

INTERIOR BOARD OF LAND APPEALS

Chevron U.S.A., Inc.

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CHEVRON U.S.A. INC.

IBLA 93-659

Decided July 5, 1994

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, reversing a decision by the Roswell District Manager approving vertical contraction of the Bogle Flats Unit Area. NM SDR 93-024.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases:
Unit and Cooperative Agreements--Oil and Gas Leases: Unitization

A proposal for vertical contraction of the Bogle Flats Unit Area could not be approved without amendment of a provision of the unit agreement that was inconsistent with the proposal because it prohibited exclusion from the unit of any part of a legal subdivision included in a participating area; since amendment of the agreement required the consent of all parties to the agreement in order to be effective, it could not be accomplished over the objection of one of the parties, and BLM therefore properly refused to approve the proposed contraction of the unit.

APPEARANCES: Ray M. Vaden, Land Unitization Representative, Chevron U.S.A. Inc., Midland, Texas, for appellant; Thomas C. Lowry, Esq., Midland, Texas, for intervenor Marathon Oil Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Chevron U.S.A. Inc. (Chevron) has appealed from an August 12, 1993, decision of the Deputy State Director, Lands and Minerals, New Mexico State Office, Bureau of Land Management (BLM), that reversed a decision by BLM's Roswell District Office approving Chevron's request for vertical contraction of the Bogle Flats Unit, Eddy County, New Mexico.

Chevron is unit operator of the Bogle Flats unit agreement made by owners of working, royalty, and other oil and gas interests for the development and operation of approximately 677.19 acres of land presently comprising the unit area. The nature of the action proposed to be taken is described in the statement of reasons (SOR) filed by Chevron on appeal:

Recently, one of the working interest owners in the Unit, Oryx Energy Company ("Oryx") sold its deep rights in the Unit to BTA

Oil Producers ("BTA"). BTA is not an original party to the Unit Agreement or the Operating Agreement. BTA now desires to explore the deeper zones.

Believing that the elimination of the deep rights from the Unit provided the best method for developing deep gas zones, Chevron proposed the vertical contraction of the Unit 1/ to exclude all formations below the top of the Atoka formation. Chevron met with the BLM District office and the New Mexico State Land office to review the proposal and to receive assurance that its plan for unit contraction was in compliance with the requirements of the Unit Agreement. Chevron adhered to the instructions of the State and the BLM as well as the requirements of Article 2 of the Unit Agreement and obtained 90+% of the voting power of the working interest owners for this contraction. The State of New Mexico and the BLM then approved the elimination of these deep zones from the Unit.

1/ Since the Unit and the Participating Area are one and the same in this case, discussion of the vertical contraction of the Unit includes the vertical contraction of the Participating Area and vice-versa.

(SOR at 2).

Chevron contends that elimination of deep zones from the unit is needed in order to encourage development of those lower formations; while Marathon Oil Company (Marathon) (a working interest owner in the Bogle Flats Unit), has objected to the action proposed to be taken, Chevron states that it has the approval of over 90 percent of the working interest owners to the proposed action. It is suggested by Chevron that section 11 of the unit agreement, governing participation after discovery, provides authority for the Chevron proposal when it recites that the unit may be contracted to "exclude land * * * regarded as reasonably proved to be not productive in paying quantities" (SOR at 4 (quoting from section 11 of the agreement)). It is argued that such a construction of section 11 is permissible when it is read in connection with section 5(f) of the operating agreement (which prohibits the operator from designating the participating area), and section 6 of the operating agreement (requiring 75 percent of working interest owners to consent to operations for which consent is required). Chevron reasons that vertical formations within a unit are "lands" in the same sense as horizontal legal subdivisions are lands, and should be considered subject to exclusion from the unit under the same conditions as are legal subdivisions, provided only that 75 percent of the consenting working owners agree.

Marathon opposes the contraction of the unit area proposed by Chevron, and asserts in defense of the BLM decision here under review that a vertical contraction of the unit as proposed by Chevron is contrary to the terms of the unit agreement. Citing section 2(e) of the agreement, Marathon contends that land can be excluded from the unit by Governmental survey tract, but only if no part of a tract to be excluded is within a participating area. Since all Governmental survey tracts now included in the unit are also part

of the Bogle Flats participating area, Marathon argues, exclusion of a horizon from within the unit cannot be accomplished without amendment of the agreement, an action that requires the consent of all parties to the agreement. Marathon points out that it has not and will not consent to amendment of the agreement to exclude production horizons, and submits that such an amendment is not needed for the Bogle Flats Unit (which it argues can equally well be developed at depth by non-consenting operations, a contingency contemplated by the unit agreement).

The decision here under review found that Chevron's request for vertical contraction of the Bogle Flats Unit area could not be approved, because to do so required an amendment of the agreement; it was concluded that the unit agreement had not been amended because not all the parties to it had consented to vertical contraction of the unit. It was determined that "[c]urrent manual guidance * * * requires that '[a]ll parties committed

to the agreement must sign or consent to the amendatory language before it may be approved by the authorized officer." BLM then concluded that: "It is our decision that the Unit agreement may only be amended with Marathon's concurrence." Both Chevron and Marathon agree that the issue

on appeal concerns whether the unit agreement must be amended, Chevron contending that vertical contraction of the unit does not require amendment of the unit agreement, while Marathon argues that it does.

[1] Unit agreements are private contracts; the Secretary of the Interior lacks authority to reform such agreements, but the parties to

the agreement may do so themselves if they agree that reformation is needed to give expression to their agreement. See generally Coors Energy Co., 110 IBLA 250, 257 (1989), and authorities cited. Decision of the issue presented by this appeal depends, all parties agree, upon the terms of the Bogle Flats unit agreement. The Bogle Flats Unit Agreement provides, at section 2(e), that expansion or contraction of the unit shall be made by adding or subtracting tracts identified by "legal subdivisions" of "40 acres by Government survey or its nearest lot or tract equivalent * * * no parts of which are entitled to be in a participating area." Id. at 4. The agreement, therefore, does not permit exclusion from the unit of any part of a Governmental survey that remains part of a participating area. Since the unit and the participating area are, as Chevron points out, one and the same, no part of the unit as it is presently constituted can be excluded. To do so would, as Marathon contends, require amendment of section 2(e) to delete the limiting provision of section 2(e) quoted above.

Chevron's argument that, because development so far has been at relatively shallow depths, the deeper horizons are not productive (and may therefore be excluded) under section 11 of the unit agreement is internally inconsistent. The primary target of the action proposed to be taken is, Chevron admits, a particular formation at depth; as Chevron explains:

The primary zone proposed to be eliminated from the Unit by vertical contraction is the Morrow Formation. The Morrow Formation is typically lenticular sandstones of petroleum reserves of limited size as opposed to the more continuous dolomite layer of the Pennsylvanian Age Cisco Canyon formation that is productive

throughout the Unit. Chevron actually tested for the Morrow Formation lenticular sandstones in its Morrow Bogle Flats Unit, #4-2 well when the well was drilled. The Morrow test was unsuccessful, but because of the nature of the isolated non-contiguous sandstone reservoirs of the Morrow Formation, it is not unusual to miss a Morrow target in this geographical area. Therefore, not many operators or working interest owners are willing to take the risks associated with exploring for these deep formations.

(SOR at 3).

But if the land comprising the deep formations is to be considered outside the unit because it is not presently producing, it is illogical to argue that it should be excluded from the unit area so that the resources it contains can be produced. The Chevron argument quoted above reveals that deeper formations (particularly the Morrow) are considered to be potentially productive; they may not, therefore, be "regarded as reasonably proved not to be productive" within the meaning of section 11 of the unit agreement. Section 11 of the unit agreement does not, therefore, support Chevron's application to exclude lower formations such as the Morrow from the unit.

It must therefore be concluded that the vertical contraction of the Bogle Flats Unit proposed by Chevron was inconsistent with the provision of section 2(e) of the unit agreement governing exclusions from the unit area. Consequently, before the Chevron proposal could be approved, the unit agreement was required to be modified to permit exclusion of lands from the unit area in the manner proposed. Amendment of the agreement did not take place, however, because a party to the agreement opposed it, and BLM properly refused to allow vertical contraction of the unit area over Marathon's objection.

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.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge