

MARY NAN SPEAR

IBLA 85-544

Decided January 22, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a noncompetitive oil and gas lease offer for acquired lands. W 84511.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -Oil and Gas Leases: Noncompetitive Leases -Oil and Gas Leases: Offers to Lease -Oil and Gas Leases: Unit and Cooperative Agreements

Where an offeror for a noncompetitive oil and gas lease for acquired lands within an approved unit agreement fails to submit, within a specified time period established by BLM, evidence either that the offeror has entered into the agreement, or that the unit operator does not object to lease issuance without unit joinder in accordance with 43 CFR 3101.3 1, or to request an extension of time for compliance, and where there are intervening rights, BLM may properly reject the offer.

APPEARANCES: Mary Nan Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Mary Nan Spear has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 8, 1985, rejecting her noncompetitive oil and gas lease offer W 84511 because she had failed to submit a unit joinder or request for an extension of time to do so.

By decision dated April 20, 1983, BLM notified appellant that her simultaneous oil and gas lease application had received first priority for parcel WY 590 in the January 1983 drawing, and required her to submit executed copies of the lease offer form and attached stipulations, along with the first year's rental payment, within 30 days of receipt of the decision. Also, on April 20, 1983, BLM issued a notice to appellant, stating that the land encompassed by

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her lease offer 1/ was within the Wildcat Creek unit agreement, approved effective August 3, 1982. BLM required appellant to file either evidence that appellant had "entered into an agreement with the unit operator [True Oil Co. (TOC)] for the development and operation of the subject lands under the terms and provisions of the approved unit agreement' or a "letter from the unit operator stating he has no objection to the lease issuance without your joining the unit." 2/ BLM allowed appellant 30 days from receipt of the decision in which to either file the required evidence or request an extension of time in which to comply, absent which her lease offer would be "subject to rejection."

On April 29, 1983, BLM received executed copies of the lease offer form and attached stipulations, along with the first year's rental payment. Also, on that date, BLM received a copy of its April 1983 notice, which bore a type-written notation addressed to TOC which stated: "In accordance with the above letter from the BLM, please write a letter to the BLM stating that the subject 40 acre lease is not necessary to the Unit operations and that you have no objections to it issuing without unit joinder." Thereafter, BLM received no further communications from appellant or TOC. Finally, in its April 1985 decision, BLM rejected appellant's lease offer for failure to comply with 43 CFR 3101.3-1, by filing either "a unit joinder or request for extension time."

In her statement of reasons for appeal, appellant states that she "requested from the Unit operator repeatedly the necessary forms to sign to join the Unit, but all inquiries went unanswered." Appellant contends that the unit operator's failure to respond "should be construed by the BLM as

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1/ This land is described as 40 acres of acquired land situated in the NW 1/4 SE 1/4 sec. 35, T. 43 N., R. 66 W., sixth principal meridian, Western County, Wyoming.

2/ BLM specifically instructed appellant to contact the unit operator immediately:

"If you are to join the unit, the operator will give you instructions about executing copies of the joinder agreement, or he will furnish you his permission to operate the lease independently of the unit agreement. Five duplicate originally signed copies of the joinder agreement must be furnished to this office or, preferably, to the Minerals Management Service [MMS], P.O. Box 2859, Casper, Wyoming 82602. If the evidence is filed with the Minerals Management Service, a copy of the transmittal letter must be filed in this office. This is also true for the operator's permission to operate independently." In the case of submission of a letter from the unit operator permitting appellant to operate her lease independently, BLM stated that if "such statement is acceptable to the Minerals Management Service, you may receive permission to operate independently with the requirement that such operations conform to the terms and provisions of the unit agreement."

statement by the unit operator that the lease can be issued without the joinder by this party." Appellant makes no contention that she filed the required evidence at any time with BLM or MMS, or that she ever requested an extension of time.

Under section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982), the Secretary has discretionary authority to mandate inclusion of Federal oil and gas leases in unit agreements in the interest of conservation of oil and gas resources. That statutory provision states, in relevant part, that:

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.

30 U.S.C. § 226(j) (1982). This statutory provision is equally applicable to oil and gas leases for acquired lands issued pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. S 352 (1982). 3/

The applicable Departmental regulation, 43 CFR 3101.3-1, states:

Before issuance of a lease for lands within an approved unit, the lease offeror shall file evidence with the proper BLM office of having joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable to the authorized officer the lessee shall be permitted to operate independently but shall be required to conform to the terms and provisions of the unit agreement with respect to such operations.

[1] This regulation grants a lease offeror seeking lands within an approved unit agreement two options: to join the unit agreement or to show satisfactory reasons for failure to join. In its April 1983 notice, BLM essentially interpreted the regulatory phrase "satisfactory reasons" specifically to mean a letter from the unit operator stating its nonobjection to lease issuance without unit joinder. In addition, in that notice, BLM allowed appellant the opportunity to seek an extension of time for compliance with the regulation.

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3/ Section 3 of the Mineral Leasing Act for Acquired Lands provides that oil and gas leases for acquired lands are to be issued "under the same conditions as contained in the leasing provisions of the mineral leasing laws." 30 U.S.C. § 352 (1982).

In the present case, the notation on the bottom of the copy of the April 1983 BLM notice filed April 29, 1983, indicates that appellant may have made some effort to get the unit operator to prepare the required letter of nonobjection. However, that notation was directed to TOC. At no time prior to the April 1985 BLM decision did appellant report to BLM the extent of her efforts with respect to TOC or explain her failure to get TOC's consent to lease issuance without unit joinder. Nor did she ever specifically request an extension of time. Moreover, the notation on the bottom of the copy of the April 1983 BLM notice clearly did not constitute either evidence of having entered into the unit agreement or a letter from the unit operator stating that it had no objections to lease issuance without unit joinder. At the time of the April 1985 BLM decision, appellant had effectively been granted almost 2 years for compliance with the April 1983 BLM notice, which originally had a 30-day time limit.

The Board has repeatedly held that BLM may set reasonable time limits for compliance with certain requirements and that BLM properly rejects a lease offer where the offeror fails to comply with such a requirement within the specified time period. William H. Kerlin, Jr., 95 IBLA 377 (1987); Carl Gerard, 70 IBLA 343 (1983). In the present case, BLM established a 30-day limit for compliance with 43 CFR 3101.3-1, and then rejected appellant's offer for failure to comply within that time period.

In Rodeo Oil Co., 93 IBLA 131 (1986), in similar circumstances, we set aside a BLM decision rejecting a competitive oil and gas lease offer, concluding that, in the absence of intervening rights, the lease offeror would be accorded an additional opportunity to submit the evidence required by BLM.

The present case, however, is clearly distinguishable from Rodeo Oil because of the presence of intervening rights, i.e., the interests of the second and third priority applicants. See *Ballard E. Spencer Trust, Inc. v. Morton*, 544 F.2d 1067 (10th Cir. 1976). Indeed, the record indicates that BLM has never issued decisions rejecting the simultaneous oil and gas lease applications of these other priority applicants. Their interests, thus, remain outstanding and would otherwise be prejudiced by affording appellant any additional time to comply with 43 CFR 3101.3-1.

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<sup>4/</sup> Specifically, in Rodeo oil, the offeror had filed timely with BLM a copy of its letter to the unit operator requesting copies of the unit agreement for the purpose of joining the unit, along with a request for an extension of time. BLM granted the extension. However, well after expiration of that extension of time, the offeror had failed to file evidence of unit joinder or an additional request for an extension of time, and BLM rejected the lease offer. On appeal, the offeror explained that the unit operator had failed to answer the offeror's request for unit joinder. Based on this assertion and the absence of intervening rights, we granted the appellant additional time to submit proof of joinder.

Accordingly, 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.

Bruce R. Harris  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

James L. Burski  
Administrative Judge

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