

WOODS PETROLEUM CORP.

IBLA 88-176

Decided February 21, 1990

Appeal from a decision of the District Manager, Casper, Wyoming, Bureau of Land Management, determining that certain acreage known as Tract 32 was not committed to the Moore Unit until the third revision of the First Frontier Participating Area, effective February 1, 1986.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Where a unit operator seeks to have certain acreage treated as if it had been subject to a unit agreement on the basis that the lessee, the unit operator, and BLM operated on the assumption that the tract had been fully committed to the unit in 1983, BLM properly determined that based upon the requirements of the unit agreement, the tract had not been effectively committed to the unit until the necessary paperwork documenting full commitment of all working interest owners had been filed with BLM in 1986.

APPEARANCES: Kenneth D. Nyman, Esq., Evans, Keane, Koontz, Boyd, Simko and Ripley, Boise, Idaho, for appellant; Lyle K. Rising, Esq., Office of the Rocky Mountain Regional Solicitor, Denver, Colorado, for BLM.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Woods Petroleum Corporation (Woods) has appealed from a decision of the Acting District Manager, District Office, Casper, Wyoming, Bureau of Land Management (BLM), dated August 27, 1987, denying Woods' request that Tract 32 (N½ N½ of sec. 34, T. 41 N., R. 76 W., sixth principal meridian, Campbell and Converse Counties, Wyoming) be deemed to be committed to the Moore Unit as of September 1, 1983. <sup>1/</sup>

The record shows that by letter of June 11, 1986, to Edmundson and Associates, Inc. (Edmundson), and Woods, the Unit Operator, BLM first made inquiry as to the commitment status of the fee leases involving Tract 32 along with two other tracts, Tract 30 and Tract 30 A, in the Moore unit

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<sup>1/</sup> Woods has also requested a hearing before an Administrative Law Judge. That request is hereby denied because Woods has not shown the need for such action or that the opportunity to present its arguments with this appeal did not provide sufficient opportunity to have all the facts of its case properly considered in an administrative proceeding.

area in Wyoming. <sup>2/</sup> BLM asked Edmundson to submit lease history involved with the tracts, the parties involved, and the dates for executed joinders. BLM also asked when these interests were considered committed to the unit so that the commitment status of these tracts could be determined in several participating area revisions for the Moore unit.

Woods responded by letter of July 10, 1986, that on September 7 and 11, 1978, Woods along with other parties acquired oil and gas leases covering among other lands Tract 32. Woods indicated that these leases embraced 87.5 percent of the mineral ownership which was represented by one group of lessors referred to as the "Taylor Group." The remaining 12.5-percent mineral interest was owned by the Taylor Ranch Company Limited referred to as "Taylor Ranch."

As to joinder, Woods indicated Joyce Taylor had not yet joined, while the remaining interests had been joined either at the time of formation of the unit or as of February 1, 1986. Woods pointed out that it was necessary to force join the 12.5-percent mineral interest of Joyce Taylor under Tract 32, and that Edmundson was proceeding with force joinder action pursuant to the unitization clause under the lease (July 10 Letter at 4).

As to lack of proper filing of documentation of joinder with BLM, Woods requested joinder be considered effective April 1, 1985, stating:

Through inadvertence due to personnel changes at Edmundson, Inc. Taylor Group and Taylor Ranch joinders which were approved effective February 1, 1986 were misplaced for more than half a year, and not timely submitted to your office for approval. You will note all of those joinders were executed no later than March 12, 1985. In fairness to all parties involved, and pursuant to Section 28 of the Moore Unit Agreement, we respectfully request that these joinders be committed effective April 1, 1985, which is the first day of the month following what should have been the filing time for such joinders.

On August 8, 1986, BLM responded to Woods with its determination that Tract 32 was not considered committed to the Moore unit until February 1, 1986, when it became fully committed stating:

Your request to have the effective date for the Taylor Group and the Taylor Ranch joinders changed to April 1, 1985, is denied, pursuant to Section 28 of the Moore unit agreement which states in part, "Except \* \* \* subsequent joinders to this agreement shall be effective as of the first day of the month following the filing with the District Manager of duly executed counterparts of all or any papers necessary to establish effective commitment of any

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<sup>2/</sup> The status of Tracts 30 and 30 A has previously been resolved and these tracts are not at issue in this appeal.

tract to this agreement \* \* \*." This office does not have the authority to alter the established provisions of the unit agreement.

On October 9, 1986, Woods requested a review and remand of the August 8, 1986, decision, again noting that the facts stated in its previous communications with BLM were based on erroneous assumptions and requested that previous correspondence be disregarded. Woods filed additional information, contending that the conclusions of the August 8 letter as to the unitization of Tract 32 were incorrect and requesting that BLM find that the tract had been "subject to the Moore Unit Agreement, at all times from and after September 1, 1983." Woods asserted that the joinders of 87.5 percent of all interests in Tract 32 were accepted by BLM on September 1, 1983, on which date these interests were committed to the unit.

As to the other 12.5-percent interest Woods stated:

The outstanding 12-1/2% mineral interest, owned by Taylor Ranch Company, Ltd., was not leased or committed on September 1, 1983, however, it was subject to an existing agreement with Woods Petroleum Corporation under the provisions of which this interest would become subject to lease and unit commitment when it was to be included within a drilling block for test well drilling under the unit operating agreement. In fact, pursuant to such agreement, a lease was executed by Taylor Ranch Company, Ltd. on Tract 32 on December 2, 1983 and on February 1, 1984, Taylor Ranch Company, Ltd. executed a ratification and joinder to the Moore Unit Agreement.

(Wood's Response at 4).

Woods noted the BLM policy had been not to treat a tract as committed if any working interest has not been committed and is not subject to the unit agreement. However, it noted that BLM had made exceptions in the past to this policy of requiring 100-percent commitment of interests in a tract for such tract to be considered unitized. It asserted that Tract 32 has at all times been treated as though all interests were unitized. Woods stated that

the Taylor Ranch Company, Ltd's 12 ½% interest was leased and a ratification and joinder executed (although not filed) within two months after the approval of the First Revision of the First Revision of the First Frontier Participating Area and has always been deemed by both royalty and working interest owners as committed to the Unit Agreement.

(Wood's Response at 6).

On January 15, 1987, BLM requested a Solicitor's opinion as to the effective date for the fully committed status of Tract 32. BLM posed the

question whether a tract can be considered committed to a unit where the proper documents had not been filed in a timely manner and where the Unitization Handbook H-3180-1 Section II.Q. provides that all interest owners in a tract have to commit their interests for a tract to be fully committed.

The July 23, 1987, response from the Regional Solicitor stated that "this office sees no legally compelling reason for BLM to deviate from its published policy choices stated in its handbook on unit agreements and sees possible administrative problems in relaxing these choices." Subsequently, BLM issued its letter decision of August 27, 1987, confirming its prior ruling that Tract 32 was considered fully committed effective February 1, 1986. It pointed out that Tract 32 is entitled to allocation under the third revision of the First Frontier Participating Area as of February 1, 1986, and requested Woods to provide revised exhibits reflecting the appropriate changes in the allocation schedules.

Woods has appealed to this Board contending that the decision was based upon incorrect findings of fact and incorrect conclusions of law, and was arbitrary, capricious, and unreasonable. Appellant acknowledges that BLM sent Edmundson and Associates a notice that Tract 32 was not fully committed to the Moore Unit stating:

Due to the departure of the person responsible for the Moore Unit, Edmundson did not pass the notice along to appellant, the Unit Operator, and appellant did not, therefore act upon that notice. Working on the assumption that tract 32 was committed to the Unit, Woods and the working interest partners completed the Moore No. 2 well, billed out well costs on a Unit basis, and distributed revenues thereon.

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In short, the delay in completing the paperwork relating to the commitment to tract 32 grew out of a clerical error which was not discovered for several years, during which time everyone involved was operating on the assumption that the commitment was already effective.

(Statement of Reasons (SOR) at 2).

Appellant asserts that since everyone involved, including BLM, has operated under the assumption of joinder since 1983, forcing appellant to reallocate the revenues and costs based upon an effective date of February 1, 1986, would work a great hardship on many royalty and working interest owners (SOR at 3). Appellant argues that BLM's analysis is flawed, contrary to other decisions of the Solicitor and this Board, and undermines the very purposes of unitization. Lastly, appellant asserts BLM is estopped to deny that Tract 32 was fully committed earlier because of its prior decisions recognizing joinder of the tract to the unit.

BLM has responded that it has not always operated as if Tract 32 was committed in 1983 as claimed by Woods stating:

Any "agreement" between Woods and the Taylor Ranch Company was not recognized by this office at that time due to the fact that no joinder to the agreement was filed by the Taylor Ranch Company nor was the joinder recognized or consented to by the required percentage of working interest owners as provided for in the unit agreement. The BLM is dependent on the unit operator to timely file the appropriate joinders for Fee leases as we do not have the necessary information to track the activity on these leases.

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Tract 32 was marked on our copies of Exhibit B for the unit agreement as noncommitted until February 2, 1986 when the necessary joinders were received by this office. Further, when the commitment status of a tract changes from noncommitted to committed, written documentation is given by this office acknowledging that the status change is in conformance with the provisions and requirements of the unit agreement and unit operating agreement. There is no documentation which supports a change in commitment status for Tract 32 in 1983. The allocation schedule submitted by Woods for the First Revision of the Frontier Participating Area erroneously credited production to Tract 32 despite its noncommitted status. This was not corrected in the review performed by the BLM prior to approving the participating area and would appear to be the basis for Woods argument that the BLM also considered that lease committed to the agreement. The Initial Frontier Participating Area and First and Second Revisions to the participating area were simultaneously approved by a BLM staff engineer. When the subsequent Third Revision was reviewed for approval by another staff engineer, the incorrect commitment status was noted and the BLM requested the changes in the allocation schedule. Woods responded with a revised allocation schedule for the Third Revision and later submitted corrected allocation schedules for the First and Second Revisions showing Tract 32 as noncommitted.

(BLM Response at 1-2).

As to appellant's charge that BLM has misconstrued the law and its own manual pertaining to commitment, BLM points out it merely followed the Unitization Manual Handbook H-3180-1 (formerly USGS R29-CDM 645.1) for noncommitted tracts which reads: "Not Committed (NC) - Any tract in which a working interest has not committed, regardless of other committed interest, is considered as not committed and is not subject to the Unit Agreement."

BLM asserts the mineral interest owner (who is considered a working interest owner) would have to commit to the unit by joining the unit

agreement and the unit operating agreement, and not merely by signing an "agreement" or letter of intent with the unit operator. BLM states:

What may appear as simply clerical details to Woods is essential in administering agreements in a consistent and equitable manner. It is not the responsibility of the BLM to determine the intent of the parties prior to filing joinders as this would allow parties to submit the required paperwork "after the fact" relative to the success of drilling ventures within the unit and receive the potential financial benefit in having an option as to how a particular tract should be treated.

(BLM Response at 2).

BLM denies that the decision is arbitrary, capricious, and unreasonable, indicating that it repeatedly has tried

to treat every operator and interest owner consistently and fairly in the application of Federal regulations and policies and in administration of the unit agreement. In this instance it sought a solicitor's opinion prior to issuing the final decision to ensure that the BLM was correctly applying unit guidelines. It followed established policy that subsequent joinders are effective the first of the month following receipt by BLM after having fulfilled the requirements for accepting a subsequent joinder as specified in Section 28 of the unit agreement.

(BLM Response at 3).

BLM denies appellant's estoppel argument stating:

The appellant was acting on its own belief that the tract was committed rather than on any BLM decision to that effect, [3/] as is supported by their submittal of the allocation schedule showing Tract 32 as a committed tract prior to any action taken by the BLM. Both parties acknowledge clerical errors which led to confusion concerning the status of this tract, however, the contractual requirement for subsequent joinders should ultimately override any clerical aspects or underlying intentions.

(BLM Response at 3).

[1] Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982), authorizes lessees to unite, for the purpose of more properly conserving the natural resources of any oil or gas field, in collectively adopting and operating under a unit plan of development

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3/ Indeed, the file contains a copy of a letter dated Sept. 7, 1983, from BLM addressed to Woods, c/o Edmundson, stating that: "Our records show that the commitment status of tract 32 remains incomplete."

or operation "whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest." The original Moore Unit Area containing approximately 1,440 acres in Campbell and Converse Counties of Wyoming was established under this authority. The unit agreement governing the development and operation of the unit was executed by all parties initially participating in the unit on June 3, 1983.

Appellant has admitted that the owners of the working, royalty, or other oil and gas interests in Tract 32 were not originally listed as participating parties in the unit agreement, and that as early as September 7, 1983, BLM notified Edmundson that Tract 32 was not fully committed to the Moore Unit (SOR at 2). Appellant has also admitted that by inadvertence, the necessary paperwork documenting the joinder of this tract was not submitted to BLM until January of 1986 (Wood's Oct. 9, 1986, Letter at 4).

BLM has also admitted that there was a period of time during which its personnel erroneously recognized Tract 32 as if it had properly been joined and recorded as part of the unit in that the tract was inadvertently allocated production in the first and second revisions of the First Frontier Formation participating area. <sup>4/</sup>

The unit agreement specifically provides detailed requirements for subsequent joinder of the unit in section 28, stating in pertinent part:

Joinder to the unit agreement by a working interest owner, at any time, must be accompanied by appropriate joinder to the unit operating agreement, if more than one committed working interest owner is involved, in order for the interest to be regarded as committed to this unit agreement. Except as may otherwise herein be provided, subsequent joinders to this agreement shall be effective as of the first day of the month following the filing with the District Manager of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this agreement unless objection to such joinder is duly made within 60 days by the District Manager.

The Department has long recognized that a unit agreement is essentially a contract between private parties setting forth the rights and liabilities of the parties to the agreement. The Secretary of the Interior does not

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<sup>4/</sup> In a memorandum to the Wyoming State Director, dated Jan. 15, 1987, concerning the commitment status of Tract 30 A and Tract 32, the Casper District Manager states:

"It is true the tracts were inadvertently allocated production in the first and second revisions of the First Frontier Formation participating area. This has been corrected in the allocation schedule for the third revision, such that the lands are included in the participating area but do not receive allocated production. Credit given to these tracts as committed does reduce the Federal participation in the participating area and results in less Federal revenue."

have the power to reform a unit agreement approved by him pursuant to the provisions of the Mineral Leasing Act. Shannon Oil Co., 62 I.D. 252, 255 (1955).

In addition, BLM's established policy as set forth in its Unitization Handbook at H-3180-1, Section II. Q. requires 100-percent commitment of the working interest ownership in order for a tract to be considered fully committed. 5/

Moreover, this Board has previously recognized the policy of BLM regarding lease commitment to the effect that any tract in which a working interest has not been committed is considered as not committed, and is not subject to the unit agreement. NuCorp Energy, Inc., 88 IBLA 195, 199 (1985); Coors Energy Co., 82 IBLA 212, 214 (1984). It appears from the record that the ratification and joinder of the unit agreement executed on behalf of Taylor Ranch Company Limited was not filed with the BLM District Manager until January 10, 1986. Thus, it must be concluded that the requirements for joinder under the terms of the unit agreement had not been met before that time.

It is clear under the BLM guidelines there was less than 100-percent commitment of the tract prior to February 1, 1986. At least as to this 12.5-percent interest, there was not complete agreement as to joinder by all outstanding parties. Moreover, appellant was not able to file evidence of joinder of this 12.5-percent interest until 1986. Therefore, there was no basis in the record for BLM to grant appellant's request that it consider Tract 32 subject to the unit agreement as of September 1983.

We find this case to be distinguishable from Woods Petroleum Corp., 23 IBLA 12 (1975); Coors Energy Co., *supra*; and Nucorp Energy, Inc., *supra*, to the extent appellant has cited them to argue in favor of reversing BLM. In Woods the land was considered on appeal to be effectively joined where joinder was executed by appellant's predecessor-in-interest pending approval of an assignment. In Nucorp it was clear from the record on appeal that all the working interests in the tract at issue were in fact committed to the unit agreement despite a prior erroneous determination to the contrary by Geological Survey based on an error of fact. In Coors the Board remanded the case on the basis that BLM agreed to regard a tract as partially committed to the unit agreement where joinder was executed by all working interest owners except for a 4.6-percent interest the owners of which could

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5/ This section provides in relevant part:

"Fully Committed - All interest owners in that tract have committed their interests therein. This includes the lessee(s) of record, basic royalty owners in Fee tracts, owners of overrides or production payments, if any, any working interest owners if different from the lessee of record.

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"Not Committed - Any tract in which a working interest has not been committed regardless of other committed interest."

(Emphasis supplied.)

not be located. These cases are all distinguishable from the situation where a working interest owner initially failed to execute a joinder and only later ratified the unit agreement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly

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Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge