

INTERIOR BOARD OF LAND APPEALS

Chevron U.S.A. Production Company and Rio de Viento, Inc.

149 IBLA 374 (July 28, 1999)

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CHEVRON U.S.A. PRODUCTION COMPANY
RIO DE VIENTO, INC.

IBLA 99-184 & 99-186

Decided July 28, 1999

Appeals from decisions of the Acting Deputy State Director, Division of Minerals and Lands, Wyoming, Bureau of Land Management, dismissing requests for State Director Review of the approval of the Second Revision of the Sour Gas Paleozoic Interval Participating Area "A" of the Madden Deep Unit. SDR WY-99-03 and SDR WY-99-04.

Decisions reversed in part, cases remanded.

1. Oil and Gas Leases: Unit and Cooperative Agreements—Rules of Practice: Appeals: Standing to Appeal

A decision dismissing a request by an adversely affected working interest owner in an existing participating area of a unit agreement for State Director Review of a BLM decision approving a revision to the participating area is properly reversed and the case remanded when BLM has dismissed the request for lack of standing and has not responded to appellant's objections on the merits of the requisite finding that the expansion well is capable of production in paying quantities.

Stanley Mollerstuen, 146 IBLA 1 (1998), distinguished.

APPEARANCES: Phillip Wm. Lear, Esq., and Christopher D. Jones, Esq., Salt Lake City, Utah, for Appellants; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management; Laura Lindley, Esq., Denver, Colorado, for intervenor Louisiana Land and Exploration Company; Craig Newman, Esq., Casper, Wyoming, for intervenors W.A. Moncrief, Jr., and North Central Oil Corporation.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Chevron U.S.A. Production Company (Chevron) and Rio de Viento, Inc. (RDV) (collectively Appellants), have appealed from two separate decisions of the Acting Deputy State Director, Division of Minerals and Lands, Wyoming, Bureau of Land Management (BLM), dated December 10, 1998.

Those decisions dismissed their requests for State Director Review (SDR) of an October 30, 1998, decision of the Chief, Wyoming Reservoir Management Group (RMG), approving the Second Revision of the Sour Gas Paleozoic Interval Participating Area (PA) "A" (Second Revision) of the Madden Deep Unit (unit) (No. 14-08-0001-8874), an exploratory unit in Fremont County, Wyoming. ^{1/}

The Unit Agreement, dated May 1, 1967, was executed or ratified by the unit operator and other owners of working interests committed to the unit, and approved by the Acting Director, U.S. Geological Survey (USGS), on July 31, 1967. It provided, in Article 8, that, except as otherwise provided, the unit operator was delegated the "exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances." (Unit Agreement at 7.) This exclusive authority included the responsibility pursuant to Article 11 to seek BLM approval for the revision of a PA, when it is shown to BLM's satisfaction that such action is appropriate, so as to either include additional land "then regarded as reasonably proved to be productive in paying quantities" or exclude land "then regarded as reasonably proved not to be productive in paying quantities." *Id.* at 10. Such a revision, pursuant to Article 11, is accompanied by a change in the "schedule" allocating production among the unitized tracts of leased land within the PA according to the respective percentage of the overall acreage in the PA encompassed by each tract. *Id.* at 10-11.

Effective August 20, 1985, and May 1, 1988, BLM approved applications, by the then-existing unit operator, for the Initial and First Revision of the Sour Gas Paleozoic Interval PA "A." Appellants, by virtue of holding several Federal oil and gas leases committed to the unit, are the owners of working interests in unitized lands within the First Revision. (Statement of Reasons for Appeal (SOR) at 2.)

In his October 1998 decision, the Chief, RMG, approved the August 31, 1998, application by the Louisiana Land and Exploration Company (LL&E), a wholly-owned subsidiary of the Burlington Resources Oil & Gas Company, the current unit operator, for approval of the Second Revision of the PA, pursuant to Article 11 of the Unit Agreement. The immediate effect of this action was to enlarge the PA from 5,750.44 acres to 8,386.22 acres based on the completion of the Bighorn No. 4-36 unit well. This changed the allocation of oil and gas produced from Federally-leased and other unitized lands within the First Revision among the owners of working interests in that Revision, including Appellants, in accordance with Article 11 of the Unit Agreement. The approval, which was effective June 1, 1997, relied on an October 30, 1998, "Engineering Analysis" performed by J. David Chase, BLM

^{1/} The appeals by Appellants, docketed by the Board, respectively, as IBLA 99-184 and IBLA 99-186, concern their SDR requests WY-99-04 (Chevron) and WY-99-03 (RDV).

