¹⁰ The 1954 amendments established “three distinct and separate sets of conditions or circumstances in which a lease will not expire even though production has ceased and the lease is in an extended term by reason of production.” *Id.* at 217. As noted in *Two Bay Petroleum, Inc.*, 166 IBLA at 336, the reasoning in *Steelco* has been applied many times since. *See, e.g., Great Plains Petroleum, Inc.*, 117 IBLA 130, 132 (1990); *C & K Petroleum, Inc.*, 70 IBLA 354, 356 (1983); *Michael P. Grace*, 50 IBLA 150, 151-52 (1980); *John S. Pehar*, 41 IBLA 191, 192 (1979); *Vern H. Bolinder*, 40 IBLA 164, 167 (1979); *Max Barash*, 6 IBLA at 181-82.

¹⁰ The current version of § 226(i) is almost identical to the language of subsection (1) of the July 29, 1954, Act. *See Steelco*, 64 I.D. at 217.

In *Coronado Oil Co.*, 164 IBLA 309 (2005), *aff'd*, No. 05-CO-11J (D. Wyo. Aug. 23, 2006), *appeal dismissed*, No. 06-8083 (10th Cir. Sept. 14, 2007),¹¹ the Board provided a comprehensive review of 30 U.S.C. § 226(i) and our precedent, the relevant portions of which are set forth below:

Both [30 U.S.C. § 226(i)] and the case law differentiate between a lease without a well capable of production in paying quantities and one containing a well capable of production in paying quantities. When the term of an oil and gas lease has been extended by production and there is *no* well capable of production in paying quantities when production ceases, the lessee has 60 days to commence reworking or drilling operations and must continue the reworking or drilling operations with reasonable diligence to avoid lease termination; if such operations are not timely initiated and diligently pursued, the lease terminates automatically upon cessation of production. *Coronado Oil Co.*, 164 IBLA [at] 115 [*aff'd in part, rev'd in part and remanded*, 415 F. Supp. 2d 1339 (D. Wyo. 2006)]. Notice is not required in this situation. *Id.*; see *Stove Creek Oil Inc.*, 162 IBLA 97, 104-105 (2004), citing *Merit Productions*, 144 IBLA 156, 160-61 (1998) (Burski, A.J., concurring); *International Metals & Petroleum Corp.*, 158 IBLA 15, 20-21, n.6 (2002). When the term of an oil and gas lease has been extended by production and the lease *does* contain a well capable of production in paying quantities, however, BLM must notify the lessee and allow a reasonable time of at least 60 days from receipt of the notice to place the well into production to avoid having BLM declare the lease expired by operation of law for lack of production. *International Metals & Petroleum Corp.*, 158 IBLA at 21; *Merit Productions*, 144 IBLA at 161, 163-64; *Great Western Petroleum & Refining Co.*, 124 IBLA [16,] 24 [(1992)]. The different treatment afforded leases with wells capable of production in paying quantities reflects Congress' concern both that a lease in its secondary term not be automatically terminated for lack of production where a lessee has in good faith expended money to develop a well capable of production, but where production has been deferred because of lack of pipelines, roads, or markets for the gas, and that such lessees are afforded a reasonable period in which to place the well in producing status. See *American Resources Management Corp.*, 40 IBLA 195, 200-201 (1979), citing H.R. Rep. No. 2238, 83d Cong., 2nd Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 2695, at 2700. This is the notice

¹¹ This matter is not to be confused with *Coronado Oil Co.*, 164 IBLA 107 (2004), which was the subject of *Coronado v. U.S.*, 145 F. Supp. 2d 1339 (D. Wyo. 2006).

provided in the regulations at 43 C.F.R. § 3107.2-3. The Department has recognized that this notice provision is applicable to a well capable of production in paying quantities that was shut in for reasons such as lack of a pipeline or market for the oil or gas. *Robert W. Willingham*, 164 IBLA 64, 68 (2004); *Merit Productions*, 144 IBLA at 161 n.5; *Steelco Drilling Corp.*, 64 I.D. 214, 219 n.3 (1957).

164 IBLA at 324 (footnotes omitted).

With regard to the first exception, BLM states that “Ridgeway has not contested the BLM’s finding that the wells on [lease NMNM 0267786] ceased production in November 2007 and have not resumed production since that time”; that “Ridgeway [has not] submitted any evidence regarding the productive capacity of any of the wells on the three leases”; that “none of Ridgeway’s alleged actions on [lease NMNM 0267786] reflect reasonable diligence in restoring production”; that “[a]s of September 20, 2010, the two wells on lease NMNM 0267786 each consisted of only one cement slab and an open hole with a bull plug without any tank or facility to receive oil” (*see* Garretson #1 well sub-file at tab 4; AR at tab 19); and that Ridgeway failed to “commence reworking or drilling as the BLM required in the relevant 60-day letter[.]” Answer at 18-19. BLM asserts that Ridgeway has not alleged facts which, if proven, would show compliance with the first exception of 30 U.S.C. § 226(i) (2006).

The plain fact shown in the record is that production ceased on lease NMNM 0267786 in November 2007. There is no evidence that there was a well capable of production in paying quantities when production ceased, or that within 60 days the lessee commenced reworking or drilling operations. Lease NMNM 0267786 terminated by operation of law upon cessation of production in November 2007. Notice of lease termination was not required. Thus, Ridgeway cannot properly invoke the first exception provided in § 226(i).

BLM maintains that the second exception does not apply to Ridgeway’s leases, asserting that “[t]here is no evidence that Ridgeway sought, or that the BLM granted, a suspension of operations and/or production, pursuant to applicable statutory/regulatory authority at any time after production ceased.” Answer at 19 (citing 30 U.S.C. §§ 209, 226(i); 43 C.F.R. §§ 3103.4-4, 3165.1; *Int’l Metals & Petroleum Corp.*, 158 IBLA at 22 n.10. BLM disputes Ridgeway’s claim that it “somehow deserves a suspension of operations for 150 days because Ridgeway alleges that the BLM consented to it,” arguing that “Ridgeway can point to no official order or decision of the BLM that provides Ridgeway with 150 extra days from April 15, 2010.” Answer at 20. BLM rejects Ridgeway’s argument that the *Coronado* decision requires BLM to “consent to any prior period of nonproduction,”

see 415 F. Supp. 2d at 1351, distinguishing *Coronado* on the basis that, in that case, Coronado's delays were attributable, at least in part, to the failure of the state permitting agency to issue a water discharge permit. In BLM's view, "Ridgeway's delay is solely attributable to its own idleness and is, therefore, clearly distinguishable from the permitting delays in *Coronado* attributable, at least in part, to the state permitting agency." Answer at 21.

We agree with BLM's reading of *Coronado Oil Co.*, 164 IBLA 107, in which the Board ruled that there was *not* a well capable of production in paying quantities at the time of cessation of production. The Board rejected Coronado's argument that under 30 U.S.C. § 226(i) (2006) it was reasonably diligent in its efforts to bring the well back into production, and that delays in such efforts were attributable to the inaction of the Wyoming Department of Environmental Quality (WDEQ) in issuing a necessary well water waste permit. In *Coronado Oil Co. v. U.S. Department of the Interior*, 415 F. Supp. 2d 1339 (D. Wyo. 2006), the court reversed the Board's ruling that Coronado's efforts to obtain the water discharge permit, begun after BLM had sent its 60-day notice to Coronado, did not constitute reasonable diligence in reworking or drilling on the leasehold. The court did so on the basis that there was evidence in the record that the Secretary, acting through BLM, had consented to a new period for reworking or drilling operations. According to the court, "[t]he Secretary's power to consent to a cessation of production, as exercised through her authorized officers, allows her to accept a prior period to begin reworking or drilling operations." *Id.* at 1349. The court interpreted 43 C.F.R. § 3107.2-2, which states that "[t]he 60 day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities," as meaning that the Secretary has the authority to grant Coronado "additional time to begin reworking or drilling operations on a nonproducing lease." *Id.* at 1350.¹² The court

