

MARGARET D. OKIE ET AL.

IBLA 79-42

Decided October 29, 1979

Appeal from decision by the Director, U.S. Geological Survey, GS-115-O&G, affirming the establishment of the Lance formation participating area within the Madden Deep Unit.

Affirmed.

1. Geological Survey -- Oil and Gas Leases: Unit and Cooperative Agreements

Where the U.S. Geological Survey has determined from available geologic and other data that a participating area of 1,000 acres is the proper size for a producing well under an approved unit agreement, this Board may rely upon reports of the Survey setting forth the conclusions reached without examining the technical data upon which the reports were based.

2. Geological Survey -- Oil and Gas Leases: Unit and Cooperative Agreements

A determination by the U.S. Geological Survey that certain land is within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

APPEARANCES: Robert A. Burgess, Esq., Winter & Burgess, Casper, Wyoming, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Margaret D. Okie, T. N. Spratt, R. J. Spratt, and J. T. Spratt, appeal from decision GS-115-O&G dated September 28, 1978, wherein the Director, Geological Survey (Survey), affirmed a decision of the Area Oil and Gas Supervisor, Casper, Wyoming, approving the initial Lance formation participating area within the Madden Deep Unit, as of October 30, 1975, and the first and second revisions of the participating area effective January 1, 1976, and May 1, 1976, respectively. 1/

The initial Lance formation participating area covers the following lands:

Sixth Principal Meridian

T. 38 N., R. 90 W.

Sec. 2: lots 3, 4, 5, 8, 9, S 1/2 NE 1/4, SE 1/4 NW 1/4;

Sec. 3: lot 1, SE 1/4 NE 1/4.

T. 39 N., R. 90 W.

Sec. 34: SE 1/4 NE 1/4, E 1/2 SE 1/4;

Sec. 35: S 1/2 N 1/2, S 1/2.

The first revision to the Lance formation participating area adds the following lands:

Sixth Principal Meridian

T. 38 N., R. 90 W.

Sec. 3: lots 2, 3, 4;

Sec. 4: lot 1.

T. 39 N., R. 90 W.

Sec. 26: SW 1/4 SW 1/4;

Sec. 27: S 1/2 S 1/2;

Sec. 28: SE 1/4 SE 1/4;

Sec. 33: E 1/2 E 1/2;

Sec. 34: Ne 1/4 NE 1/4, W 1/2 NE 1/4, W 1/2,

W 1/2 SE 1/4;

Sec. 35: N 1/2 NW 1/4.

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1/ The Madden Deep Unit Agreement, 14-08-0001-8874, was approved July 31, 1967, by the Acting Director, Geological Survey, embracing some 70,023 acres in Ts. 37, 38 and 39 N., Rs. 88, 89, 90 and 91 W., sixth principal meridian, Natrona and Fremont Counties, Wyoming.

The second revision to the Lance Formation Participating Area adds the following lands:

Sixth Principal Meridian

T. 38 N., R. 90 W.

Sec. 4: lots 2, 3, 4;

Sec. 5: lot 1.

T. 39 N., R. 90 W.

Sec. 28: SW 1/4 SE 1/4, S 1/2 SW 1/4;

Sec. 29: SE 1/4 SE 1/4;

Sec. 32: E 1/2 E 1/2;

Sec. 33: W 1/2 E 1/2, W 1/2.

The initial participating area incorporated 160 acres owned by appellants; and the first and second revisions incorporated 800 acres owned by them.

Action by the Area Supervisor was consonant with section 11 of the Madden Unit Agreement, which provides in pertinent part:

11. PARTICIPATION AFTER DISCOVERY

\* \* \* Upon completion of a well capable of producing unitized substances in paying quantities or as soon thereafter as required by the Supervisor, the Unit Operator shall submit for approval by the Director a schedule, based on subdivisions of the public land survey or aliquot parts thereof, of all unitized land then regarded as reasonably proved to be productive of unitized substances in paying quantities; all lands in said schedule on approval of the Director to constitute a participating area, effective as of the date of completion of such well \* \* \*. Said schedule also shall set forth the percentage of unitized substances to be allocated as herein provided to each unitized tract in the participating area so established, and shall govern the allocation of production from and after the date the participating area becomes effective. A separate participating area shall be established in like manner for each separate pool or deposit of unitized substances \* \* \*. The participating area or areas so established shall be revised from time to time, subject to like approval, whenever such action appears proper as a result of further drilling operations or otherwise to include additional land then regarded as reasonably proved to be productive in paying quantities, or to exclude land then regarded as reasonably proved not to be productive in paying quantities and the percentage of allocation shall also be revised accordingly \* \* \*. No land shall be excluded

from a participating area on account of depletion of the unitized substances. It is the intent of this section that a participating area shall represent the area known or reasonably estimated to be productive in paying quantities; \* \* \*.

The Supervisor's decision of July 28, 1977, set out these facts in the case:

The application establishes an initial Lance formation participating area of 1,010.99 acres and is based upon the completion of unit well No. 1-35, in the SE 1/4 SW 1/4 sec. 35, T. 39 N., R. 90 W., lease Wyoming 0321964, Tract 67, with an initial potential of 12,800 MCFGPD on October 30, 1975, from the Lance formation, 11,990 to 12,830 feet. Cumulative production from this well to January 1, 1977, is 820,420 MCF gas and current production is approximately 2,000 MCFGPD.

The first revision of the Lance formation participating area enlarges the area from 1,010.99 acres to 2,171.28 acres and is based upon the completion of unit well No. 1-34, in the SE 1/4 NW 1/4 sec. 34, T. 39 N., R. 90 W., patented tract 148, with an initial potential of 14,800 MCFGPD on January 29, 1976, from the Lance formation, 13,054 to 13,374. Cumulative production from this well to January 1, 1977 is 1,289,346 MCF gas and current production is approximately 9,000 MCFGPD.

The second revision of the Lance formation participating area enlarges the area from 2,171.28 acres to 3,132.36 acres and is based upon the completion of unit well No. 1-33, in the SE 1/4 NE 1/4 sec. 33, T. 39 N., R. 90 W., lease W-5411, Tract 128, with an initial potential of 10,060 MCFGPD on May 27, 1976, from the Lance formation, 13,222 to 13,412 feet. Cumulative production from this well to January 1, 1977, is 393,086 MCF gas and current production is approximately 4,000 MCFGPD.

Appellants contend they are required by the Survey decision to contribute through drainage under their lands to parties who have no interest or ownership in such natural gas. Basically they argue that the establishment of the participating area of approximately 1,000 acres around each completed Lance well in the Madden Unit is error and that the participating area should be limited to no more than 640 acres, conforming to the State of Wyoming spacing pattern for wells of similar and greater depth, which is based on a ruling of the State Commission that 640 acres is not smaller than the maximum area which can be efficiently drained by one well. They concede that the unit agreement is not covered by State spacing rules.

Appellants further contend that if the Lance wells should not effectively drain more than 640 acres, the area which they say Wyoming spacing regulations support, the Lance wells in secs. 33, 34, and 35 will not effectively drain the Lance formation underlying secs. 3, 4, and 9, so that at a future date when the existing Cody wells in secs. 3, 4, and 9 are reworked to recover gas from the shallower Lance formation, or new Lance wells are drilled in those sections, the participating unit interests in secs. 33, 34, and 35 would participate in the new Lance production. It is only fair, appellants argue, that secs. 3, 4, and 9 be included in the present Lance participating area in order for them to achieve equity in this matter. <sup>2/</sup>

It appears from the record that proposals by appellants have been submitted to the Area Supervisor for a third and fourth revision of the Lance participating area, based on well information from secs. 3 and 9. In such circumstance, it would be untimely for this Board to make any comment other than to say that information from these wells was not, and cannot be, considered in the revisions of the Lance participating area based only on wells completed in secs. 33, 34, and 35.

Appellants argue that drill stem test information should be given more consideration by Survey in establishing participating areas. This argument is easily answered by the terms of the Unit Agreement. Section 9 provides that discovery in paying quantities for a unit well is achieved only when unitized substances are produced in quantities sufficient to repay the cost of drilling and producing operations, with a reasonable profit. Section 11 provides that a participating area will be established upon completion of wells capable of producing unitized substances in paying quantities. However promising a drill stem test may be, it does not reflect a completed well capable of producing in paying quantities within the context of the Unit Agreement.

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<sup>2/</sup> The record is not completely clear but it appears that the Cody formation is deeper than the Lance, and wells drilled into the Cody in sections 3, 4, and 9 gave good results from drill stem tests taken in the Lance formation during the drilling operations, although none of the wells was completed as a Lance producer. Appellants suggest that of 11 unit wells drilled into the Lance, six were dry, being unable to be completed; a situation which they contend supports their charge that 1,000 acres is too large a participating area for a Lance well. It is not clear whether appellants are discussing unit operations which have occurred since May 1, 1976, the effective date of the second revision of the Lance participating area. Obviously, any new wells or producing information generated after May 1, 1976, cannot be considered in any review of the correctness of the action taken effective that date or earlier. Under the terms of the Madden Unit Agreement, continuing review of the participating areas is to be made whenever further drilling operations indicate that additional land should be included in a participating area, or existing land be excluded from a participating area.

We do not see any error under the terms of the Unit Agreement in the refusal of Survey to give more consideration to information from drill stem tests in the establishment of a participating area.

To the extent that appellants may be pressing their argument that net feet of pay in producing formations be given consideration in the allocations under a participating area, we reject the argument and point out that the terms of the Unit Agreement provide for the establishment of participating areas based only on surface acres.

Furthermore, reference by appellants to the establishment and size of participating areas in the Lower Fort Union and Cody formation participating areas within the Madden Deep Unit area have no direct bearing on the appeal before us, which relates only to the propriety of the Lance participating area.

[1] Where the U.S. Geological Survey has determined from available geologic and other data that a participating area of 1,000 acres is the proper size for a producing well under an approved Unit Agreement, this Board may rely upon reports of the Survey, setting forth the conclusions reached without examining the technical data upon which the reports were based. Cf. William F. Martin, 24 IBLA 271 (1976); William J. Colman, 9 IBLA 15 (1973).

[2] A determination by the U.S. Geological Survey that certain land is within the participating area of a producing oil and gas well established pursuant to an approved Unit Agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error. See U.S. Natural Resources, Inc., 13 IBLA 258 (1973).

Nothing adduced by appellants persuades us of any error by Survey in establishing the Lance participating area and its first and second revisions. Appellants have requested that the matter be referred for a hearing at which testimony of expert witnesses might be given. We cannot see that such a hearing would be productive of information which might persuade us to a different conclusion from that above stated. The request is denied.

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

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Douglas E. Henriques  
Administrative Judge

I concur:

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Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

Appellants have requested an oral argument or a hearing. The reason articulated in their appeal brief for an oral presentation is the difficulty in explaining their position in a written discussion. They assert it would be simple to explain their situation verbally, however. This may be so. In reviewing their arguments, it is somewhat difficult to understand their position that their rights are not being adequately protected here and that they are being forced to contribute to parties who have no interest or ownership in natural gas. It is apparent that their written presentation does not adequately show that Survey's decision establishing the participating areas so far in the unit is an abuse of discretion or violative of any statutory, regulatory or unit agreement term. Appellants have made no offer of proof of evidence that could be presented at a hearing to demonstrate factual error in Survey's determination, or establish an abuse of discretion. Appellants have not indicated the names of other parties who they claim are being benefited unfairly at appellants' expense. Certainly, were further proceedings necessary which might result in a different determination, other affected parties should be participants in the proceedings.

It appears that a further determination concerning other possible participating areas will be made by Survey which may have bearing upon some of the points raised by appellants here.

While I believe an oral argument might give some enlightenment on appellants' position, in the present posture of this case and in the absence of participation by other affected parties, neither an oral argument before this Board nor a fact-finding hearing before an Administrative Law Judge is warranted.

I agree with the majority opinion to the extent it finds there is not a showing of error which sufficiently establishes that Survey's decision was arbitrary or capricious or not supported by competent evidence. Appellants have pointed to minor aspects of Survey's decision in an attempt to demonstrate error, but their assertions are not persuasive that the basic determination of the participating areas was erroneous.

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Joan B. Thompson  
Administrative Judge

