

GORDON H. BARROWS

IBLA 78-14

Decided July 31, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, requiring joinder to unit agreement as a condition precedent to issuance of competitive oil and gas lease W 58790.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

Before issuance of a competitive oil and gas lease for land within the area of an approved unit agreement, it is proper to require the successful bidder to file evidence that he has entered into an agreement with the unit operator for development of the land in the lease under the terms and provisions of the approved unit agreement or to file a statement giving satisfactory reasons for failure to enter such agreement.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

Where high bidder for a competitive oil and gas lease within the area of an approved unit agreement fails to file evidence showing joinder to the unit agreement or to submit satisfactory reasons for failure to enter into agreement with the unit operator, it is proper to reject his bid and to refund the bonus payment tendered with the bid.

APPEARANCES: Gordon H. Barrows, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On March 23, 1977, the Wyoming State Office, Bureau of Land Management (BLM), held a sale of competitive oil and gas leases. Parcel No. 4 at the sale included W 1/2 SE 1/4 sec. 27, T. 44 N., R. 62 W., 6th principal meridian, Wyoming, also designated as Tracts 7 and 9 in Skull Creek South Unit Agreement, 14-08-001-8671. The sale notice indicated that the successful bidder for Parcel No. 4 will be required to comply with the regulations in 43 CFR 3100.6-1. ^{1/} The high bidder for Parcel No. 4 was Gordon H. Barrows. Barrows requested permission from American Petrofina Company of Texas, the unit operator, to operate the subject oil and gas lease independently of the Unit Agreement. By letter of June 16, 1977, Petrofina, acting as unit operator, denied permission to Barrows to operate the lease independently of the Unit Agreement, but invited him to join the Unit Agreement and to participate in accordance with the terms and provisions thereof.

Thereafter, by decision of September 15, 1977, BLM required Barrows to file, within 30 days, evidence of having joined the Skull Creek South Unit Agreement, or to submit a statement giving satisfactory reasons for failure to join the Unit Agreement. From this decision Barrows has appealed.

Appellant argues:

A. Forcing Gordon H. Barrows to join the Skull Creek South Unit in order to obtain a lease on the 80 acres making up Tracts 7 and 9 of the Unit would, in effect, result in Gordon H. Barrows giving up a possible asset without consideration of any type; Gordon H. Barrows would receive no cash consideration or any interest in the Unitized Substances.

B. Since the creation of this Unit (12 years ago) the Unit Operator has not drilled any additional wells

^{1/} Section 3100.6-1, Joinder evidence required, states:

"Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations."

on this 80-acre tract. This situation leads one to assume either (a) if a well had been drilled, particularly on Tract 7 (NW/4 SE/4 Section 27) and successfully completed in the Unitized Formation, such would evidence an error in not assigning said Tract 7 and possibly Tract 9 a primary or secondary participation at the time of Unitization, or (b) this 80-acre tract is not prospective in the Unitized Substances and should never have been included in the Unit.

C. Section 38 of the Unit Agreement for the Development and Operation of the Skull Creek South Unit Area provides for a border-protection agreement. In lieu of including Tracts 7 and 9 in the Unit at the time of Unitization, the Unit should have entered into a border-protection agreement with the Lessee of the lease or leases covering Tracts 7 and 9.

D. The fact that no unit participation has been afforded Tracts 7 and 9 and such tracts' inclusion in the Unit discourages any type of exploration or development operations on this 80 acres since the Newcastle formation is one of the primary objectives for drilling in this area; there is every reason to believe that a well on Tract 7 would be a commercial success in the Newcastle formation. Additionally, it is impossible for any meaningful amount of crude underlying such Tracts 7 and 9 to be produced by the Unit without wells located in said Tracts 7 and/or 9.

E. Petrofina, the Unit Operator, is the owner of a 50% working interest in four of the nine tracts making up the Unit and a 100% working interest owner in three additional tracts. It is interesting to note that Petrofina has no interest in Tracts 7 or 9 and it is possible that as a result of now owning a working interest in Tracts 7 and 9 and not affording the Lessee of such tracts an equitable Unit Participation thus forcing such Lessee to stay out of the Unit, Petrofina has breached its fiduciary duties and obligations as Operator.

The Geological Survey, in a memorandum dated May 1, 1978, has made these comments with respect to the arguments of appellant:

The Skull Creek South Unit Agreement was approved by the Acting Director of the Geological Survey on April 23, 1965, and became effective as of May 1, 1965.

At the time of unit approval, a schedule (Exhibit "C") was submitted specifying the percentage of participation to which each tract in the unit area was entitled, assuming that all tracts would be qualified for unit participation. Section 4 of the unit agreement sets forth the condition which must be satisfied in order to qualify a tract for participation. According to the schedule submitted as a preliminary Exhibit "C", tracts 7 and 9 were entitled to secondary participation of 0.8452 percent and 0.6754 percent, respectively, if the tracts were qualified. The percentage of participation for each tract in the unit area was established on the basis of remaining primary reserves for the primary phase and on the net acre-feet of Newcastle formation each tract contained for the secondary phase.

The secondary participation phase has been in effect since November 1, 1966. Each tract in the unit area was entitled to participation provided the tract was qualified as provided for under section 4 of the Skull Creek South Unit Agreement. However, tracts 7 and 9 were not qualified for participation because the working interest owners of each tract did not commit their interests by ratifying or signing the unit agreement and unit operating agreement. Therefore, since all tracts were not qualified for participation, the original Exhibit "C" was revised to show participation for only those tracts which were qualified. This revision was dictated by the provisions of section 11 of the agreement, "Participation and Allocation of Production." This explains why tracts 7 and 9 are shown as receiving no participation in the unit but it does not mean that these tracts could not be qualified for secondary participation in the event the working interests in the tracts were subsequently committed to the unit pursuant to section 33 of the unit agreement.

The Skull Creek South Unit was established for secondary recovery purposes. As such, it is not unusual that no additional wells have been drilled on tract 7 or any other tract in the unit. Generally, secondary recovery units involve an area which has been developed to the point that the limits of the producing reservoir are fairly well defined. This is a factor taken into consideration before designating the area as logically subject to unitization for secondary recovery purposes. To date, operations in this unit have been limited to

well workovers, conversions of certain wells to water injection, and drilling of border-protection injection wells. One advantage of unitization is that only those wells essential for orderly development and depletion of a productive reservoir need be drilled.

Under the terms and provisions of the unit agreement, all tracts qualified for participation share in unit production even though some tracts may not have a producing well located thereon.

As has been indicated, section 38 of the unit agreement provides for border-protection agreements. However, this type of agreement is considered entirely inappropriate and without justification in regard to those lands embraced by tracts 7 and 9. This provision was included to provide the means by which the interest owners in the Skull Creek South Unit Area might enter into an agreement that would prevent the migration of petroleum hydrocarbons across the common unit boundary lines of the Skull Creek and Skull Creek South Units. This is accomplished by drilling an equal number of offsetting injection and production wells along the common boundary at locations equidistant from the border. The unit agreement provides no authorization for the execution of similar agreements between the unit interest owners and owners of noncommitted tracts within the unit area. Moreover, even if such agreements were possible, we believe that an examination of the enclosed geologic information would confirm our opinion that the equities would not be properly protected.

Under Federal regulation, Mr. Barrows could drill producing wells as close as 200 feet from the western boundary of tracts 7 and 9 (W1/2SE1/4 sec. 27). With no pressure sinks (producing wells) on tracts 7 and 9, i.e., the present condition, water injected into well No. 3-27 should theoretically provide a satisfactory flood pattern to well No. 5-27 to the north and wells No. 8-27 and No. 3-34 to the south. Admittedly, some oil originally under tracts 7 and 9 may be recovered by the unit operations. However, if non-unit producing wells were completed on tracts 7 and 9, this would create pressure sinks that would change the present flood direction and might very well reduce the overall recovery efficiency. It could also result in Mr. Barrows being able to recover a significant amount of oil which, except

for the unit water flood operation, would otherwise be unrecoverable and he would be able to do so without committing to the unit and participating in the cost of the secondary recovery project.

If Mr. Barrows joins the unit, he would still have the right to explore and develop all formations other than the Newcastle formation since the unit only covers this formation.

Secondary participation was established for tracts 7 and 9 when the unit was designated and granted final approval. The only requirement for participation in unitized substances is that the interests in the two tracts be committed to the unit. The dry hole drilled on tract 9 has served to define the productive limits of the Newcastle reservoir in an easterly direction. Further control of the eastern limits of the producing reservoir is afforded by the dry hole completed in the NW1/4NE1/4 sec. 27. In consideration of this geologic control, the established reservoir limits and resultant tract participation, as they pertain to tracts 7 and 9, appear reasonable and consistent with the available data.

At the time the Skull Creek South Unit was approved, the State of Wyoming did not have a statutory unitization law. It is worthy to note that all basic royalty and working interest owners are committed to the unit with the exception of the interests involving tracts 7 and 9. Under existing Wyoming Statute 30-222, if 80 percent of both the working interest owners and basic royalty owners agree to the unit agreement, upon proper application, the remaining uncommitted interests would be subject to statutory unitization which, in effect, would result in the "forced" unitization of these interests. Therefore, it is conceivable that the interest held in tracts 7 and 9 could be "force" unitized under the present laws of the State of Wyoming.

In consideration of various factors as discussed above, it is the recommendation of this office that Gordon H. Barrows not be permitted to operate oil and gas lease W-58790, involving unit tracts 7 and 9, without commitment to the Skull Creek South Unit Agreement and Unit Operating Agreement.

Appellant has not replied to the memorandum from Survey.

The Secretary, under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), has discretionary authority to mandate inclusion of Federal oil and gas leases into unit agreements in the interest of conservation of the resources.

The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

The implementing regulation, 43 CFR 3100.6-1, supra, grants to the lessee of lands within the area of an approved unit agreement two options: to join the unit agreement, or to show satisfactory reasons for failure to join. If the reasons for nonjoinder are acceptable, the lessee may then operate his lease independently, but wholly in conformity with the terms and provisions of the unit agreement.

[1] Supervision of oil and gas leases on Federal public lands, including operations under unit agreements affecting such lands, is a function of the Geological Survey. 220 DM 4.1. Survey is the technical representative of the Secretary. Powhatan Mining Company, 10 IBLA 308 (1973). This Board therefore is entitled to rely upon Survey's technical appraisal of oil and gas operations within an approved unit area and under the unit agreement, without examining the technical detail upon which Survey's conclusions were based. William F. Martin, 24 IBLA 271 (1976); William J. Colman, 9 IBLA 15 (1973). The reasons given by Survey in support of its recommendation that Barrows not be allowed to conduct independent operations for oil and gas within Tracts 7 and 9 of the Skull Creek South Unit Agreement are persuasive, and have not been shown to be incorrect by the appellant. We hold that an oil and gas lease may not be issued for the W 1/2 SE 1/4 sec. 27, T., 44 N., R. 62 W., 6th principal meridian, unless that tract is fully committed to the Skull Creek South Unit Agreement.

[2] Gordon H. Barrows will be allowed 20 days from receipt of this decision to submit to the Wyoming State Office, Bureau of Land Management, evidence of his joinder to the Skull Creek South Unit Agreement. Failure to submit such evidence within the time allowed will result in final rejection of his high bid for Parcel No. 4 in the competitive oil and gas lease sale held March 23, 1977, without further notice, and refund will be made of the bonus payment tendered with his bid at that sale.

Therefore, pursuant to the authority delegated to the Board of Lands Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

