

INTERIOR BOARD OF LAND APPEALS

Samuel Gary, Jr. & Associates, Inc.

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SAMUEL GARY JR. & ASSOCIATES, INC.

IBLA 91-361

Decided February 5, 1993

Appeal from decisions of the Montana State Office, Bureau of Land Management, declaring lease NDM-51630 terminated by cessation of production and denying a request for approval of record title assignment.

Affirmed.

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

Where a Federal oil and gas lease is in an extended term owing to production from wells on the lease, where BLM has given notice under 43 CFR 3107.2-2 to the lessee that those wells are no longer capable of production and allows 60 days to rework the wells, drill a new well on the leasehold, or submit justification that the lease is capable of producing in paying quantities, and where no remedial action has been taken, BLM properly issues a decision declaring that the lease has terminated by cessation of production and returns unapproved pending applications for approval of assignments of interests in that lease.

APPEARANCES: Craig Ambler, Land Manager, Samuel Gary Jr. & Associates, Inc., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Samuel Gary Jr. & Associates, Inc. (SGA), has appealed from the May 20, 1991, decisions of the Montana State Office, Bureau of Land Management (BLM), declaring Federal oil and gas lease NDM 51630 terminated by cessation of production, and returning unapproved various assignments of interests in that lease from SGA to other parties.

Federal oil and gas lease M-32464 (ND) Acquired, covering 2,560 acres in McKenzie County, North Dakota, was issued effective November 1, 1975, to Dorothy A. Mohrle. The lease was assigned effective February 1, 1977, to Getty Oil Company (Getty). On June 11, 1981, the lease was segregated, as 160 acres of the lands covered by it were committed to an approved unit agreement (Bob Creek) on January 21, 1981. The lease for the lands covered by the unit agreement retained serial number M-32464 (ND) Acquired; the

lease for the remaining 2,400 acres was assigned serial number M-51630 (ND) Acquired. It is the latter lease that is involved in this appeal. Under BLM's current system of lease numbering, the lease is known as NDM-51630.

On September 20, 1984, Getty advised BLM by telephone that there were two producing wells on the lease and that royalty was being paid to the Minerals Management Service (MMS). On October 26, 1984, BLM notified Getty that the lease account had been transferred to MMS because the lease was in producing status and no rental was due.

On March 15, 1985, Getty notified BLM that Texaco, Inc. (Texaco) had been designated as operator for the Bob Creek Well Nos. 13-8 and 13-11, both situated on the lease. The lease interest was assigned to Texaco Producing Company effective September 1, 1985, with Texaco remaining the designated operator. A series of assignments followed, SGA becoming lessee of record effective October 1, 1989.

On May 6, 1989, the Dickinson, North Dakota, District Office (DDO) suspended production for this well, presumably under sec. 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1988), until May 31, 1990, citing economic conditions. On March 28, 1990, DDO advised SGA that the suspension would be extended until May 31, 1991:

In order to prevent premature abandonment of wells and the loss of recoverable reserves, this office approved a suspension of production for the following leases until May 31, 1990.

NDM-51630 Acq.

The Bureau of Land Management (BLM) plans to hold a series of public meetings concerning continuation or termination of its policy of suspension of production for stripper wells as related to economic conditions. The meetings will include discussion of criteria, certification and test requirements, and bonding amounts relative to the BLM's liability risk. BLM will also conduct an internal review on the potential Government liability for unplugged wells. The meetings and review could result in requirements that operators (1) provide detailed justification at any time why the suspension should continue, (2) provide proof that the wells have been left in a condition that does not pose an environmental risk, (3) possibly must perform casing integrity tests, and (4) possibly must provide an increased level of bonding to cover the potential liability for unplugged wells.

Since it is still questionable as to whether it would be economically feasible to resume producing operations, this office is hereby extending the approval for the suspension of production on the above referenced lease until May 31, 1991. This extended

approval is valid until the lease is returned to producing status, or upon notification by the Authorized Officer of termination of this approval.

However, on May 10, 1990, the DDO sent a letter to SGA notifying it that the suspension of operations would not be extended:

In order to prevent the premature abandonment of wells and the loss of recoverable reserves, this office approved a suspension of production for the above referenced lease. A suspension of production is allowable so long as there remains a well on the lease that is capable of producing hydrocarbons in paying quantities. At the time this suspension was granted, the Bob Creek 13-11 and the Bob creek [sic] 13-8 wells * * * fulfilled these requirements.

In reviewing our files, we have discovered that rods and pumping unit have been removed [from] both wells. We also found that the common tank battery, for both wells has been dismantled and removed. With this equipment removed, these wells can no longer be considered capable of producing hydrocarbons in paying quantities. Our records also indicate that the Bob Creek * * * wells are the only wells on [the] lease * * * and the lease does not receive production from any other source.

Since a well capable of production no longer exists on the subject lease, a suspension of production is no longer valid. Therefore, the suspension of production for [the] lease * * * is hereby terminated effective May 1, 1990.

It appears that, on May 22, 1990, SGA appealed that letter to the State Director. ^{1/} However, there is nothing in the record concerning that appeal. We are left to presume, for purposes of this decision, the suspension of production was terminated effective May 1, 1990.

On May 29, 1990, DDO issued a letter decision to SGA providing as follows:

Our records indicate that the Bob Creek 12-8 well * * * has not produced since October 1988, and is the last well on the lease.

Since the lease is currently in its extended term by reason of production, it will terminate unless the lease is capable of producing hydrocarbons in paying quantities.

^{1/} SGA referred to such appeal in a second notice of appeal dated June 6, 1990, discussed below.

We feel this lease is not capable of production in paying quantities. Under 43 CFR 3107.2-2, you are allowed 60 days from receipt of this letter within which to commence reworking or drilling operations on the leasehold. The lease will not terminate so long as approved operations are commenced within the 60 day period and are continued with reasonable diligence until paying production is restored.

If you believe the lease is capable of production in paying quantities, (which means paying the day-to-day operating costs, including rental and/or minimum royalty on a sustained basis), you must submit justification within 60 days of receipt of this letter. If you resume production, a 5-day production notice must be filed with our office pursuant to 43 CFR 3162.4-1(c).

BLM's letter expressly noted that it was subject to appeal to the State Director under 43 CFR 3165.3(b). SGA filed a notice of appeal of the letter to the State Director on June 8, 1990.

In that appeal, SGA noted that there are two wells on the lease, not one, as stated by DDO. Further, it asserted that the productive capability of the Bob Creek 13-8 and Bob Creek 13-11 has been previously established. SGA stated:

These wells were shut in during 1988 due to uneconomic operating conditions in the area. At last report, the 13-11 well produced 34 barrels of oil in a one day production test in May, 1988, the time of the original [suspension of production] application, and the 13-8 well last produced in December, 1987. Should these wells be prematurely abandoned, an economic resource would be lost, to the detriment of The United States.
* * * In view of the above,
we do not believe a termination of lease NDM-51630 is justified. This lease has been held under an [suspension of production] status since May, 1988 by two wells, and we have previously requested to the State Director and Dickinson District that the SOP status be continued for the period from May, 1990 until May, 1991.

On June 11, 1990, the State Director sent a decision dismissing as premature SGA's appeal from DDO's May 29, 1990, decision:

[DDO's] May 29, 1990, letter allowed the operator to submit justification if they have reason to believe that the lease is capable of production in paying quantities. The DDO decision would not be final until the 60-day period had elapsed. [SGA] indicated in the [State Director review] that they would submit justification to the DDO to prove that the well is capable of production. However, because of the 20-day appeal period stated in the DDO decision, [SGA] had no choice but to file this [State Director review] request prior to presenting the justification to

the DDO. We believe that the appeal language in the May 29, 1990, letter should not have been included, and is not appropriate. We are, therefore, dismissing this [State Director review].

Within 60 days upon receipt of this letter, [SGA] may rework the well, drill a new well on the leasehold or submit justification to the DDO that the lease is capable of production in paying quantities. The DDO will review the justification submitted by [SGA] and make the determination whether the well is capable of production in paying quantities. The DDO will notify [SGA] of their determination. If the determination is negative, the DDO will provide [SGA] with the reasoning for its decision and advise [SGA] of the appeal rights. [Emphasis in original.]

Thus, the State Director ruled that the DDO had properly given SGA notice under 43 CFR 3107.2-2 to rework the well, and that any appeal was premature until the expiration of that period. The State Director allowed SGA a full 60-day period to make the required showing, commencing on receipt of his decision, and directed the DDO to analyze any information filed in response by SGA and determine whether the wells on the lease were capable of production.

It does not appear that SGA filed any response. On January 31, 1991, the DDO sent out a letter to Bob Dennis, who was not then the lessee of record. ^{2/} In that letter, the DDO expressly found that the lease

is no longer capable of producing hydrocarbons in paying quantities. Our decision is based on the current status of the Bob Creek 13-8 well and the Bob Creek 13-11 well * * *. Both wells are currently lacking any surface and subsurface equipment to effectively produce the wells. The tank battery for these wells [has] been dismantled with only the storage tanks remaining. No means currently [exist] to treat or separate production from the wells, [or to] transfer any production to storage tanks or sales points.

The DDO did not send that letter to SGA. Although it was not required to do so, the DDO also offered an additional 60 days to commence reworking or drilling operations on the lease.

On May 20, 1991, BLM issued the decision under appeal, declaring the lease terminated by cessation of production.

The [DDO] has reported that [the wells] were abandoned. On January 31, 1991, Bob Dennis as operator was sent a 60-day letter to restore production quantities. No remedial actions were undertaken.

^{2/} Dennis was at that time the prospective assignee of a two-thirds interest from SGA.

Since there is no production to continue the lease, the lease term is exhausted and declared terminated by cessation of production effective January 31, 1991.

On the same date, BLM also returned unapproved pending requests for transfer of various lease interests from SGA to Dennis and other parties.

[1] This case is controlled by 43 CFR 3107.2-2, which provides:

A lease which is in its extended term because of production in paying quantities shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

The record demonstrates that production on lease NDM-51630 did terminate at an indeterminate time and that it was not capable of production in May 1990. The State Director's June 11, 1990, decision ruled that the DDO's May 29, 1990, letter was notice to SGA (which was then lessee of record) that the lease must be placed into a position where it contained a well that is capable of production in paying quantities within 60 days. In view of the confusion engendered by DDO's improperly making that notice subject to State Director review, the State Director allowed SGA a full 60 days to respond, starting from its receipt of the June 11 decision. Thus, there can be no doubt that adequate legal notice to put the lease back into a condition where it was capable of production was given as required by 43 CFR 3107.2-2 as of the date SGA received the June 11 decision. 3/

The record also shows that, as of January 31, 1991, the DDO found that the lease had not been placed into a condition where it was capable of production as required by BLM's June 11, 1990 decision. Accordingly, there was no bar to declaring that the lease had terminated by cessation of production, and BLM properly did so in its May 20, 1991, decision.

The only argument raised by SGA on appeal concerns BLM's failure to serve SGA, as lessee of record, with the January 31, 1991, notice issued by DDO. As noted above, by issuing the June 11, 1990, decision, BLM had already given SGA notice as required by 43 CFR 3107.2-2 that the wells on the lease were not capable of production and that it was necessary to rework them, on pain of cancellation of the lease. The State Office incorporated in its May 20, 1991, decision DDO's finding that the wells on the leases were not capable of production on January 31, 1991. SGA

3/ There is no proof of service of that decision on SGA in the record. However, in the absence of any allegation that it was not received, we may presume that it was regularly delivered.

has made no effort to dispute that conclusion on appeal. Therefore, we have no basis to disturb the decisions under appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge