



PREMCO WESTERN, INC.

165 IBLA 328

Decided May 5, 2005

Editors Note: Motion for Reconsideration Denied; request for stay Denied as Moot Order July 21, 2005. Appeal Filed. No. 05-2211-PCT-JAT (D. Ariz), *aff'd Premco Western, Inc. v. Kempthorne*, 2007 WL 951962 (Mar 27, 2007).



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PREMCO WESTERN, INC.

IBLA 2004-27

Decided May 5, 2005

Appeal from a decision of the State Director, Arizona State Office, Bureau of Land Management, terminating the Dutchman Unit. AZA 31924-AZIX (3180 (AZ-932)).

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

A BLM decision terminating an oil and gas unit for failure to prosecute diligent drilling as required by the unit agreement will be affirmed on appeal where the unit operator neither met the target depth nor completed a well that produced in paying quantities at a lesser depth, and where the record established that the unit operator was not diligently prosecuting drilling operations, as evidenced by numerous periods of non-operation, and little progress was being made toward the target depth or toward establishing production in paying quantities at a lesser depth. While technical difficulties in operating in a wildcat area can be addressed in an extension of time or a suspension of operations, difficulties in funding the drilling of the well and complications associated therewith do not excuse the operator's failure to diligently drill the unit well.

APPEARANCES: Rodney Ratheal, President, St. George, Utah, for Premco Western, Inc.; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Premco Western, Inc. (Premco Western), has appealed from a September 11, 2003, decision of the State Director, Arizona State Office, Bureau of Land Management (BLM), upholding the June 13, 2003, decision of the Arizona State

Office Renewable and Mineral Resources Group Administrator (ASO Group Administrator) informing Premco that the Dutchman Unit in Mojave County, Arizona, “automatically terminated” effective June 11, 2003, pursuant to the last paragraph of Section 9 of the unit agreement. The last paragraph of Section 9 states: “Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid ab initio by the Authorized Officer.”

The ASO Group Administrator provided Premco Western with the following explanation for his June 13, 2003, decision:

On November 9, 2002, you received a letter from the Arizona Strip Field Office of the Bureau of Land Management detailing the level of operations necessary for Premco Western, Inc., to be in compliance with the diligent drilling requirements of Section 9 of the unit agreement. Premco Western was given 30 days to comply with the diligent drilling requirements. Premco Western was required to have a person capable of operating the drilling equipment on site for eight hours out of every 24 hour period, unless Premco Western received prior written approval from the Arizona Strip Field Office Manager.

Inspection and conversation records submitted by the Arizona Strip Field Office indicate that Premco Western did not meet the requirement that it “have an employee capable of operating the approved drilling equipment on site for at least eight hours in every 24 hour day, seven days a week, for the duration of time that it takes to complete this well.

(ASO Group Administrator Decision at 1.) The ASO Group Administrator informed Premco Western of its right to request “Administrative Review” of his decision by the Arizona State Director, BLM, under 43 CFR 3165.3(b) and 3185.1.

On June 26, 2003, Premco Western filed its request for State Director Review (SDR) of the ASO Group Administrator’s decision. In her decision, the State Director observed that upon conducting periodic drilling inspections of Premco Western’s drilling operations, the Arizona Strip Field Office “noted that there had been several periods of extended non-operation after the extension to resume drilling had expired.” The State Director set forth the following facts, which provide a further context for the ASO Group Administrator’s decision, as well as the rationale for her own:

On October 21, 2002, the Arizona Strip Field Manager sent Premco Western a letter detailing necessary actions for Premco Western to be

diligently drilling to meet the public interest requirements of the unit agreement. Premco Western received this letter on November 9, 2002.

This letter required Premco Western “to resume drilling within 30 days of receipt of this letter, complete the exploratory well to the target depth of 6000 feet as approved in the APD regarding this well or a hydrocarbon producible horizon, and must be conducting drilling operations and have an employee capable of operating the approved drilling equipment on site for at least 8 hours in every 24 hour day, seven days a week, for the duration of the time that it takes to complete this well. Thanksgiving Day, November 28, 2002, Christmas Day, December 25, 2002, and New Year’s Day, January 1, 2003, are exempt from the requirement for having an employee capable of operating the drilling equipment on site for 8 hours out of a 24 hour day.” Deviation from these requirements required prior written approval from the Arizona Field Strip Manager.

Subsequent inspections indicated that the well was deepened approximately 500 feet more to a depth of approximately 3700 feet from January 2002 until June 2003. It had also been observed that there had been several extended periods of failing to comply with the October 21, 2002, letter.

(SDR Decision at 2.)

The State Director notes that while “Premco Western cites many operational and financial difficulties as reasons for not complying with the diligent drilling requirements of the unit agreement, * * * there are no indications that Premco Western ever requested or received written approval from the Arizona Strip Field Manager to deviate from the diligent drilling requirements outlined in the letter of October 21, 2003, to Premco Western.” Id. The State Director’s discussion and ruling is set forth below:

The Bureau of Land Management is required to uphold the public interest when it manages the public resources of the citizens of the United States. The regulations regarding oil and gas development on federal leases require a unit to be diligently explored. The inspection record indicates that Premco Western has failed to meet the diligent drilling requirements of the public interest requirements of Section 9 of the unit agreement.

Id. Accordingly, the State Director upheld the decision issued by the ASO Group Administrator.

As noted, Premco Western filed a timely appeal from and petition for stay of the State Director's decision. By order dated December 9, 2003, this Board denied Premco Western's request for stay. Based upon the record, the Board stated:

BLM's decision was predicated on regulations requiring oil and gas development of federal leases that require a unit to be diligently explored. Premco does not explain why, to the extent that it believed further extensions were in the public interest, that it did not seek such extensions from BLM, rather than risk violating BLM's October 21, 2002, letter emphasizing Premco's duty to diligently complete the unit well. Even accepting operational difficulties, the fact that the target well was drilled only 500 feet between January 2002 and June 2003 tends to confirm the existence of BLM's diligent development concerns.

(Order, Premco Western, Inc., IBLA 2004-27 (Dec. 9, 2003).) Based upon the further submissions of the parties, and for the reasons set forth below, we affirm the State Director's decision upholding the ASO Group Administrator's determination that the Dutchman Unit terminated effective June 11, 2003, for failure to diligently drill the unit obligation well.

The regulations at 43 CFR Part 3180 relate to onshore oil and gas unit agreements for unproven areas, with Subpart 3186 providing model forms for such agreements. The version of the Dutchman Unit agreement which appears to be controlling was signed by Premco Western, on December 13, 2001.^{1/} This

^{1/} The record contains another Dutchman Unit agreement, not referred to in BLM's answer, signed by Premco Western on Oct. 1, 2001. This agreement covers an area stated to contain "7,676.56 acres more or less," consisting of Federal leases/acreage AZA 26123, AZA 26126, AZA 26135, AZA 26137 and AZA 26138. Section 9 of the Oct. 1, 2001, unit agreement is identical to the Dec. 13, 2001, unit agreement, except that it provides that the "Unit Operator shall not in any event be required to drill said well to a depth in excess of 6,000 feet," rather than the 5,000 feet maximum specified in the Dec. 13, 2001, agreement. The record contains a letter from Premco Western to BLM dated Oct. 1, 2001, requesting a proposed Unit, stating that the "deepest formation to be tested is the Cambrian and maximum depth should be 6,000." The lease numbers identified for inclusion in the Dutchman Unit described in the Oct. 1, 2001, unit agreement do not include AZA 31923, as was the case with the Dec. 13, 2001, unit agreement. Rather, the request for unitization only includes the following lease numbers: AZA 26123, AZA 26126, AZA 26135, AZA 26137, and AZA 26138. We need not resolve this issue, because this discrepancy in the maximum depth for drilling the target well is without significance for our "diligent drilling" analysis, since Premco Western fell far short of reaching even the 5,000 feet
(continued...)

agreement refer to 11,623.09 acres, including Federal leases AZA 26123, AZA 26126, AZA 26135, AZA 26137, AZA 26138, and 5068.53 acres of unleased Federal acreage. BLM has attached this agreement to its answer as Exhibit D. See BLM Certification/ Determination dated December 20, 2001 (BLM Answer, Exh. D). Section 9 of the unit agreement sets forth the following parameters of the “diligently drill” standard to which Premco Western was subject:

9. DRILLING TO DISCOVERY. Within six months after the effective date hereof, the Unit Operator shall commence to drill an adequate test well at a location approved by the AO [Authorized Officer], unless on such effective date a well is being drilled in conformity with the terms hereof, and thereafter continue such drilling diligently until the 700 feet below the top of the Redwall formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (to wit: quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the AO that further drilling of said well would be unwarranted or impracticable, provided, however that the Unit Operator shall not in any event be required to drill to a depth in excess of 5,000 feet. Until the discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue drilling one well at a time, allowing not more than six months between the completion of a well and the commencement of drilling operations for the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the AO or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formations drilled hereunder.

* * * * *

The AO may modify any of the drilling requirements of this section by granting reasonable extensions of time when, in his opinion, such action is warranted.

“Exhibit B” to the agreement, provided as “Exhibit D” to BLM’s Answer, identifies the leases and/or acreage embraced by the Dutchman Unit, and, where applicable, the effective dates of the leases and their respective expiration dates. As noted, this

^{1/} (...continued)
depth.

Dutchman Unit agreement, approved by BLM on December 20, 2001, appears to be the agreement involved in this appeal.

BLM's records show that on December 20, 2001, it approved the Dutchman Unit agreement signed by Premco Western on December 13, 2001. See BLM Certification/Determination dated Dec. 20, 2001 (BLM Answer, Exh. D). The requirement that Premco Western, the unit operator, diligently drill to discovery pursuant to Section 9 of the approved unit agreement is based upon the terms of 43 CFR 3183.4(b), which provides:

The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. [^{2/}] If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3-2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title. [Emphasis added.]

According to BLM, "there is substantial evidence available in the record as to Appellant's failure to adhere to the diligent drilling requirement." (Answer at 9.) In its letter dated October 21, 2002, which BLM sometimes refers to as an "Order," the Arizona Strip Field Office, BLM, made clear to Premco Western the level of operations necessary to comply with the diligent drilling requirements of Section 9 of the unit agreement. See BLM Answer, Exh. E. BLM stated that recent inspections of Premco Western's unit exploration well indicated "an extended period of non-operation." BLM related that the public interest requirement of the unit agreement governing "unproven areas" found at 43 CFR 3183.4(b) "shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement." The

^{2/} The "public interest requirement" is derived from 43 CFR 3183.4(a). These provisions require the authorized officer to determine that unitization is "necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources." Similarly, an application to designate the unit area requires geologic and other information "showing that unitization is necessary and advisable in the public interest." 43 CFR 3183.2. See also Chesapeake Operating, Inc., 149 IBLA 188, 202 (1999); Orvin Froholm, 132 IBLA 301, 305 (1995).

Arizona Strip Field Office cautioned: “Failure to comply with the requirements of this Order, without prior written approval of the Arizona Strip Field Office Manager, will result in the termination of the Dutchman Unit. Leases in the unit, which terms were extended by the unit obligation well, will be terminated ab initio.”

By memorandum dated December 6, 2002, the Arizona Strip Field Office informed Premco Western that the company had simply not complied with the diligent drilling requirements of Section 9 of the unit agreement, as reflected in its October 21, 2002, order. (BLM Answer at 9, Exh. F.) BLM stated that an inspection conducted on November 20, 2002, and later conversations with Rodney Ratheal, president of Premco Western, “demonstrate lack of compliance with the Order,” and that “[d]rilling operations ceased in August 2002 and have not yet resumed.” BLM indicated its intent to request that the Dutchman Unit be terminated. (BLM Answer at 14, Exh. F.)

There is evidence in the record that BLM made repeated efforts to accommodate Premco Western’s operational and financial difficulties in meeting the “diligent drilling” requirements of Section 9. In a memorandum to the file dated January 2, 2002, Rodney Cox, BLM’s geologist, observed that “[s]ince the approval of the unit agreement more than one year ago, the depth of the Dutchman 18-1c well drill hole had advanced from 3,230 ft. (Sundry Notice dated 2/6/2002) to 3,394 ft. (Sundry Notice dated 12/10/2002) a total of 164 ft.”

The record amounts to a lengthy catalog of the repeated financial and operational difficulties encountered by Premco Western in its efforts to drill an exploratory well to its target depth. In January and February 2003, Premco reported difficulty removing drill collars from the hole. Other delays occurred in February, including a delay in logging the well. In March, Premco encountered a fracture zone at 2,900 feet, so that the bottom of the hole could not be reached. The hole remained obstructed through the end of March.

Premco Western reported no further drilling or other activity until Ratheal left voice messages for BLM on March 24 and 25, 2003, stating that he had spent several days at the well “trying to clear the bridge plug encountered at approximately 2900 feet when Schlumberger logged the hole.” Ratheal reported that he had been using cable tools, that material seemed to continue to fall off the wall and block the hole just as he was able to break through the plug at approximately 2,900 feet, and that the bailer had been “hanging up at about 3100-3150 feet.” He related that he was trying to purchase a rotary head and to rent a compressor, then go back down the hole with the rotary tri-cone bit to clear the hole and deepen it. The hole remained obstructed through the end of March. During that month, BLM repeated its request for Premco Western’s drill log, the Schlumberger log, and any reports prepared by Premco Western’s geologist and any other available information. Ratheal stated that

he would mail the information, stressing that he had “been working hard every day either at the rig or office and that he is trying to raise some more money and anticipates resuming drilling in April.” (Confirmation/Report of Telephone Conversation of Mar. 26, 2003.)

Ratheal visited BLM’s Arizona Strip Field Office on April 7, 2003, to discuss the well with Cox, who prepared a memorandum to the file dated April 8, 2003, recounting the meeting. Ratheal brought copies of the three geophysical logs from the well produced by Schlumberger, and an in-house gas meter log which had been previously provided to BLM. He did not bring his drill log, explaining that his printer ran out of ink while it was printing. Nevertheless, he stated that “a geologist at Schlumberger told him the drill hole had potential to produce gas on a commercial basis.” BLM noted that the hole was stated to be approximately 3,617 feet deep, and that Schlumberger had logged the well to 2,900 feet before encountering the plug that possibly resulted from the wall rock coming loose and falling down the hole.

Ratheal showed the logs to BLM and discussed the results, stating “that many of the gas shows had too much water to be commercial, but there are several zones that had potential and could be hydrated.” Ratheal spoke about the promise of oil show at approximately 3,525 to 3,540 feet, and discussed his efforts to raise more funds to purchase a rotary head and rent a compressor so he could clean out and deepen the drill hole. He said that if he could raise at least \$1,000,000 or more he could try to buy a used rotary oil rig located in Farmington, New Mexico. He seemed concerned about drilling substantially deeper with his present modified cable tool rig, stating that “if he [did] not buy a different drill rig, then he need[ed] to anchor the front of the rig because it was coming off the ground and the drill mast was swaying when he pulled up the drill collars and bit last time.” (Apr. 8, 2003, Memorandum, at 1.)

On April 24, 2003, Ratheal contacted BLM to state that he had returned from Dallas and was working with investors, including those associated with major oil companies. He mentioned indications of hydrocarbons, and that he had other decisions to consider, related to the rig to be used. No drilling occurred in April 2003. On May 8, 2003, Ratheal informed BLM that “he [would] resume drilling in approximately two weeks with air and foam with his drill rig and that Clair Adams [would] be on-site and believe[d] they will have commercial production of oil.” Ratheal reported that he contacted a firm in Reno that would rent two compressors with a booster that would produce between 900 and 1,170 cubic feet per minute at 350 psi. (Confirmation/Report of Telephone Conversation dated May 8, 2002.)

On June 3, 2003, Ratheal informed BLM that “he was moving back to St. George and anticipated resuming drilling on June 9 or 10th.” He reportedly raised \$60,000 and thought that he could raise an additional \$60,000 to \$80,000 to

resume drilling on the well. He reported difficulties in obtaining a water truck, noting that fixing his old one would cost more than \$15,000. (Confirmation/Report of Telephone Conversation dated June 3, 2003, at 1.) June 9 and 10 passed without the filing of a Sundry Notice indicating resumption of drilling operations, or the provision of any oral notice to BLM that drilling operations had resumed.

As noted, in its June 13, 2003, decision, the ASO Group Administrator, BLM, informed Premco Western that the Dutchman Unit automatically terminated effective June 11, 2003, pursuant to the last paragraph of Section 9 of the unit agreement and 43 CFR 3183.4.

BLM records reflect that on June 23, 2003, it received a phone call from Ratheal stating that in his opinion the decision to terminate the Dutchman Unit was unfair, given the timing of his letter in which he indicated that he was about to resume operations. He stated that he “had recently purchased equipment and machines, had ordered an engine for his water truck, [had] raised \$120,000 to resume operations and [was] ready to resume work today.” He stated that he thought BLM should let him continue to drill the well, and that “he had already discovered oil and gas.” (Confirmation/Report of Telephone Conversation dated June 23, 2003.)

As stated, on SDR review, the State Director upheld the decision of the ASO Group Administrator that the Dutchman Unit terminated due to lack of diligent drilling as required by Section 9 of the unit agreement, and Premco Western appealed to this Board.

In its submissions to this Board, Premco Western details its efforts to overcome repeated operational and financial difficulties in drilling the target well to discovery. In his statement of reasons (SOR) for appeal, Ratheal explains that he has “worked non-stop since December, 2002 in preparing to finish what [he] believe[s] to already be a discovery oil well.” (Notice of Appeal at 4.) Ratheal adds:

During the months of January and February * * *, I was talking to investors as well as industry service companies to gather opinions and evaluate what we had discovered. Schlumberger was called upon to log the well * * * and Konark was sent to log the well * * *. [T]he tools hit a plug which apparently had formed during the pipe retrieval and could only log from 2,860' and above. * * * After the well was logged, Schlumberger called me to ask if they could send it to their top geologist in Denver, Colorado to evaluate the prospect of natural gas. About a week later, this geologist from Denver called and asked if he could run it through a sophisticated, expensive program they have to evaluate the log. I was told by Konark that the logging tools used on

our well cost \$5,000,000. To run it through this program normally costs \$3,000, but they wanted to do it at no charge for me since this was a wildcat and it looked so promising. The geologist reported back that they were very positive about a section between 2340-2365' being commercial gas. They would never write this on paper, but one of their employees told me that they (at Schlumberger) were sure I was going to hit oil down deeper with as much gas shows as I had. I told them that I already had, it was just unfortunate that we could not get the logging tools down to the bottom of the hole or we would have seen it.

(SOR at 3.)

Premco Western filed an additional statement of reasons (SSOR) on November 19, 2003, in which he further described the operational difficulties encountered. Ratheal asserts that he has found the “key’ essential equipment that will soon prove to be the last components for a successful future of drilling in this area,” a foaming unit. Ratheal concludes that he is “convinced that with the dramatic increase of additional funds that would be available when the Dutchman 18-1c is completed as a commercial oil well combined with the drilling program [he has] described to those of you who are concerned, future wells will be successfully drilled economically in less than a month.” (SSOR at 2.)

In its Answer, BLM states that Section 9 of the unit agreement requires the operator to “diligently drill” to discovery and that that obligation has a “clear basis” in 43 CFR 3183.4. BLM asserts that it was made “quite clear to Appellant as to the level of operations necessary to be in compliance with the diligent drilling requirements of Section 9 of the unit agreement,” and maintains there is substantial evidence in the record as to Premco Western’s failure to adhere to the diligent drilling requirement. (Answer at 9-10.) BLM argues that because Premco Western had made preparations as of August 5, 2003, to resume drilling does not change the fact that diligent drilling “had not occurred and that the Dutchman unit had already terminated pursuant to section 9 of the unit agreement.” BLM submits that this case is similar to several cases reported by the Board, including D. L. Cook, 144 IBLA 63, 68-69 (1998), and Ruby Drilling Co., 119 IBLA 210, 214-15 (1991). (Answer at 12.)

Further, BLM argues that the three documents comprising Premco Western’s October 13, 2003, submittal (Notice of Appeal, Request for Stay, and SSOR), “provide detailed reasons—e.g., financial, logistical and technical—as to why Appellant was not able to comply with the section 9 requirement to ‘diligently’ drill to the depth identified.” (Answer at 14.) BLM contends: “[T]here is no evidence that Appellant materially disputes BLM’s conclusion that there were numerous periods of inactivity and non-operation at the site. Indeed, as a BLM December 6, 2002, memorandum notes (see also inspection dated August 5, 2003), ‘[d]rilling operations ceased in

August 2002 and have not yet resumed.” (Answer, Exh. F.) BLM points to this Board’s December 9, 2003, order at 2, denying Premco Western’s request for stay, in which the Board stated: “Even accepting operational difficulties, the fact that the target well was drilled only 500 feet between January 2002 and June 2003 tends to confirm the existence of BLM’s diligent development concerns.” BLM concludes that “BLM’s record shows, on its face, a failure to comply with the regulatory public interest requirement,” and that the State Director’s September 11, 2003, decision should be affirmed.

[1] Based upon this record, there is no question that BLM properly exercised its authority pursuant to Section 9 of the unit agreement, as well as 43 CFR 3183.4(b), in terminating the Dutchman Unit. The Board’s rulings in D.L. Cook, *supra*, and Ruby Drilling Co., *supra*, provide solid support for BLM’s termination of the Dutchman Unit based upon lack of diligent drilling. In D.L. Cook, which is factually similar to Premco Western’s case, in considering whether there were timely diligent drilling operations on the subject well, the Board upheld the State Director’s decision:

There is simply no evidence that Cook pursued diligent drilling operations. The record, which Cook does not dispute, demonstrates a failure to respond to BLM’s 60- and 30-day letters, and a lack of action on Cook’s part to carry out its obligations. On appeal, Cook lists belated operational efforts which were fruitless to establish either that the well was capable of production in paying quantities or that it was not capable of such production. Cook’s failure to timely drill and produce is unrefuted, nor is any justification shown on appeal.

The difficulties Cook lists on appeal—drilling moratorium, the cavitating process—do not amount to sufficient justification. As BLM points out, Cook was unaffected by the bar to BLM’s issuance of [applications for permit to drill] because it already had its permit to drill. The suggestion of loss of financial backing is on no firmer ground and cannot serve as a justification of Cook’s obligation to carry out timely drilling operations. See Ruby Drilling Co., 119 IBLA 210, 214-15 (1991), and cases there cited. [Footnotes omitted.]

144 IBLA at 68-69.

We agree with BLM that Ruby Drilling Co. is “particularly instructive.” There, Ruby Drilling was the unit operator of the Gold Butte Unit located in Clark County, Nevada, subject to a unit agreement, Section 9 of which provided that “[u]pon failure to continue drilling diligently any well commenced hereunder, the [authorized officer] may, after 15-days notice to the Unit Operator, declare this Unit Agreement

terminated.” The Nevada State Director declared the Gold Butte Unit terminated automatically due to lack of diligent drilling. The Board affirmed the State Director’s decision, stating:

With respect to the termination of the unit, we affirm BLM’s conclusion that a suspension of drilling obligations pursuant to section 25 of the unit agreement cannot be granted in order to allow the operator to find alternative funding sources. Insufficient funds will not excuse a lessee’s failure to timely perform drilling obligations. See Champlin Petroleum Co. v. Mingo Oil Producers, 628 F.Supp. 557 (D. Wyo. 1986), aff’d, 841 F.2d 1131 (10th Cir. 1987); Alphin v. Gulf Refining Co., 39 F.Supp. 570, 576 (W.D. Ark. 1941); Williston on Contracts, § 1932 (3rd ed., 1978); Colorado Open Space Council, 109 IBLA 274, 313-14 (1989) (Irwin, A.J., dissenting). Moreover, appellant does not allege a situation or circumstance that prevented the diligent drilling of the 36-1 well, as required in section 25 for a suspension. Appellant only alleges its inability to find someone else to fund the drilling.

Appellant cites several difficulties it has encountered in the past in conducting operations on the Gold Butte Unit. However, it has not established that any of these difficulties were objectively preventing the drilling of the obligation well at the time the suspension request was filed. It is insufficient to simply allege that performance has been difficult “over the past several years.” It is clear, for example, that the vandalism to which Ruby’s equipment was subjected occurred in November 1987. We are unable to find that 10 months afterward an operator exercising due care and diligence would still be prevented by the vandalism from complying with the drilling obligation, especially where drilling occurred in the intervening period.

119 IBLA at 214-15.

BLM contends that just as with the operator in Ruby Drilling Co., Premco Western’s “operational difficulties here should not operate as an excuse or exemption from compliance with the applicable diligent drilling requirements.” (Answer at 14.) BLM asserts that while Premco Western has provided details as to financial and technical difficulties encountered in complying with Section 9, “there is no evidence that [Premco Western] materially disputes BLM’s conclusion that there were numerous periods of inactivity and non-operation at the site.” Id. at 15.

Premco Western’s reasons for appealing the SDR decision detail the financial and technical reasons why diligent development has not occurred. Premco Western

does not, however, dispute that there were numerous periods of non-operation as contended by BLM. Ratheal contends that he has satisfied the public interest requirement on the basis of his belief that he will eventually complete a producer oil well at a shallower depth. Documentation supporting that conclusion has not been submitted to BLM or this Board. In a letter dated January 16, 2004, responding to BLM's Answer, Premco Western's reply states that it "is currently working to gather the necessary information to document and prove that, indeed it has met the Unit requirements." However, even at this late date, such information has not been forthcoming.^{3/}

The long periods of non-operation, coupled with such little progress toward achieving the target depth, or alternatively, in establishing production in paying quantities at a shallower depth, is not consistent with the prosecution of diligent drilling, and does not satisfy the public interest requirement. BLM properly noted that "[s]ince the approval of the unit agreement more than one year ago, the depth of the Dutchman 18-1c well drill hole had advanced from 3,230 ft. (Sundry Notice dated 2/6/2002) to 3,394 ft. (Sundry Notice dated 12/10/2002) a total of 164 ft." Between the time of the Sundry Notice dated December 10, 2002, and BLM's decision terminating the unit, depth of the well advanced only another 306 feet (3,394 to 3,617 feet (approximately 3,700 feet)), notwithstanding Premco Western's repeated claim that drilling operations would resume. The reasonableness of BLM's action herein is founded on the fact that BLM issued its decision terminating the unit only after Premco Western failed to resume drilling operations as promised on June 9 or 10, this date having been previously extended by Ratheal as he attempted to finance continued drilling operations on behalf of Premco Western. The foregoing, coupled with Premco Western's lack of diligence in submitting to BLM relevant logging data and expert geological reports establishing that commercial production at a lesser depth had been achieved, even as late as urged by Premco Western in its Reply, simply cannot be squared with Premco Western's obligation under Section 9 of the unit agreement.^{4/}

^{3/} BLM predicated its decision in part upon Premco Western's failure to comply with the specific requirements of having a person operating the well 8 hours per day for 7 days a week. We do not agree that failure to meet the schedule mandated by BLM equates to a finding that Premco Western has not satisfied its diligent drilling obligations. The requirements mandated by BLM seem excessive since it is possible to satisfy the diligent drilling requirements of Section 9 of the unit agreement without meeting BLM's mandated work schedule. BLM does not cite any regulation, directive or standard, industry or otherwise, in support of the work schedule.

^{4/} This is not to say that the Department does not recognize that drilling in a wildcat area has its attendant risks and technical challenges. Unanticipated technical
(continued...)

The principal difficulty which cannot be addressed through a suspension of operations or repeated extensions of time, which appears to have consistently plagued Premco Western's operations, is the persistent lack of adequate funding to support drilling operations. Virtually each time any progress was made on the drilling front, rather than continuing to prosecute the drilling operations, Premco Western was compelled to launch yet another campaign to fund the next step in drilling. A lack of finances cannot excuse appellant's failure to prosecute diligent drilling under the terms of the unit agreement. See Ruby Drilling Co., 119 IBLA at 214; D.L. Cook, 114 IBLA at 69, and cases cited; see also W&T Offshore, Inc., 148 IBLA 323, 354 (1999). Consequently, for the reasons detailed herein, we affirm BLM's decision terminating the Dutchmen Unit.

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

James F. Roberts
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

^{4/} (...continued)

challenges can be addressed by BLM through the grant of a request for extension, as quoted above from the unit agreement, or a suspension of operations, if necessary, to resolve technical issues. Premco Western sought neither.