INTERIOR BOARD OF LAND APPEALS

Chesapeake Operating, Inc., et al.

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CHESAPEAKE OPERATING, INC., ET AL.

IBLA 97-550, 98-48, 98-55 Decided June 15, 1999

Appeals from a decision by the State Director, Eastern States Office, Bureau of Land Management, affirming approval of the Certification-Determinations for the Hurricane Branch Unit Area and the Whisky Chitto Unit Area. Contract Nos. LAES-48134X, LAES-48135X.

IBLA 97-550 affirmed; IBLA 98-48 and IBLA 98-55 dismissed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

A unit agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved. A unit agreement submitted to BLM is properly approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources.

APPEARANCES: Henry J. Hood, Esq., Oklahoma City, Oklahoma, Charles L. Kaiser, Esq., and Ezekiel J. Williams, Esq., Denver, Colorado, for Chesapeake Operating, Inc.; Cecil W. Ballard, President, Grant Parish, Louisiana, for Grant Parish Police Jury; Ms. Thelma Jarnigan, Secretary, Winn Parish, Louisiana, for Winn Parish Police Jury; Randy Lucky, Parish Administrator, Natchitoches Parish, Louisiana, for the Natchitoches Parish Police Jury; Richard Bellings, President, Rapides Parish, Louisiana, for the Rapides Parish Police Jury; Richard A. Schwartz, Superintendent, Vernon Parish, Louisiana, for the Vernon Parish School Board; Jack D. Palma, II, Esq., Cheyenne, Wyoming, for Sonat Exploration Company and Union Pacific Resources Company; Courtney W. Shea, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, and Dennis Daugherty, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Chesapeake Operating, Inc. (Appellant or Chesapeake) has appealed from an August 8, 1997, decision issued by the State Director, Eastern States Office, Bureau of Land Management (BLM or Respondent), affirming the May 19, 1997, Certification-Determinations for the Hurricane Branch

Unit Area (LAES-48134X) and the Whisky Chitto Unit Area (LAES-48135X) issued by the Jackson District Office, BLM (IBLA 97-550). Chesapeake holds approximately 1,342 acres of Federal and private lands under lease within the Hurricane Branch Unit and approximately 435.03 acres of Federal and private lands under lease in the Whisky Chitto Unit, but has not committed its leaseholds to either of the two units which together constitute 70,000 acres.

Sonat Exploration Company (Sonat), the unit operator of the Hurricane Branch Unit, and Union Pacific Resources Company (UPRC), the unit operator of the Whisky Chitto Unit, have been granted intervenor status by the Board because they have interests in this matter which would be adversely affected by a reversal of the decision on appeal.

The Police Jury of Grant Parish, Louisiana, filed a notice of appeal from the August 8, 1997, decision of the State Director, Eastern States Office (IBLA 98-48). The Police Juries and School Boards of four other Parishes in Louisiana (Natchitoches, Vernon, Rapides, and Winn) also filed a consolidated notice of appeal from the August 8, 1997, decision of the State Director, Eastern States Office (IBLA 98-55). As the three appeals (IBLA 97-550, IBLA 98-48 and IBLA 98-55) relate to the same subject matter, they were consolidated by the Board on appeal. No statements of reasons (SOR) were subsequently filed by the five Parish Police Juries and School Boards. We have long held that the failure to file an adequate SOR, seek an extension of time to do so, or provide an explanation for the failure, will result in dismissal of the appeal. 43 C.F.R. § 4.412(c); see Burton A. McGregor, 119 IBLA 95, 98 (1991).

On October 1, 1997, the Grant Parish Police Jury advised the Board that it would take no further action with regard to this matter. On October 29, 1997, the Rapides Parish Police Jury similarly advised the Board in a filing that it "will take no further action in regards to this matter." No further communication was received from the other three Parishes. The Notice of Appeal filed collectively by the Police Juries and School Boards of Natchitoches, Vernon, and Winn Parishes cannot be considered an adequate SOR, and they have filed nothing else with the Board. Furthermore, the time for filing an SOR under 43 C.F.R. § 4.412(a) has long since passed. In these circumstances, we conclude that the appeals of the Police Juries and School Boards of Natchitoches, Vernon, Grant, Rapides, and Winn Parishes, Louisiana, as included within IBLA 98-48 and 98-55, must be dismissed.

As a brief background to Chesapeake's appeal, in December 1996, Sonat and UPRC sought approval from the Jackson, Mississippi, District Office of BLM for unit agreements involving Federal leases in Vernon Parish, Louisiana. After separate meetings with BLM officials in which the applicants presented their unit proposals and the geologic facts and data upon which they were basing their proposals, BLM gave preliminary indications to Sonat and UPRC that their units would be approved if they could acquire sufficient commitments from other mineral owners within the

proposed units. On January 16, 1997, Chesapeake objected to the proposed units. BLM met with Chesapeake on January 23, 1997, to hear its concerns and objections. According to the BLM notes of that meeting, Appellant opposed the unit agreements "so that leases would expire and be available for competitive bid." See Record #105. Appellant's SOR reflects that Chesapeake is a competitor of Sonat and UPRC for development rights to Austin Chalk mineral resources. (SOR Exh. 3.)

Sonat and UPRC subsequently obtained the necessary approvals in accordance with 43 C.F.R. § 3183.4(a). The Manager of the Jackson District Office, BLM, issued the Certification-Determinations for both units on May 19, 1997. See Record #52. Appellant then requested review by the State Director-Eastern States Office, BLM, of both of the unit certifications. See Record #46 and #52. Chesapeake made its oral presentation before the State Director on July 8, 1997, and, thereafter submitted written material. Sonat and UPRC made oral presentations on the same day. On August 8, 1997, the State Director issued his decision (Decision) which affirmed the Certification-Determinations of the BLM Jackson Office. (Decision at 3; see Record #6-#13.)

The State Director's decision addressed each of Appellant's seven main points of appeal included within its June 17, 1997, letter. Appellant first argued that the units cannot be geologically justified as exploratory. In response, the State Director held, in pertinent part:

> The development and production history of the vast Austin Chalk geologic trend has established that commercially productive wells are completed in areas where the Austin Chalk is extensively fractured, creating oil and gas reservoir conditions conducive to fluid flow characteristics necessary for production. Such localized geologic areas in the Austin Chalk that have undergone extensive fracturing provide the target zones of the subject units.
>
> Chesapeake, in part, bases an argument that the unit areas cannot be considered to be exploratory because of the existence of the Crosby #21 well just outside the unit boundaries. The Crosby #21 well, at the time of unit application[,] was not productive. The well could have been included within the proposed unit, but was not proposed for inclusion by the operator due to the existing agreement among interest holders of that particular State-spacing unit. The Crosby #21 well has only recently begun to produce, but duration of production thus far has not verified that the well will be economic. Even if a formation has yielded production somewhere in the vicinity of a proposed unit, that fact does not make the entire occurrence of that formation "proven."

(Decision at 3-4.)

In response to Appellant's second claim that the boundaries of the units are improperly based on Sonat's and UPRC's leasehold ownership rather than geological considerations, the State Director found, in pertinent part:

> The record shows that the boundaries of the units were based on both geologic and administrative considerations. Considerations include geology, State spacing, adjoining units, existing wells and acreage control. The JDO [Jackson District Office] technical experts support Sonat's and UPRC's geologic basis of the boundaries of the units and are in agreement that the target zones are untested within these unit boundaries. When a geologic horizon is large, as is the case of the Austin Chalk play, inclusion of the entire structure is not reasonable or practical, nor is it necessary to achieve the conservation objective since this is not a structural trap reservoir. Also, Federal ownership is largely limited to the Kisatchie National Forest which encompasses a small part of the horizon, as currently defined.

(Decision at 4.)

In response to Appellant's third claim that the units will not promote orderly development as the unit agreements fail to provide for a meaningful and enforceable drilling commitment to develop the Unit lands, the State Director determined:

> Both units require a minimum number of test wells to be drilled to the target formation and depth; i.e., five for Sonat's Hurricane Branch Unit and one for UPRC's Whisky Chitto Unit. These numbers are well within BLM guidelines which state, for unit areas larger than 25,000 acres, one additional test well should be required for every 10,000-15,000 acres. Additionally, drilling of a subsequent test well must begin within 6 months of completion of drilling of the previous test well until a paying well has been established. If the required test well drilling cycle is not maintained, the unit will terminate.
>
> The agreements require a minimum of test wells; if they are not all drilled within the prescribed period, the unit will contract to established participating areas [PA's] of those wells that have been drilled. Upon discovery within a unit, the operator must annually submit a "Plan of Development" that establishes future drilling obligations.

(Decision at 4-5.)

Appellant's fourth claim is that the unit agreements fail to provide for expanding or merging PA's, thus stripping the unit agreements of an

essential feature to protect correlative rights. The State Director determined, in pertinent part:

> We believe that the approval of the unit agreements with PAs being defined by State spacing is appropriate both in protecting correlative rights and for the geologic situation that exists for Austin Chalk exploration and development in Central Louisiana.
>
> * * * * * * *
>
> The proponents of the unit agreements requested that PAs conform to a single-State spacing unit. The JDO determined that such PAs would be logical for the Austin Chalk due to the geologic environment, technological developments and size of the State- spacing units. We agree with the JDO District Manager's determination that establishing fixed boundaries for the participating areas utilizing State spacing units, as requested by Sonat and UPRC, is a reasonable approach for Austin Chalk units.

(Decision at 5-6.)

Appellant's fifth claim is that BLM has failed to consider the impact from lost revenue to the Department of the Treasury and applicable Louisiana Parishes from the re-leasing of expired leases that could be derived if unit approval is denied. The State Director determined, in pertinent part:

> The potential of bonus bids from competitive leasing, if leases expire if the units are not approved, is not a criterion that BLM uses in deciding whether to approve units. The primary purpose of the Mineral Leasing Act is to promote the development of Federal minerals in an environmentally responsible manner, not the maximization of short-term revenue gain at the expense of reasonable opportunities to exercise lease rights expected by lessees and provided for in BLM's rules. During the life of leases, lessees have the contractual right to propose actions that will maximize development and recovery of leased resources. The proponents of the two units filed their applications in a timely manner and followed established procedures for approval.

(Decision at 7.)

Appellant's sixth claim is that Sonat and UPRC have failed to secure the approval of the State of Louisiana as required by 43 C.F.R. § 3181.4 and BLM Manual H-3180-1 Unitization (Exploratory) (hereinafter BLM Manual). The State Director found that

> in this case the amount of State acreage is so small that inclusion or exclusion does not affect the public interest

determination for unit approval. In support of this, the BLM Manual 3180-1 (Chapter II at Paragraph C-11), notes:

> However, where a majority of acreage within the proposed unit is Federal, and where sufficient acreage has been committed to assure effective control, the authorized officer may approve the agreement prior to its approval by the appropriate State or Indian agency.

The regulations and manual guidance of BLM give a State the opportunity to determine whether or not it wants State lands included in unit agreements. In this case for both units under appeal the majority interest is Federal and sufficient acreage (greater than 85 percent) has been committed to assure Sonat and UPRC effective control.

* * * * * * *

The JDO had verbally advised Sonat and UPRC of their need to seek and obtain State approval in order for any State land to participate in the unit, including the 25 acres currently in the Hurricane Branch Unit. Additionally, the JDO did notify the Louisiana Office of Conservation of the preliminary approval of the two units by sending copies of correspondence to the operators to that office. Sonat and UPRC have certified that they have contacted all interest holders, including the State, within the unit areas asking them to join the unit.

(Decision at 7-8.)

The Appellant's final claim urged that BLM has exceeded its authority in attempting to implement Secretarial Order No. 3199 to the unit approvals. The State Director made the following determination:

> In the view of the State Director, there is no need to rely on the Order with respect to the unit approvals by the District Manager of the JDO. The current regulations at 43 CFR 3180, Onshore Oil and Gas Unit Agreements, provide the guidance and authority to consider and approve the unit agreements submitted by Sonat and UPRC.

(Decision at 8.)

In its SOR for appeal of the August 8, 1997, decision to this Board, Appellant argues that the lands within the units do not meet the requirements for Federal exploratory unitization because they are not unproven. (SOR at 12.) Appellant claims that BLM erred in certifying the units as necessary and advisable to explore the Austin Chalk. (SOR at 14.) Appellant states that the three reasons provided by BLM in its decision for finding the units unproven and suited for exploratory unitization are

without merit. First, Appellant claims that on the date of certification, May 19, 1997, the Crosby 21-1 well, located between the units, was capable of producing 1,700 barrels of oil per day and 10 million cubic feet of gas per day. (SOR at 15.) In addition, Appellant states, as of May 19, 1997, "approximately ten wells immediately adjacent to or within a few miles of the Units had been shown to be capable of producing as high as 4,685 barrels of oil a day and 13,000,000 cubic feet of gas per day." (SOR at 16.) Appellant recites that "[b]y focusing on the wrong date and on only one well, the BLM ignored numerous facts that demonstrate the lands within the Units were not unproven and that the Units contain the most lucrative federal minerals unitized in recent years." (SOR at 16.) Appellant claims BLM's second reason--that the units were suitable for exploratory unitization--was inapplicable because "(i) the target formation is well defined and known to yield commercially paying quantities of hydrocarbons through horizontal drilling techniques, and (ii) at least ten wells surrounding the Units in all but one direction had been shown to be capable of production prior to formation of the Units." (SOR at 16.) Appellant states BLM's third reason for accepting the application for exploratory unitization--dry holes can be drilled within a mile or two of highly productive wells, and the fact that the two units do not include any productive Austin Chalk wells--is also erroneous. Appellant explains that approximately 42 wells capable of production were completed in Vernon Parish and Rapides Parish between January 1996 and May 1997 and that the "dry hole factor" is simply an aspect of horizontal drilling in the Austin Chalk. (SOR at 17.)

Appellant claims that even if exploratory units may be formed on these lands, BLM acted unreasonably by imposing inadequate conditions for unitization. (SOR at 17.) Chesapeake argues that in an area surrounded by wells producing large volumes of hydrocarbons, BLM did not require the unit proponents to agree to conditions consistent with the prospective nature of the lands unitized. (SOR at 19.) Appellant states that approval of the units was unreasonable because: (i) unit boundaries were based on leasehold ownership as opposed to geology; (ii) the drilling commitments do not ensure that approximately 70,000 acres within the units will be adequately explored; and (iii) the PA's are static and do not protect correlative rights. Id.