Petroleum Engineer (as supplemented November 17, 1998), which was largely predicated on June 20, 1997, flow testing of the Bighorn No. 4-36 well. This testing was held to determine whether the well, which is located on State-leased unitized lands in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 36, T. 39 N., R. 91 W., Sixth Principal Meridian, Fremont County, Wyoming, was capable of producing oil and gas in paying quantities. ^{2/}

In his October 1998 decision, the Chief, RMG, instructed LL&E to notify "all interested parties" of the Second Revision and expressly provided that LL&E had the right to request SDR. (RMG Decision, dated Oct. 30, 1998, at 1.) Although the RMG decision did not expressly recognize the right of other working interest owners under the Unit Agreement to request SDR, LL&E notified the working interest owners, including Appellants, by letter dated November 12, 1998 (Ex. C attached to RDV's Request for SDR, dated Dec. 4, 1998), that RMG had approved its Second Revision application, and that they had the right to request SDR.

Appellants filed requests for SDR of RMG's October 1998 decision pursuant to 43 C.F.R. § 3185.1. They primarily contended that RMG's determination that the Bighorn No. 4-36 well was reasonably proved to be productive of oil and gas in paying quantities, thus justifying expansion of the PA pursuant to Article 11 of the Unit Agreement, was in error. Appellants argued that RMG erred by relying on a 3-hour flow-test, rather a 12-month production history, in assessing the well's true productive capability. They noted that there is need for such a history because the productive interval of the Madison Formation, found in the Bighorn No. 4-36 well, is structurally lower than in other nearby producing wells, and also arguably very near the gas/water contact, and the well in fact produced a relatively large amount of water (compared to these other wells). Further, RDV argued that, even assuming a paying well, RMG's expansion of the PA was excessive, given the likelihood that the Bighorn No. 4-36 well is very near the gas/water contact.

In addition, Appellants asserted that RMG had failed to properly include in its paying well determination the capital costs of extending a pipeline gathering system and expanding the capacity of a gas processing plant (for the removal of hydrogen sulfide and carbon dioxide), which are necessary for the full-scale production and marketing of the natural gas from the well. Finally, they stated that the effective date of the expansion should, in any event, be either the date of first production (Chevron) or the first day of the month following the 1 year necessary to make a proper paying well determination (RDV).

^{2/} The Bighorn No. 4-36 well was initially spudded on Nov. 4, 1995, and drilled to a total depth of 24,600 feet. The well was completed, perforated in the Madison Formation at a depth of from 24,122 to 24,382 feet, and flow-tested for 3 hours on June 20, 1997, producing 5.34 million cubic feet (MMCF) of gas and 104.3 barrels of water, before being shut-in to await a tie-in to an existing pipeline gathering system. Based on that test, the well was expected to produce 44 MMCF of gas and 834 barrels of water in a 24-hour period.

In his December 1998 decisions, the Acting Deputy State Director held that under Article 8 of the Unit Agreement the operator was granted the "exclusive" authority for obtaining BLM approval of the revision of PA's, and taking other action with respect to the allocation of production among working interest owners. (Decision (SDR WY-99-04) at 1.) Hence, he found that Appellants and other working interest owners had no legally cognizable interest which was adversely affected by the decision to approve the modification of the PA, citing Stanley Mollerstuen, 146 IBLA 1 (1998), and thus lacked standing under the regulation at 43 C.F.R. § 3185.1 3/ to request SDR. (Decision (SDR WY-99-04) at 2.) The Acting Deputy State Director further noted that the RMG decision stated that RMG had taken into consideration the concerns of parties challenging the revision of the participating area. The decision on SDR, however, cited no analysis of the issues in the RMG decision, which merely stated: "We have reviewed the letters from parties expressing concerns with our approval of the second revision to the [PA] and have considered their concerns." (RMG Decision, dated Oct. 30, 1998, at 1.) The Acting Deputy State Director on SDR did not address these issues himself since he concluded that Appellants had no standing to raise them.

Appellants assert in their SOR that they are parties to the case adversely affected by the decision approving expansion of the PA and, hence, have standing under Board precedents to appeal that decision. Specifically, Appellants cite Chevron U.S.A. Inc., 111 IBLA 96 (1989), and Margaret D. Okie, 43 IBLA 326 (1979), in which we recognized the standing of adversely affected working interest owners to appeal BLM decisions regarding expansion of PA's. Further, Appellants seek to distinguish the Mollerstuen case cited by BLM on the ground that appellant in that case was a royalty interest holder and not a working interest owner responsible for a share of the costs of drilling a well. Appellants also note that Article 22 of the Unit Agreement expressly recognizes the right of other interested parties to participate in appeals of BLM decisions.