¹² The court noted the "apparent contradiction between the statutory language and the regulatory language," and the Board's approach to that contradiction as evidenced in *Merit Productions*, 144 IBLA at 160-67 (Burski, A.J., concurring) ("recognizing contradiction, declaring the regulatory language a nullity, and recommending adjudication solely on the statutory language"). 145 F. Supp. 2d at 1349.

Ridgeway's predicament is factually distinguishable from *Coronado*; *i.e.*, in *Coronado* the court viewed the delay in resuming production as primarily attributable to WDEQ, not to Coronado, whereas the record supports BLM's assertion that Ridgeway's delay is due to its own inaction. Moreover, as a legal matter, the court's conclusion that BLM consented to a period of nonproduction is squarely at odds with the Department's consistent position that the Secretary cannot suspend a lease (or consent to a period of nonproduction) if the lease has already expired; upon

(continued)

remanded the case to the Board, stating that Coronado's efforts to secure the water discharge permit "should certainly be a part of the factual determination of whether Coronado commenced reworking and drilling operations on the Lease within the required time and whether Coronado thereafter conducted such operations with reasonable diligence." 415 F. Supp. 2d at 1350-51 n.6. We agree with BLM that "[u]nlike Coronado's prolonged pursuit of a state discharge permit, there is not a single but-for cause within the control of the BLM or a state agency that prevented Ridgeway from resuming production." Answer at 21.

¹² (...continued)

expiration, "the lease ends totally and there is nothing in existence for the Department to suspend." *Jones-O'Brien, Inc.*, 85 I.D. 89, 94-95 (1978) (Secretarial opinion); accord, *John March*, 98 IBLA 143, 146-47 (1987); *Fuel Resources Development Co.*, 69 IBLA 39, 41 (1982); *Teton Energy Co.*, 61 IBLA 47, 49 (1982); *Tenneco Oil Co.*, 44 IBLA 171 (1979); *American Resources Management Co.*, 40 IBLA 195, 198 (1979). This aspect of *Coronado* drew the attention of the Solicitor in a recent M-Opinion involving OCS leases:

In an anomalous decision, a Federal district court interpreting the MLA concluded that an agency could, in effect, retroactively suspend a lease by consenting to an earlier period of non-production. *Coronado Oil Co. v. Department of Interior*, 415 F. Supp. 2d 1339 (D. Wyo. 2006). The court held that communications from the Bureau of Land Management (BLM) after automatic termination of an onshore oil and gas lease for failure to have a well capable of production in paying quantities amounted to "consent" to non-production under section 17(i) of the MLA (30 U.S.C. 226(i)), *Coronado* at 1351, and thus a suspension of production that extended the term of a lease. The *Coronado* court reasoned that a clause of section 17(i) authorizing the Secretary to "consent" to non-production meant that the BLM could "consent" after termination of a lease and could offer a lessee additional time to re-establish production beyond that provided in the statute. *Id.* at 1348-49. *We believe Coronado is limited to its facts and not an authoritative interpretation of the MLA outside of Wyoming.* It has no bearing on the interpretation or implementation of the OCS Lands Act. [Emphasis added.]

Sol. Op., "Revival of Offshore Oil and Gas Leases," M-37019 (Jan. 15, 2009), at 9 n. 7. In any event, even if we were to subscribe to the *Coronado* court's holding that BLM could agree to a period of nonproduction on a terminated lease, we conclude that there is no evidence in the record that BLM agreed to any period of nonproduction on Ridgeway's leases, including Lease NMNM 0267786.

BLM rightly concludes that “because Ridgeway’s wells are ‘extremely run down’ and not capable of production as in *Coronado*, Ridgeway is not entitled to the implied suspension granted in *Coronado*.” *Id.* (footnote omitted). BLM afforded 60 days from receipt of its notice to commence reworking or drilling on the lease, so BLM’s approach is consistent with the *Coronado* decision. However, we see no evidence in the record that BLM granted a suspension covering 150 days of nonproduction on the lease. The *Coronado* court rejected the argument that “mere acquiescence constitutes consent under section 226(i),” and that “[i]f mere acquiescence constitutes consent for section 226(i) purposes, then any failure to contact an operator or lessee who has allowed a lease to fall into nonproduction would qualify as consent.” 415 F. Supp. 2d at 1350 n.6. Such an approach, in the court’s view, “would effectively require notice before automatic termination of a lease for nonproduction, and, under the plain language of section 226(i), notice is not required unless there is a well capable of production on the lease.” *Id.*¹³

Even under a reading of *Coronado* most favorable to Ridgeway, we see no evidence that Ridgeway requested or was granted a suspension of operations for 150 days, from April 15, 2010, in which to return a well to production on lease NMNM 0267786. Thus, BLM is correct that the second exception does not apply.

Further, BLM argues that the third exception of 30 U.S.C. § 226(i) (2006) does not apply to Ridgeway’s leases, given that Ridgeway offered no evidence that there is a well capable of production on lease NMNM 0267786. The third exception to lease termination upon cessation of production “covers only a situation where, *at the time when production ceases*, there is on the lease a well capable of production.” *Steelco*, 64 I.D. at 220 (emphasis added); *see also Two Bay Petroleum, Inc.*, 166 IBLA at 344-45. In *Coronado Oil Co.*, 164 IBLA at 324, the Board set forth the standards for determining whether a well is capable of production, as follows:

¹³ Ridgeway argues that the correspondence with BLM it cites constitutes evidence that BLM consented to a 150-day period of nonproduction on Lease NMNM 0267786. A similar argument was advanced on judicial review of the Board’s decision in *Two Bay Petroleum, Inc.*, 166 IBLA 329. The court treated the argument as an estoppel argument and rejected it in the following terms:

Given the termination of the Lease in December 2000, Two Bay’s argument that the government is estopped due to approving sundry notices in 2002 is unavailing. Additionally, Two Bay has not alleged any of the elements required for estoppel. Consequently, Two Bay’s estoppel argument fails.

Two Bay Petroleum, Inc. v. U.S. Dep’t of the Interior, 2007 WL 2028192 at *5 (E.D. Cal. July 10, 2007).

In defining a well capable of production in paying quantities, the Department has required evidence of the present capability of the well to produce:

The phrase “well capable of producing” means a “well which is actually in a condition to produce at the particular time in question.” *United Manufacturing Co.*, 65 I.D. 206 (1958). In the absence of perforation of the well casing, a well has been held to be physically incapable of production and, hence, not capable of production in paying quantities. *Arlyne Lansdale*, 16 IBLA 42 (1974); *United Manufacturing Co.*, *supra*. A well has been held not capable of production in paying quantities where substantial pumping of water from the well is required before oil could be produced in paying quantities. *The Polumbus Corp.*, 22 IBLA 270 (1975). Further, a well has been held not capable of production in paying quantities where sandfracing operations were unsuccessful and the record indicated further efforts were needed to restore production, including hot oil treatment and swabbing the well. *Steelco Drilling Corp.*, 64 I.D. 214 (1957).

Amoco Production Co., 101 IBLA 215, 221 (1988) (footnotes omitted). In addition, in order to be considered capable of production in paying quantities, a well must be “physically capable of producing a sufficient quantity of oil and/or gas to yield a reasonable profit after the payment of all the day-to-day costs incurred after the initial drilling and equipping of the well, including the costs of operating the well, rendering the oil or gas marketable, and transporting and marketing that product.” *International Metals & Petroleum Corp.*, 158 IBLA at 22; *see Stove Creek Oil Inc.*, 162 IBLA at 105-106; *Amoco Production Co.*, 101 IBLA at 221-22. Actual production is not required to qualify a well as capable of production in paying quantities as long as production can clearly be obtained but has not been because of a lack of pipelines, roads, or markets for the gas. *John G. Swanson*, 66 IBLA 200, 202 (1982); *American Resources Management Corp.*, 40 IBLA at 201; *see also C & K Petroleum Inc.*, 70 IBLA 354, 356 (1983); *Burton/Hawks, Inc.*, 47 IBLA 125, 127 (1980).

164 IBLA at 322-24 (footnotes omitted).

When considered in light of these guidelines, the record makes clear that the RFO properly determined that there is no well capable of production on lease NMNM 0267786. The RFO based its initial determination on Ridgeway's failure to follow up with BLM to obtain either temporary abandonment status for its wells or to bring the wells back into production, and on Ridgeway's failure to notify BLM as to whether it had performed mechanical integrity tests. Answer at 22; *see* AR at tab 11. Moreover, BLM states that Ridgeway failed to follow up with BLM about the commitments identified in Ridgeway's May 17, 2010, Sundry Notice for lease NMNM 0267786. Answer at 22; *see* Garretson #1 well sub-file at tab 2. BLM inspected lease NMNM 0267786 in September 2010. Answer at 22; *see* AR at tab 19; Garretson #1 well sub-file at tab 4. BLM asserts that "Ridgeway identifies nothing in the record that suggests any well has been economic, or capable of yielding a reasonable profit since November 2007," and that "Ridgeway apparently relies on invoices and projections of future productive capability, if the wells were restored to a functioning condition." Answer 23. BLM states that Ridgeway "effectively admits that it had not commenced production within the 60 days by its belated attempts to obtain yet another extension from the BLM to commence production." *Id.*; *see* Garretson #1 well sub-file at tab 3. BLM concludes that "[t]here is no other evidence that any well on the three leases was physically capable of producing any oil or gas, let alone a quantity sufficient to cover the specific costs of operation and production." Answer at 23.

There is no evidence that reworking or drilling operations were initiated within 60 days of ceasing production sometime in November 2007. Thus, as a technical matter, lease NMNM 0267786 terminated by operation of law effective as of the date production ceased. Nonetheless, the RFO appears to have handled the situation in a fashion that was favorable to Ridgeway by providing Ridgeway 60 days in which to demonstrate the productive capacity of the wells, or in which to commence reworking or drilling operations on the leasehold. The record confirms that Ridgeway failed to take any such action. We see no evidence that the RFO displayed an "apparent antipathy" toward Ridgeway in adjudicating this matter. *See* SOR at 18.

[2] BLM held that the lease terminated effective April 19, 2010, the date on which Ridgeway received the 60-day letter from the RFO. The Board made clear in *Two Bay Petroleum, Inc.*, 166 IBLA at 344-45, that

[w]hen none of the circumstances that could save a lease from termination materialized in the 60 days following the cessation of production, the lease terminated by operation of law as of the date production ceased, not 60 days after [Ridgeway] received the notice BLM has chosen to give lessees in these circumstances pursuant to

43 CFR 3107.2-2. *See* 30 U.S.C. § 226(i) (2000); *see also Samuel Gary, Jr. & Associates, Inc.*, 125 IBLA 223, 228 (1993).

This is because “BLM’s notice to a lessee directing it to demonstrate the producing status of a well is to be distinguished from the statutorily prescribed point when a lease terminates after it has been determined that production failed because there was no well on the leasehold capable of producing oil or gas in paying quantities.” 166 IBLA at 345. Lease NMNM 0267786 therefore terminated in November 2007. BLM’s decision is modified accordingly.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is affirmed as modified.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Christina S. Kalavritinos
Administrative Judge