In urging that the unit boundaries are not geologically justified as required by the BLM Manual, Appellant claims these units were based on approximately 50,000 acres of Federal leases due to expire July 31, 1997. (SOR at 20.) With regard to drilling commitments, Appellant states that although the five-well drilling commitment required of Sonat and the one-well drilling commitment required of UPRC meet minimum guidelines for exploratory units, it was unreasonable for BLM to set the number of test wells required for the productive Vernon Parish Austin Chalk based on minimum guidelines for unproven areas. (SOR at 22.) Appellant states it was also unreasonable for BLM to omit the minimum distance requirement for test wells or a mandate that Sonat drill all five test wells regardless of outcome. (SOR at 22.) Moreover, Appellant claims, by approving the static PA's provided in the Sonat and UPRC Unit Agreements, BLM overlooked

an essential feature that permits PA's in an exploratory unit to evolve as information about the presence of hydrocarbons is gained with each well drilled. (SOR at 25.) In that regard, Appellant states, the static PA's do not protect the correlative rights of interest owners in the units because the purposes for establishing a participating area within a unit are to ensure that each interest owner of lands covering a single producible pool will receive the benefits of its fair share of production from the pool and to promote the efficient production of unitized substances. (SOR at 26.)

Appellant also states BLM failed to consider all the impacts of unitization. (SOR at 27.) Chesapeake states that if these leases had expired and been re-leased, state and local governments would have shared in the substantial bonus bids that would have been bid at a competitive sale. (SOR at 27.) Simply put, Appellant argues, BLM identified economic factors related to re-leasing that supported unitization but refused to consider economic factors on the same subject that did not support its decision. (SOR at 28.) Appellant claims this is arbitrary and capricious, particularly in light of the discrepancy between the nominal savings in avoiding re-leasing and the income anticipated in re-leasing at current market rates. Id.

Finally, Appellant renews its claim that BLM violated Departmental regulations requiring State approval of unitization of State lands. Citing 43 C.F.R. § 3181.4(a)(1996), Appellant states that BLM violated the requirement that approval of the unitization agreement by appropriate State officials must be obtained prior to its submission to the proper BLM office for final approval. (SOR at 28.)

In its Response, BLM explains that the decision under appeal took into account unique and difficult development issues posed by the Austin Chalk formation where the oil and gas are widely deposited and commercially productive wells are completed in areas where the Austin Chalk is extensively fractured. (Response at 8.) BLM states that it has extensively evaluated the geological, logistical, and administrative realities in developing and approving the units in accordance with the standards of the Mineral Leasing Act and 43 C.F.R. § 3183.4. Id. BLM claims that the units will provide for orderly development, requiring a minimum number of test wells, establishing a test well drilling cycle and requiring a Plan of Development upon discovery of a productive well, thus maximizing ultimate resource recovery while using a minimum number of wells to meet this end. Id.

Respondent addresses Chesapeake's claim that the proposed units do not meet Federal requirements for unitization by noting that the provisions of the Mineral Leasing Act and regulations relating to units in most instances are applicable to both proven and unproven areas. (Response at 9, citing 2 Law of Federal Oil and Gas Leases § 18.03[1].) Nevertheless, BLM explains, in this case, the hydrocarbon to be located is in fractures and no productive wells had been established within

the vicinity of the unit when the unit was proposed. (Response at 10.) Further, Respondent claims, BLM has evaluated the other drilling activities, cited by Chesapeake and disagrees that the drilling history proves the history of commercial amounts of oil and gas on these units. (Response at 11, citing Adams [BLM Geologist] Affidavit at para 7.) Respondent states that BLM did not ignore the presence of other drilling activity in the vicinity of the proposed units, but rather examined the full history of the successes and failures of drilling activity, considered the amount of uncertainty in seeking to identify the existence of deep geological formations through seismic data, considered all variables, including water, temperature and permeability, and concluded that the drilling proposals of Sonat and UPRC were exploratory. (Response at 12.)

Respondent claims that the "facts" cited by Chesapeake concerning the 42 other wells "capable of production" in Rapides and Vernon Parishes are subject to different interpretations. Respondent claims that BLM did not and does not interpret this number of producing wells to indicate the wells drilled into the proposed units will undoubtedly result in the production of commercial quantities of minerals. (Response at 12.) BLM notes the 42 wells are scattered over a large area with 30 of the wells in the N. Burrs Ferry area 15 miles northwest of the western boundary of the Hurricane Branch unit. Id. Whether each of the wells will continue to produce sufficient quantities to recoup the cost of drilling remains to be seen, Respondent states. (Response at 12, citing Adams Affidavit at para 7.) Indeed, BLM claims, the preponderance of the evidence demonstrates that drilling the Austin Chalk involves high expenditures, chances of dry holes, drilling problems, and erratic production. In these circumstances, Respondent claims, unitization will encourage development of the resources because the unit operators have established drilling commitments and the incentives to concentrate on the most potentially productive areas, while BLM has the flexibility to require modifications to the drilling plans as information on the productivity of the unit is developed. (Response at 13.)

In response to Appellant's argument that the units were not constituted within proper boundaries, Respondent states Chesapeake erred in stating that "BLM conceded that the unit boundaries were not geologically based." (Response at 13.) This statement, Respondent claims, ignores BLM's other statements that "applicants presented geologic information that supports the general size and shape of the units." Id., citing Decision at 4. Rather, Respondent states, BLM established general unit boundaries considering the geology and final boundaries were determined by administrative considerations such as access to the unit areas as a result of commitment of land for military use. (Response at 13.) Respondent explains that Sonat and UPRC presented geologic and seismic data to support their presentations in December 1996 and before the State Director in July 1997. The data for each proposed unit showed geologic contours and anticipated fracture patterns which formed the target zones for the proposed exploration. (Response at 14.) In turn, the target zones roughly correlated with the proposed boundaries for the units, with the edge of

the Cretaceous shelf roughly forming the line that established the boundary between the two units. Id. Moreover, Respondent claims, the State of Louisiana has undertaken considerable study of the Austin Chalk geology in its establishment of state spacing units and BLM used this information in its review of the proposed units. Id.

In response to Appellant's claim that BLM approved inadequate drilling commitments in the unit agreements, Respondent states that not only do the drilling requirements meet the minimum guidelines identified in the BLM Manual, but Chesapeake's arguments ignore other provisions of the unit agreements which provide ample opportunity for BLM to ensure reasonable and productive drilling programs. (Response at 15.) For example, Respondent states, section 9 of both unit agreements, entitled "drilling to discovery," requires the unit operator to "continue drilling, one well at a time, allowing not more than six months between the completion of one well and the commencement of drilling operations for the next well" until a participating area is approved pursuant to section 11. (Response at 15, quoting Unit Agreement, Section 9.) Further, Respondent states, completion of the drilling of the indicated number of test wells does not excuse the operator from the obligation to comply with the drilling schedule. Id.

In reply to Appellant's criticism that the unit agreement for the Hurricane Branch unit does not indicate the horizontal spacing for the test wells, Respondent claims that there are rational reasons for allowing the unit operator to establish the location of the test wells, especially in a formation where drilling success is based upon the intersection of the drilled hole with fractures. (Response at 16.) BLM notes that the wells are expensive to drill and Respondent has no interest in forcing the drilling of "dry holes." Id. Respondent explains that the unit agreement provides ample incentives for Sonat to drill in a manner which will most likely result in a well capable of producing paying quantities of mineral. Without such discovery, the unit agreement will lapse. Id., citing SOR Ex. 7, Section 2(e). Because in this case Respondent was already considering five or more applications for permits to drill (APD's) at the same time it was considering the application for the unit agreement, which provided significant information on probable well locations, BLM states that it was amply justified in its discretionary decision that mandating minimum distances between wells was not appropriate for this unit agreement. Id.

In response to Appellant's claim that the unit agreement "does not mandate that Sonat drill all five test wells regardless of outcome," BLM responds that it did not require that all five wells be drilled to meet the public interest requirement for this particular unit because of the obligations imposed by other sections of the agreement. (Response at 16.) Respondent notes that the State Director stated in the decision under appeal that "[a]dequate exploratory drilling will be required as a condition of JDO's approval of the plans of development addressing timely exploration of the unitized area and the diligent drilling necessary for determination of areas capable of producing unitized substances in paying quantities in each and every production formation." (Response at 17, quoting Decision at 5.)

In responding to Chesapeake's claim that it (BLM) abused its discretion in approving a modification to the model unit agreement formulation set forth in 43 C.F.R. § 3186.1 by authorizing static PA's, BLM counters that it approved modifications which excluded the PA's from merger based upon the unique characteristics of production of oil and gas from the Austin Chalk formation and based upon the expertise of its geologists. (Response at 17-18.) Such flexibility is encouraged by Secretarial Order 3199. (Response at 17.) Respondent recites the State Director's determination, based upon the professional opinion of BLM geologists, that "there is no evidence current wells located on adjacent State-spacing units in the Austin Chalk communicate with each other, so each State-spacing unit can be appropriately considered a separate reservoir as they have been designated by the State." (Response at 18-19, quoting Decision; see also Adams Affidavit at para 10.) For this reason, Respondent urges, Chesapeake has failed to show that BLM's differing opinion is unsupported by the evidence. (Response at 19.)

In response to Appellant's claim that BLM violated its "public interest" obligation to consider potential revenue from bonus bids by not allowing the leases to expire and become available for competitive bids, Respondent states that Chesapeake's argument confuses BLM's description of the potential benefits from unit agreements with the standards which BLM must apply in evaluating a unit proposal. Respondent urges consideration of the following language from the State Director's decision:

> The primary purpose of the Mineral Leasing Act is to promote the development of Federal minerals in an environmentally responsible manner, not the maximization of short-term revenue gain at the expense of reasonable opportunities to exercise lease rights expected by lessees and provided for in BLM's rules. During the life of the leases, lessees have the contractual right to propose actions that will maximize development and recovery of leased resources. The proponents of the two units filed their application in a timely manner and followed established procedures for approval * * *. The applicants met all BLM requirements for unitization.

(Response at 20, quoting Decision at 7.) Respondent states that consideration of potential revenues from new leasing, if a lease were close to expiring, would impinge upon the development expectations of a lease holder who had successfully bid, in good faith, on a lease. (Response at 21.) Such a policy, Respondent claims, could result in outcomes adverse to the public interest such as unplanned drilling on leases close to expiration and depression of lease bids resulting from the inability to rely upon impartial regulatory review of unit proposals. (Response at 21.)

In response to Appellant's final claim that the unit agreements required State approval, Respondent states that the requirements are otherwise for the circumstances in this case. (Response at 21.) Reciting that landowners within a proposed unit may choose to initially join the unit and

be "unitized" or may ignore the unit agreement, Respondent explains that the state land within the boundaries of the Hurricane Branch and Whisky-Chitto units was not committed to either unit and was thus not "unitized." Thus, Respondent states, Chesapeake's argument that BLM failed to comply with 43 C.F.R. § 3181.4 is in error, as that regulation applies only to land to be "unitized." (Response at 22.)

Intervenors Sonat and UPRC (hereinafter Intervenors or Sonat and UPRC) filed a combined Answer in this case and argue that the BLM decision is consistent with the authority vested in BLM by law and is supported by the record. (Answer at 14.) Intervenors urge that the authorized BLM officer has "broad discretion to approve any unit plan he may deem necessary or proper to secure the proper protection of the public interest, to mandate unitization, and to prescribe a plan which will adequately protect the rights of all parties in interest including the United States." (Answer at 12, quoting from Orvin Froholm, 132 IBLA 301, 306 (1995).) In this instance, Intervenors claim, the District Manager found that the approval of the unit agreements was "necessary and advisable in the public interest for the purpose of more properly conserving the natural resources" as required by Federal law. (Answer at 13, quoting JDO Decision at para B.) Intervenors state that unitization is supported by the facts in this case, and Chesapeake's arguments should be rejected because the BLM decision is supported by sound geological justifications and is in the public interest as defined by the Mineral Leasing Act. (Answer at 14-15.)

Addressing Appellant's claims directly, Intervenors state that Appellant's claim concerning the number of well completions in Vernon Parish during 1996 is simply false. (Answer at 15.) Intervenors state that as of December 31, 1996, there were actually only two wells completed in Vernon Parish which can be considered structurally analogous to the Whisky Chitto Unit area; one of those wells, the Crosby 17-1, was nonproductive, and the Crosby 21-1 had been tested, but was then shut-in waiting on a pipeline connection. (Answer at 16, citing Lane Affidavit, Ex. 3, at para 11.) Intervenors state that to include all wells completed in both Vernon and Rapides Parishes as of May 19, 1997, would only add two other wells: the Scobee 34-1 and the Crosby 17-1 re-entry, both of which proved uneconomic. Furthermore, Intervenors claim, at the time UPRC submitted its proposal to designate the Whisky Chitto Unit, there were no rigs engaged in development drilling within an analogous structural setting to the Whisky Chitto Unit as Chesapeake implies. (Answer at 16, citing Lane Affidavit at para 13.)

In answer to Appellant's claim that this area is not unproven, Intervenors state that the fact that one well in a formation (the Crosby 21-1) yields some production does not mean that the entire area is "proven" and therefore not exploratory. (Answer at 17, citing Utah Chapter Sierra Club, 120 IBLA 229, 233 (1991); Southern Utah Wilderness Alliance, 108 IBLA 318, 324 n.4 (1989).) In that regard, Intervenors state, Chesapeake attempts to blur distinctions between the nature of the Austin Chalk encompassed by the units, and Austin Chalk drilling anywhere in Louisiana. For example, they claim, Appellant has lumped together wells drilled as far away

as 140 miles from the units as indicative of the proven nature of the entire Austin Chalk. (Answer at 19, citing SOR at 5, Lane Affidavit at para 13.) Equally significant, Intervenors state, is the document from which Appellant itself submitted 75 pages of attachments with its SOR, entitled "Petroleum Frontiers, a Quarterly Investigation into the Most Promising Petroleum Horizons and Provinces, Louisiana Austin Chalk." Id., citing SOR, Ex. 2.) The preface of the article states: "This play, while expanding a known trend of production in Texas, represents a frontier in the true sense." (Answer at 19, citing "Petroleum Frontiers," supra at vii.) Intervenors state further that the introduction to this same article includes the following: "This expansion (of activity) into Louisiana marks the next major phase of exploration in the Chalk" and that "exploration in the Louisiana Chalk is at a critical juncture * * *." (Answer at 20, citing "Petroleum Frontiers" at 2.) Intervenors note, finally, that Appellant itself has found drilling in the Austin Chalk to be exploratory and uncertain at best. From Chesapeake's 1997 SEC 10K: Annual Report at 1, they quote:

> Chesapeake's strategy during fiscal 1997, and particularly in the third and fourth quarters of the year, was to identify the potential of the various areas of the Louisiana Trend by exploratory drilling. In several large areas outside of the Masters Creek portion of the Louisiana Trend, this exploration program was unsuccessful.

(Answer at 23, quoting from Ex. 17 at 1.)

In addressing Appellant's claim that BLM's approval of the unit agreements was unreasonable, Intervenors state the unit boundaries are geologically justified and were based largely on the geologic reports submitted by Sonat and by UPRC which demonstrated that the general size and form of the units were based upon geologic information, with the precise unit boundaries established using administrative considerations. (Answer at 24, citing Hochstein Affidavit at para 8c.) Intervenors note that this is consistent with the BLM Manual which recognizes that "an actual unit boundary may be established by honoring structural, stratigraphic, or administrative limits." (Answer at 25, quoting Manual at 4.)

Further, Intervenors contend, the unit agreements provide enforceable and meaningful drilling commitments, both in number and with regard to minimum distances, contrary to Appellant's claims. In fact, Intervenors state, and Exhibit 6 to the Answer demonstrates, the one Federal unit in Louisiana where the guidelines were not followed is Chesapeake's Kisatchie Federal Unit where Chesapeake agreed to drill only one well to test a 26,000-acre unit. (Answer at 25.) The spacing argument made by Chesapeake is equally strained, Intervenors claim, because in Louisiana, the State rule adopted for horizontal Austin Chalk wells mandate that no

> Austin Chalk Formation well shall * * * be located so as to encroach into a rectangle formed by drawing north-south lines 3,000 feet east of the most easterly point and 3,000 feet west

> of the most westerly point * * * of any horizontal well completed in, drilling to or for which a permit shall have been granted to drill to the Austin Chalk Formation.

(Answer at 26, quoting Ex. 13: Louisiana Department of Natural Resources, OOC Statewide Order No. 29-S at § 4305(2)(a); see also Robbins Affidavit at para 5.) Intervenors state that despite the fact that this "make-weight" argument on the part of Appellant that minimum distances are necessary "is ludicrous," Sonat has either drilled wells or has APD's pending for the drilling of wells across the entire width of the southern half of its unit. (Answer at 26, citing Richards Affidavit at para 21.)

In response to Appellant's objection to static PA's and to its claim that the expansion, merger and revision of PA's is "an essential feature of unitization" and that the Model Onshore Unit Agreement for Unproven Areas "requires" revision, merger, and expansion of PA's, Intervenors state that the Mineral Leasing Act itself contains no definition of or reference to "participating areas" and that the procedures for expansion, merger and revision of PA's are not mandated by the regulations or the BLM Manual. (Answer at 27.) Intervenors claim that to state that the Model Form agreement requires anything with respect to PA's is just plain wrong, since the model agreement is just that, a model and form to be used as a guideline. Id. They state that the State Director reasonably concluded: "We believe that the approval of the unit agreements with PA's being defined by State spacing is appropriate, both in protecting correlative rights and for the geologic situation that exists for Austin Chalk exploration and development in Central Louisiana." (Answer at 28, quoting Decision at 5.) This conclusion on the part of the State Director is consistent with the BLM policy, Intervenors claim, because that policy states that "State spacing may be used as a guide in determining the acreage to be included in participating areas, unless the authorized officer determines that such spacing is not in the public interest." (Answer at 28, quoting BLM Manual at II.G.2.)

In response to Appellant's claim that BLM failed to consider the appropriate public interest standard in approving the units, Intervenors state that the State Director clearly delineated the public benefits of unitization in this instance and correctly determined that "[t]he primary purpose of the [Mineral Leasing Act] is to promote the development of Federal minerals in an environmentally responsible manner, not the maximization of short term revenue gain at the expense of reasonable opportunities to exercise lease rights expected by lessees * * *." (Answer at 31, quoting Decision at 7.)

Intervenors' response to Appellant's final argument--that State approval is a prerequisite to unit approval--parallels that of BLM. Intervenors maintain that the regulation at 43 C.F.R. § 3181.4(a) does not grant a State veto power over BLM regarding the approval of Federal unit agreements simply because those agreements could contain State lands. (Answer at 32.) They state that no such State veto is contemplated by the Mineral Leasing Act and Chesapeake provides no authority for this

far-reaching interpretation of the regulation. (Answer at 32.) Intervenors note that the BLM Manual instructs that "where sufficient acreage has been committed to assure effective control, the authorized officer may approve the agreement prior to its approval by the appropriate State * * *." (Answer at 33, quoting BLM Manual at II. C. 11.) Intervenors state that this is the approach taken by BLM, that it is consistent with BLM policy, and in this instance, where State land comprises far less that 1 percent of the total, it avoids the absurd result of absolute State veto over Federal unitization. (Answer at 33.)

Appellant subsequently filed a Consolidated Reply Brief and Intervenors and BLM filed Responses to the Consolidated Reply Brief. As these submissions did not add anything substantially new to the arguments already presented, their contents are not summarized here.

[1] The Federal regulations governing unit agreements are found at 43 C.F.R. Subpart 3180. A unit agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved. A unit plan may be adopted for an unproven oil and gas field considered suitable for exploration and operation as a unit. "The owners of any right, title, or interest in the oil and gas deposits to be unitized are regarded as proper parties to a proposed agreement. All such parties must be invited to join the agreement." 43 C.F.R. § 3181.3. A unit agreement submitted to BLM "shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources." 43 C.F.R. § 3183.4(a).

The Secretary has broad authority to approve any unit plan he may deem necessary or proper to secure the proper protection of the public interest, to mandate unitization, and to prescribe a plan which will adequately protect the rights of all parties in interest, including the United States. See Celsius Energy Co., 99 IBLA 53, 68, 94 I.D. 394, 403 (1987). The Department, as the steward of the public's interest in Federally-owned minerals, has an obligation to ensure that those minerals will be efficiently developed so that optimum recovery will be realized. Thus, BLM has the authority under the Mineral Leasing Act, as amended, 30 U.S.C. § 226(m) (1994), to require unitization when it deems that doing so will conserve the natural resources of the United States.

Appellant, as a royalty interest owner, was clearly a "proper party" to the proposed unit agreements within the meaning of 43 C.F.R. § 3181.3. As such, it was required to be invited to join the proposed units. However, its consent was not necessary for formation or approval of the units. The record shows that Sonat and UPRC complied with 43 C.F.R. § 3181.3. The record reflects that Appellant declined to join the two units.

In addition, BLM issued the document entitled "White Paper--Public Interest in Relation to Approval of Oil and Gas Unit Agreements Austin Chalk Formation of Central Louisiana." (SOR, Ex. 8.) The White Paper

provides a careful analysis of the reasons supporting unitization of the area. Appellant had an opportunity to respond, and did respond, to the points addressed in the White Paper. Thereafter, Chesapeake met with members of BLM's Eastern States Office, including its technical experts, to present its views before the units were approved. There can be no doubt that Appellant had ample opportunity to make its case to the BLM technical experts and failed to persuade BLM to its point of view.

In determining whether conditions favorable to the establishment of a unit exist, the Secretary is entitled to rely on the reasoned opinion of his technical experts. Benson-Montin-Greer Drilling Corp., 118 IBLA 8, 12 (1991). Thus, a decision to approve a unit agreement will not be set aside in the absence of a definite showing that the decision was in error. Orvin Froholm, supra at 314. A difference of opinion concerning the interpretation of available information does not establish such error. Id., see also Benson-Montin-Greer, supra at 12; Woods Petroleum Co., 86 IBLA 46, 52 (1985). Nothing in the arguments and evidence Appellant offers establishes that the State Director's decision is in error. See Chevron U.S.A., Inc., 111 IBLA 96 (1989); Sun Oil Co., 67 IBLA 80 (1982); Placid Oil Co., 46 IBLA 392 (1980) (cases upholding BLM decisions ordering unitization where the decision established that the combining of leases was "in the public interest" and "prevented the drilling of unnecessary well sand in the interest of conservation"). We therefore find no error in the State Director's decision regarding BLM's unit determinations. Justification for approval of the Hurricane Branch and Whisky Chitto units clearly existed.

The fact that there are differences in approach and methodology for assessing the hydrocarbon potential of an unproven area is not tantamount to a demonstration that the methods utilized by Sonat and UPRC and endorsed by BLM's geologist were unacceptable or otherwise flawed. The Appellant has alleged, but submitted no significant or credible evidence, that Sonat and UPRC undervalued the production capacity of the two units. Nor do the Applicants' projections rise to the level of misrepresentation merely because they have embarked upon a drilling schedule that exceeds their exploratory requirements of the unit agreements.

We specifically find that the lands within the Hurricane Branch and Whisky Chitto units meet the requirements for Federal exploratory unitization pursuant to 30 U.S.C. § 226(m) (1994), and that BLM acted reasonably in imposing adequate and reasonable conditions upon Sonat and UPRC for unitization. We further find that the unit boundaries are geologically justified in the context of the Austin Chalk Formation as it exists in Vernon and Rapides Parishes, Louisiana, and that the unit agreements provide enforceable and meaningful drilling commitments–commitments which already have been met or exceeded. Finally, Appellant's claims that BLM refused to consider all economic impacts of unitization and failed to follow Departmental regulations concerning State approval are without merit. We agree with the District Manager that approval of the unit agreements was "necessary and advisable in the public interest for the purpose of more properly conserving the natural resources" (JDO Decision at para B), and

with the State Director when he determined that "[t]he decision reflects an assessment of the public interest and serves to conserve natural resources through efficient development and recovery of the oil and gas resources to the benefit of the public interest." (Decision at 3.) Moreover, the claim that the State of Louisiana's interests have been abridged because it did not approve the unit agreements, even though its acreage in the units is minimal and it chose not to join the units, is best evaluated in light of the fact that the State has raised no objection. In any event, with respect for lands to be unitized, the BLM Manual instructs that "where sufficient acreage has been committed to assure effective control, the authorized officer may approve the agreement prior to its approval by the appropriate State * * *." (BLM Manual at II. C. 11.) In this case, because the State chose not to commit its land to either unit, and was thus not to be unitized, Appellant's argument that BLM failed to comply with 43 C.F.R. § 3184.4 is without merit, as that regulation applies only to land to be unitized.

While the Appellant's disappointment with the outcome of the State Director's decision may be understandable, and while Chesapeake has provided interpretations of various data which differ from those of Sonat, UPRC, and BLM, it has not produced credible evidence contrary to that relied upon by BLM which might lead to a different result. Consequently, the State Director's decision must be affirmed.

To the extent not specifically addressed, all other contentions of Appellant have been reviewed and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed and IBLA 98-48 and IBLA 98-55 are dismissed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge