

Editor's note: Reconsideration denied by Order dated April 20, 1992.

GLOBAL NATURAL RESOURCES CORP.

IBLA 89-335

Decided November 22, 1991

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dismissing request for State Director review as untimely filed. NM SDR 89-14.

Affirmed.

1. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Timely Filing

Pursuant to 43 CFR 3185.1 and 43 CFR 3165.3, where a party to a unit agreement files a request for technical and procedural review by a State Director of the Bureau of Land Management, the request is properly dismissed as untimely pursuant to 43 CFR 3165.3(b) when

it is filed more than 20 business days after the date the decision of the authorized officer was received or deemed to be received by the aggrieved party.

2. Administrative Procedure: Generally--Oil and Gas Leases: Unit and Cooperative Agreements--Rules of Practice: Generally

To the extent that a unit operator is delegated with all rights of the working interest owners with respect to allocation of production, receipt by the unit operator of a notice by BLM accepting the unit operator's determination that a well completion is noncommercial constitutes constructive service of that notice on the working interest owners.

3. Administrative Procedure: Generally--Oil and Gas Leases: Unit and Cooperative Agreements--Rules of Practice: Generally

Where, under a joint Federal/State unit agreement, authority for the approval of a noncommerciality determination is vested in the authorized officer, the New Mexico Land Commissioner, or the New Mexico Conservation Commission, depending upon whether the well in question is completed on Federal, State, or private land, respectively, a notice that BLM is filing a noncommerciality determination for a well not located on Federal land "for the record" does not constitute an appealable decision under 43 CFR 4.410.

APPEARANCES: Greg Cusack, Houston, Texas, for Global Natural Resources Corporation.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Global Natural Resources Corporation (Global) has appealed from a decision of the Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management (BLM), dated March 15, 1988, denying Global's request for State Director Review (SDR) of a determination that its San Juan 31-6 Unit #53 Dakota well (#53 well) does not qualify as a unit (commercial) well. SDR was denied as untimely filed pursuant to requirements set forth in 43 CFR 3165.3(b).

BLM's official file indicates that, on October 31, 1988, the Albuquerque Office, BLM, received written notification from Northwest Pipeline Corporation (Northwest), Unit Operator of the San Juan 31-6 Unit Agreement, that, pursuant to provisions of article 11(b) of the Unit Agreement, Northwest had determined that the San Juan 31-6 Dakota Unit #53 well was not capable of producing unitized substances in paying quantities. By letter dated November 29, 1988, the Assistant District Manager informed Northwest that "[t]his notice is accepted for the record." Issuance of this letter was preceded by approval of the notice by the New Mexico Oil Conservation Commission on November 3, 1988, and followed by approval of the New Mexico Commissioner of Public Lands, State of New Mexico, on December 30, 1988.

On January 10, 1989, Global requested Northwest to reconsider its determination that the #53 well was noncommercial, and to submit to BLM and the State of New Mexico a "Notice of Completion of Commercial Well," pursuant to the engineering data submitted. In that letter, Global stated: "In the event we receive BLM approval of your non-commercial well notice/application prior to your re-submittal, Global will then ask the BLM for an administrative review of the #53 Well's commerciality based on the attached Engineering Report."

Northwest informed the working interest owners by letter dated January 12, 1989, that the three regulatory agencies had approved their "Notice of Completion of Non-Commercial Well." According to its request for SDR, Global received this notification on January 18, 1989. On February 27, 1989, the State Director, BLM, received Global's request for SDR of the commerciality evaluation on the #53 well.

In its decision denying the request for SDR as untimely, BLM noted:

Global's request * * * was received in this office on February 27, 1989. * * * [Northwest's commerciality] evaluation * * * was accepted for record by the Assistant District Manager, Mineral Resources, * * * by letter dated November 29, 1988. The record indicates that Northwest received the letter on December 2, 1988. The SDR request states that Global did not receive notice from Northwest until January 18, 1989.

The Federal Regulations at 43 CFR 3165.3(b) require that any party adversely affected by a decision of the Authorized Officer must file a request for an SDR within 20 business days. As previously stated, this office received the SDR request on February 27, 1989. The SDR request was not timely filed, and is therefore dismissed.

In its statement of reasons, Global contends that it had just cause for its untimely filing of its request for SDR, and requests consideration by the Board of the circumstances surrounding the untimely filing. Appellant states that it notified Northwest on January 10, 1989, that it believed the #53 well to be a commercial producer, and that it received official notice from the unit operator of the noncommercial determination on January 18, 1989. Appellant avers that

[t]hrough a number of verbal conversations, Northwest indicated that they were reviewing our commerciality determination and would handle any necessary steps with the regulatory agencies. Global waited to hear back * * *. [On] February 20, 1989, Northwest called to inform Global that they still deemed the well to be non-commercial. * * * [On] February 23, 1989, Global filed a "Request for State Director Review."

Appellant has supported this averment by attaching to the SOR a copy of a letter dated January 12, 1989, from Northwest to the working interest owners stamped as received on January 18, 1989, indicating that BLM, the New Mexico Commissioner of Public Lands, and the New Mexico Oil Conservation Commission had approved the well as noncommercial. The SOR also addresses appellant's technical arguments in support of its position that the #53 well should be classified as a commercially producing well, and that production should, therefore, be allocated within the participating area of the San Juan 31-6 Unit.

[1] Regulations at 43 CFR Subpart 3180 through 3186 govern Federal onshore oil and gas unit agreements. The applicable regulation, 43 CFR 3185.1, provides: "A technical and procedural review may be requested pursuant to 3165.3 of this title and/or an appeal may be taken as provided in Part 4 of this title from any order or decision issued under the regulations in this part."

BLM denied Global's request based upon the requirements set forth in 43 CFR 3165.3(b) which provide, in pertinent part:

State Director review. Any adversely affected party that contests a * * * decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, * * *. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of * * * decision was received or considered to have been received * * *. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the

State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal * * * to the Interior Board of Land Appeals.

In Han-San, Inc., 113 IBLA 362 (1990), this Board recently applied this regulation as follows:

In analogous circumstances, namely, when a notice of appeal to the Director of the Geological Survey has been filed with the Director after the 30 days from date of service allowed by 30 CFR 290.3(a), we have consistently held that the failure to file a notice of appeal within the 30-day time period properly results in dismissal of the appeal. See Pennzoil Oil & Gas, Inc., 61 IBLA 308 (1982); Texaco, Inc., 51 IBLA 243 (1980); Mesa Petroleum Co., 44 IBLA 165 (1979). We believe a similar rule should apply to a request for review under 43 CFR 3165.3(b), when, as here, neither of Han-San, Inc.'s, requests was filed within 20 business days of its receipt of BLM's letters. The requests were both untimely, and were both therefore properly dismissed.

While the facts in Han-San pertained to a notice of noncompliance issued pursuant to 43 CFR 3162.6(d), we find no cause for disparate application of the rule as it applies to regulations governing Federal onshore oil and gas unit agreements. Thus, appellant was required to file its request for SDR within 20 business days of the date on which it received or was considered to have received notice of BLM's actions.

[2] We note that, in order to ascertain whether or not BLM was correct in its conclusion that the request for SDR was untimely, it is first necessary to determine the operative date on which appellant is deemed to have been notified that Northwest's notice of completion of a noncommercial well had been accepted for the record. The decision of the Deputy State Director, however, did not focus on a specific date but rather, after recounting the facts set forth above, merely concluded that the request was untimely.

While appellant asserts that it did not receive written notification of the BLM acceptance of Northwest's notice until January 18, 1989, it is clear that Northwest, as operator of the unit, received such notification significantly earlier. As unit operator, Northwest is vested with the exclusive authority to exercise "any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances." Art. 8, San Juan Unit Agreement, No. 14-08-001-464. Since the determination of whether or not a complete well is commercial is clearly within the scope of the authority delegated to the unit operation (see Art. 11, San Juan Unit Agreement, supra), receipt by Northwest of notice of BLM actions related thereto constituted constructive receipt by all parties signatory to the unit. Thus, the 20-day period contemplated by 43 CFR 3165.3(b) commenced to run, not upon receipt by appellant of Northwest's notification that BLM had accepted Northwest's noncommerciality determination, but upon receipt by Northwest of BLM's acceptance. Thus, appellant's petition for SDR was clearly

untimely and BLM's dismissal of the request on the ground of untimeliness was warranted. 1/

[3] In any event, appellant has attempted to bring its substantive challenge to Northwest's noncommerciality determination in the wrong forum. As BLM's November 28, 1988, notification to Northwest makes clear, BLM did not purport to independently review Northwest's determination. Rather, it accepted Northwest's notice "for the record." While it is true that, normally, determinations by a unit operator that a well is or is not commercial are made subject to the approval of the authorized officer (see Art. 11, Model Onshore Unit Agreement for Unproved Areas set forth at 43 CFR 3186.1), the unit agreement involved herein is a joint Federal/State unit agreement in which such determinations for wells drilled below the Mesaverde 2/ are made by the unit operator subject to the approval of the authorized officer, the New Mexico Land Commissioner, or the New Mexico Conservation Commission, depending upon whether the well is located on Federal, state, or private land, respectively. See Art. 11(b) San Juan Unit Agreement, supra. It is clear from the case file that the #53 well was drilled on non-Federal land. This was the reason that the District Office was careful to note that Northwest's notice was being accepted "for the record." Because the authorized officer was not responsible for approving Northwest's determination with respect to the #53 well, there is no BLM decision which might be subject to either SDR review or appeal to this Board. Thus, even had appellant's filing been timely, BLM would have properly denied appellant's request for SDR review.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

1/ To the extent that 43 CFR 3185.1 might be amenable of an interpretation that an appellant may either request an SDR or appeal directly to this Board (but see Utah Chapter, Sierra Club, 114 IBLA 172 (1990); San Juan Citizens Alliance, 104 IBLA 288 (1988)), it is sufficient to note that treating appellant's Feb. 27, 1989, request for SDR as a notice of appeal would require that the Board dismiss the appeal as untimely under 43 CFR 4.411.

2/ Article 11(b) deals with procedures for wells drilled into the Mesaverde and shallower formations. This section generally provides for the joint approval of the authorized officer, the Land Commissioner, and the Conservation Commission, of the unit operator's commerciality determinations for their wells. Since this well was drilled into the Dakota formation, this provision is not applicable.