Counsel for BLM has filed an answer including a memorandum from BLM in which it asserts that Article 8 of the Unit Agreement delegates to the operator the exclusive right to exercise the rights of the parties to the agreement regarding PA's and that, hence, BLM was justified in dismissing the requests for SDR. It is admitted by BLM that the revision "will affect [Appellants'] interests." (Memorandum to Regional Solicitor from Deputy State Director, dated Mar. 12, 1999, at 2.) However, BLM notes that it interprets the Mollerstuen precedent to be applicable to the working interest owners in this case.

In an order dated March 26, 1999, we consolidated these cases and entered a stay after noting Appellants' assertion that they were deprived

3/ The Acting Deputy State Director actually cited 43 C.F.R. § 3165.3(b), which likewise provides that the right to request SDR is limited to any "adversely affected" party. However, the regulation which specifically limits the right to request SDR with respect to the revision of PA's and other matters concerning unitization is 43 C.F.R. § 3185.1.

of the opportunity to have input in the initial BLM decision in this matter and that the requests for SDR were dismissed. We also granted a motion to expedite review of this case. In a subsequent order dated April 29, 1999, we granted the motions of LL&E and working interest owners W.A. Moncrief, Jr., and North Central Oil Corporation to intervene in these cases. In an order dated June 3, 1999, we directed the intervenors to address the issue of standing in their answer at this point in the proceedings "[i]n view of the fact that the decisions appealed from dismissed appellants' request for SDR on the ground of lack of standing, without addressing the merits." (Order of June 3, 1999, at 2.)

In response to our most recent orders, intervenors have conceded that the BLM decision cannot be sustained on the basis of a lack of standing. Rather, intervenors urge the Board to affirm the BLM decision on the merits on the ground that Appellants' substantive arguments were thoroughly considered by BLM and that support for the decisions is set out in the engineering analysis prepared by BLM in October 1998. Further, intervenors contend it is clear what the BLM decision on remand will be.

[1] Since a BLM decision approving the proposed revision of a PA is issued pursuant to the regulations in 43 C.F.R. Part 3180, a request for SDR of that decision is made pursuant to 43 C.F.R. § 3185.1. See Orvin Froholm, 132 IBLA 301, 308 (1995); Global Natural Resources Corp., 121 IBLA 286, 288 (1991). As we recognized in Stanley Mollerstuen, 146 IBLA at 4-5, that regulation limits such a request for administrative review to "[a]ny party adversely affected by [the] * * * decision." 43 C.F.R. § 3185.1. Thus, we held that, in order to maintain the request for SDR, the party seeking such review must demonstrate that it has a legally cognizable interest which has been adversely affected by the decision. 146 IBLA at 5.

In Mollerstuen, we concluded, relying on our earlier decision in Orvin Froholm, 132 IBLA at 309-10, that an overriding royalty interest owner in lands outside either the original or the revised PA does not have a legally cognizable interest which is adversely affected by a BLM decision approving a proposed revision of a PA, and thus lacks standing under 43 C.F.R. § 3185.1 to pursue SDR of that decision. In Froholm, we found that, "as mere royalty interest owners who had not joined the unit, [Appellants] were not adversely affected by BLM's approvals and, thus, had no right to administrative review of any of those determinations by BLM." 132 IBLA at 310. In Mollerstuen, we also held that, whether or not they have executed the Unit Agreement, such interest owners simply do not have such an interest because, under that agreement, the "unit operator has the exclusive right, privilege, and duty of exercising any and all rights of the parties thereto." 4/ 146 IBLA at 5. Thus, we stated that

4/ In Mollerstuen, individual overriding royalty interest owners objected to the inclusion of 120, rather than 1,440, acres of land in a PA revision, arguing that the larger expansion was necessary to properly include all of the land being drained by a paying well, thus ensuring that they received all of the overriding royalties to which they were entitled under the Unit Agreement. 146 IBLA at 2.

the unit operator alone has "a duty to seek expansion of a PA, when necessary, and the right to appeal any BLM decision relating to expansion," and that, when an overriding royalty interest owner has an objection to the proposed expansion, his sole remedy lies "with the unit operator." Id.

The BLM decision below seeks to extend the holding in Mollerstuen to lessees who have joined the unit and hold working interests within the PA. To reach this result, BLM relies on the delegated authority of the operator under the Unit Agreement. Thus, by virtue of the authority delegated under a unit agreement, the unit operator acts on behalf of both overriding royalty and working interest owners when he takes any action delegated to him under the agreement, including proposing the revision of a PA. In the context of the present appeal by working interest owners who have been adversely affected it appears that this analysis fails to distinguish between the delegation of authority to take action and the right of the principal to challenge action deemed to be in error. The relevant regulations provide for the approval of unit agreements by the authorized officer of BLM. 43 C.F.R. § 3183.4. Further, the regulations authorize BLM to approve PA's or revisions thereof. 43 C.F.R. § 3183.5. Finally, the regulations recognize the right of a party adversely affected to appeal BLM decisions regarding unit agreements and participating areas. 43 C.F.R. § 3185.1. Article 22 of the Unit Agreement, while recognizing the right of the unit operator (after notice to affected parties) to appear on behalf of any and all interests affected in any proceedings before this Department and to appeal from orders issued by the Department, expressly recognizes that "any other party shall also have the right at his own expense to be heard in any such proceeding." (Unit Agreement at 18.)

It is asserted by BLM in its answer that the fact that the RMG "considered" Appellants' input before making its decision constitutes compliance with the Article 22 right to be heard regardless of the fact that the RMG decision did not address the issues raised by Appellants below. In particular, BLM contends that the right to be heard does not include the right to appeal a decision. This interpretation of Mollerstuen which BLM is relying upon effectively renders nugatory the right of affected interested parties to be heard as recognized in Article 22 of the Unit Agreement. We find that BLM erred in reading Article 8 of the Unit Agreement in a manner which substantially undermined the rights of the parties recognized in Article 22. Our holding herein is also consistent with past precedent in which we have recognized the standing of a working interest owner who challenges approval by a USGS or BLM official of an action by the operator of the unit, to which his lease is committed, which is adverse to his interests. See Celsius Energy Co., 136 IBLA 293 (1996) (unit expansion); Champlin Petroleum Co., 100 IBLA 157 (1987) (PA expansion); Monsanto Oil Co., 95 IBLA 112 (1987) (PA expansion); Margaret D. Okie, 43 IBLA 326 (1979) (PA creation and expansion); Amoco Production Co., 41 IBLA 348 (1979) (PA expansion). Hence, we find that our decision in Mollerstuen is properly distinguished and we hold that a working interest owner who is a party to the Unit Agreement is not precluded, by the delegation of authority under the Unit Agreement for submitting applications for approval of revisions of PA's, from challenging approval by BLM of the expansion of a PA when adversely affected by such expansion.

To hold otherwise would effectively insulate the initial BLM decision to approve the proposed revised PA from any further administrative review. If Appellants and other working interest owners, who are directly affected by a revision of the PA at the instigation of the unit operator, do not have standing to challenge that revision, it is unlikely there would be any administrative review of any BLM decision approving a proposal for revision of a PA. Although the right of the affected working interest owner to be heard is recognized in the Unit Agreement, the effect of denying standing is to make the initial BLM decision final for the Department. The risk of such a holding is demonstrated by this case in which not one of the BLM decisions, either by the RMG or on SDR, responded to the issues raised by Appellants.

The critical issue before BLM is whether the proposed expansion of the PA is, in accordance with Article 11 of the Unit Agreement, "proper" because further drilling operations or other activity has shown that the additional land is "reasonably proved to be productive in paying quantities." (Unit Agreement at 10; see Monsanto Oil Co., 95 IBLA at 119; Davis Oil Co., 53 IBLA 62, 67-68 (1981); 2 The Rocky Mountain Mineral Law Foundation, Law of Federal Oil & Gas Leases § 18.03[2][b][vi], at 18-26 (1998) ("The selection of the lands deemed to be reasonably proven * * * involves an exercise of judgment based upon the best geological, geophysical, and other information available".)) As we said in Chevron U.S.A. Inc., 111 IBLA 96, 104 (1989), overruled on other grounds, Orvin Froholm, 132 IBLA at 311, it is the "reasonableness" of the proposed expansion, and thus whether it will promote the optimum recovery of oil and gas resources for the benefit of all parties in interest (including the United States), which is the ultimate aim of all unitization-related decisions, which must be considered by BLM. See 111 IBLA at 101-03. However, as in Chevron, the State Director here, by failing to address that issue in the context of reviewing the action taken by the lower BLM official in the face of Appellants' contentions, has not only not himself adjudicated the matter, but also not provided the Board with the benefit of his expert analysis of the question, and thus has deprived us of the ability to properly review the matter. In these circumstances, as in Chevron, the case must be remanded. Id. at 104-05.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are reversed in part to the extent they dismissed the requests for SDR and the cases are remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge