

Editor's note: Appealed, Civ.No. 88-0162-B; aff'd (D.Wyo. Jan. 12, 1989)

CDM OIL & GAS

IBLA 85-356, 85-357

Decided March 15, 1988

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease applications U-56212 and W-91632.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application filed on behalf of a partnership where the applicant failed to disclose the identity of its general partners on the application form or on a separate accompanying sheet, as required by notice published in the Federal Register in accordance with 43 CFR 3102.5 (1983).

APPEARANCES: Kal Zeff, Denver, Colorado, and David G. Ebner, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

CDM Oil & Gas (CDM) has appealed from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), each dated January 14, 1985, rejecting its simultaneous oil and gas lease applications U-56212 and W-91632. These applications were selected with first priority for parcels UT-629 and WY-488 in the October 1984 simultaneous oil and gas lease drawing.

On each application form, the applicant's name was set forth as "CDM Oil & Gas, a Colorado General Partnership." Signing each application was Kal Zeff, below whose signature was typed the words "Kal Zeff, General Partner." The area on each application for identifying other parties in interest was left blank. BLM rejected these applications because appellant failed to indicate in this area the names of other members of the partnership or, in the alternative, failed to provide a separate listing of such names with its application.

In support of its decisions, BLM quoted from 43 CFR 3112.2-3, which states in part: "The applicant shall set forth on the lease application, or

on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued." BLM also quoted part of a notice that appeared in the Federal Register at 48 FR 37656 (Aug. 19, 1983):

Pursuant to the final rulemaking of July 22, 1983, (48 FR 33648) * * * the Bureau of Land Management hereby gives notice that effective August 22, 1983, it will strictly enforce the provisions of amended § 3112.1-3, [1/] which pertain to the designation of other parties in interest * * *. Amended § 3112.1-3 requires that an applicant (including an association, partnership, or corporation) filing a simultaneous oil and gas lease application must designate * * * the names of all parties who hold an interest * * * in the application * * *. Failure by associations or partnerships to comply with this requirement shall result * * * in * * * rejection of the application * * *. [Emphasis added.]

In its statement of reasons, CDM states that it did, in fact, disclose on each application the names of all parties who held an interest in the application. No name other than Kal Zeff appeared on the application, CDM contends, because no other member of the partnership had any interest in the application, and during his lifetime, Kal Zeff is the only party in interest in CDM Oil & Gas.

A copy of the partnership agreement of CDM Oil & Gas accompanied appellant's statement of reasons. Four individuals, Kal Zeff, his wife Joyce Zeff, and their adult children, Diane Sharon Wolfson and Ron David Zeff, are identified as partners, with Kal Zeff being named as managing partner. In a supplemental statement of reasons, CDM contends that the partnership was formed "as a probate avoidance and estate planning mechanism for Kal Zeff." It points out that the partnership agreement provides that while Kal Zeff is alive, no general partner, other than Kal Zeff, has any right to partnership income or responsibility for partnership losses. CDM contends that should Kal Zeff decide to dissolve the partnership, he, as the sole capital contributor and the sole partner entitled to receive partnership profits, would receive all of the partnership assets after payment of liabilities. Referring to 43 CFR 3112.2-3, the regulation requiring the appellant to disclose the names of other parties in interest, CDM argues that none of appellant's general partners, other than Kal Zeff, are currently vested with any legal or equitable rights under the lease, although they may be so vested upon Kal Zeff's death.

[1] In The Turner Association, 85 IBLA 374 (1985), aff'd, The Turner Association v. Hodel, CV 85-196-BLG-JFB (D.C. Mont. Sept. 23, 1986), the Board affirmed BLM's rejection of an association application that failed

1/ BLM's reference to section 3112.1-3 is a misquote. The Aug. 19, 1983, notice cites section 3112.2-3 as the regulation to be strictly enforced.

to disclose association members. In so holding, the Board expressly relied on regulation 43 CFR 3102.5 which authorizes BLM to require an applicant to submit "additional information to show compliance with the regulations of this group and the Act," including those related to citizenship, acreage holdings, and prohibited arrangements. See also, Santa Fe Energy Operating Partners, L.P., 101 IBLA 256 (1988); Venlease I, 99 IBLA 387 (1987).

As we explained in Turner, BLM issued its August 19, 1983, notice, quoted above, pursuant to 43 CFR 3102.5. Not quoted by BLM but highly relevant to Turner and to this appeal is the following paragraph from the notice:

After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made. [Emphasis added.]

Thus, in Turner the requirement that association members be disclosed was based not on 43 CFR 3112.2-3, 2/ but rather on BLM's exercise of its right to require that certain relevant information accompany an application. The exercise of this right is set forth in BLM's August 19 notice, and appellant is charged with knowledge of its contents. 44 U.S.C. § 1507 (1982); see also Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Citing Turner with approval, the Board subsequently affirmed BLM's rejection of partnership applications that failed to disclose the members of the partnership either on the application itself or on an accompanying sheet. See, e.g., Santa Fe Energy Operating Partners, L.P., supra; Venlease I, supra; R.G.B. Co., 95 IBLA 300 (1987); Kerogen Crushers, 95 IBLA 63 (1986); and BTA Oil Producers, 91 IBLA 268 (1986).

Our holding in Turner makes unnecessary an examination of whether the wife or children of Kal Zeff are parties in interest in the application. BLM's notice of August 19 requires that a partnership application be accompanied by a complete list of individuals who are general partners. 3/ The partnership agreement reveals that there are four general partners in CDM. Only one of the partners was named on CDM's application, and CDM submitted no accompanying papers identifying the other three. BLM, therefore, properly rejected CDM's application.

2/ This regulation does, however, require compliance with 43 CFR Subpart 3102, and, as noted above, 43 CFR 3102.5 is the authority for BLM's requirement that partnership members be disclosed.

3/ We note that in TXP Operating Co., 99 IBLA 355 (1987), our holding in The Turner Association, supra, was held not to apply to limited partners holding or controlling 10 percent or less of the partnership. This exception, however, is not applicable in the present case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Wyoming State Office are affirmed as modified herein.

John H. Kelly
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

ADMINISTRATIVE JUDGE MULLEN CONCURRING:

This Board has recently issued an en banc decision addressing the primary issue in this case. Nothing has taken place since the issuance of Santa Fe Energy Operating Partners, L.P., 101 IBLA 256 (1988), to change my opinion. I joined the dissent in that case for the reasons aptly expressed in that dissent. However, I am bound by Santa Fe, and must concur with that opinion unless and until that decision is overturned by the Federal court or a majority of this Board.

It is interesting to note that a new volume 43 of the Code of Federal Regulations was published about the time of issuance of Santa Fe. This volume reflects a change to 43 CFR 3102.5, in the form of an addition of a new paragraph (e). However, the regulation remains silent as to the requirement to submit additional evidence at the time of filing an application.

R. W. Mullen
Administrative Judge