



THREE FORKS RANCH, INC.

171 IBLA 323

Decided June 28, 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



THREE FORKS RANCH, INC.

IBLA 2006-286

Decided June 28, 2007

Appeal from a decision of the Deputy State Director, Energy, Lands, and Minerals, Colorado State Office, Bureau of Land Management, dismissing a request for State Director Review of a decision issued by the Chief, Branch of Fluid Minerals, Division of Energy, Lands, and Minerals, Colorado State Office, Bureau of Land Management, approving an expansion of the Focus Ranch Unit. SDR-06-06.

Motion to dismiss denied; reversed and case remanded.

1. Oil and Gas Leases: Unit and Cooperative Agreements--
Rules of Practice: Appeals: Dismissal--Rules of Practice:
Appeals: Timely Filing

Designation of a unit operator relieves BLM from any obligation to communicate directly with working interest owners or others concerning general unit operations, such as approval of development plans and other matters related to operation of the unit. However, BLM may have an obligation to inform certain parties when the action concerns a matter other than general unit operations, such as unit expansion. Where the unit agreement requires the unit operator to notify each working interest owner, lessee, and lessor whose interests are affected by a proposed expansion and to allow such persons to file objections and then to forward those objections to BLM for its consideration, a BLM decision approving the expansion must be served on any person filing an objection because the filing of an objection makes that person a party to the proceeding leading up to BLM's decision.

2. Administrative Procedure: Standing--Oil and Gas Leases:
Unit and Cooperative Agreements

Under 43 C.F.R. § 3185.1, a party may request State Director Review in accordance with 43 C.F.R. § 3165.3(b), if it is adversely affected by a decision, order, or instruction issued under the unit agreement regulations. A person who has received, in accordance with provisions of the unit agreement, notice of the expansion of a unit and has filed objections to that expansion, may request State Director Review of a BLM decision approving expansion, if that person is adversely affected by the decision.

APPEARANCES: Richard H. Bate, Esq., Denver, Colorado, for appellant; Susan L. Aldridge, Esq., Denver, Colorado, for Clayton Williams Energy, Inc., intervenor.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Three Forks Ranch, Inc. (Three Forks) has appealed from a decision issued on July 31, 2006, by the Deputy State Director, Energy, Lands, and Minerals, Colorado State Office, Bureau of Land Management (BLM). Therein, the Deputy State Director dismissed Three Forks' request for State Director Review (SDR) of a May 30, 2006, decision issued by the Chief, Branch of Fluid Minerals, Division of Energy, Lands, and Minerals, Colorado State Office, BLM, approving an expansion of the Focus Ranch Unit, finding that the SDR request was "not filed in a timely manner." SDR Decision at 1.

For the reasons stated below, we conclude that Three Forks' SDR request was timely filed, and we remand the case to the State Director for consideration of that request.

Background

On August 30, 1999, BLM approved Unit Agreement COC63212X creating the Focus Ranch Unit. The unit contains over 25,000 acres of land in Routt County, Colorado, approximately 74 percent of which are Federal lands, 23 percent are patented lands, and 3 percent are State lands. Three Forks is listed on Exhibit "B" of the Unit Agreement as a working interest owner of unitized substances in the unit area, but Three Forks did not join the unit.

On February 21, 2006, Clayton Williams Energy, Inc. (CWE), the unit operator, filed an application with BLM requesting "preliminary approval of the

proposed expansion of the Focus Ranch Unit Area”¹ See Apr. 7, 2006, letter from Chief, Branch of Fluid Minerals, Division of Energy, Lands, and Minerals, Colorado State Office, BLM, to CWE. Three Forks asserts on appeal that on March 16, 2006, UnitSource Incorporated (UnitSource), acting on behalf of CWE, mailed Three Forks notice of the proposed expansion of the unit.

Three Forks states that, as the owner of unleased mineral interests in both the original and expanded unit areas, it was entitled to such notice under subsection (b) of Section 2 of the Unit Agreement, which provides that the unit operator must mail a copy of any notice of proposed expansion or contraction “to the last known address of each working interest owner, lessee and lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.” Three Forks states that the notice from UnitSource did not advise it that 30 days would be allowed for filing objections, but that, nevertheless, it mailed its objections to UnitSource on April 11, 2006, complaining, *inter alia*, that the unit automatically terminated 5 years from its effective date, as provided in Section 20 of the Unit Agreement.

On May 25, 2006, UnitSource informed BLM that, in accordance with the provisions of Section 2 of the Unit Agreement, it had provided notice of the proposed expansion “to all parties entitled thereto,” and that “[n]o objections to the expansion were received within the 30 day period stipulated in the Focus Ranch Unit Agreement.”² While UnitSource claims that it did not receive any objections within the 30-day period prescribed in Section 2, the case record forwarded to the Board shows that BLM received a copy of Three Forks’ objections on April 12, 2006.³

Section 2(d) of the Unit Agreement provides that, “[a]fter due consideration of all pertinent information, the expansion or contraction shall, upon approval by the

¹ The case record forwarded to the Board does not include that application.

² Section 2(c) of the Unit Agreement provides that “[u]pon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the AO [BLM authorized officer] evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with the Unit Operator, together with an application in triplicate, for approval of such expansion or contraction and with appropriate joinders.”

³ The copy of the letter, dated Apr. 11, 2006, and addressed to CWE, “c/o UnitSource,” is signed by Richard H. Bate, as attorney for Three Forks, “the owner of some of the surface and some of the unleased, uncommitted oil and gas interests within the existing and proposed expansion of the referenced [Focus Ranch] unit area” The letter is styled, in part: “Objections of Three Forks Ranch, Inc. to Proposed Expansion.”

AO, become effective as of the date prescribed in the notice thereof or such other appropriate date.” By decision dated May 30, 2006, BLM notified CWE of the approval of the expansion of the Focus Ranch Unit. The decision did not mention the objections filed by Three Forks, and there is no evidence in the record that BLM served a copy of that decision on Three Forks. Three Forks states that it learned of the approval on June 30, 2006, and, thereafter, sought SDR in accordance with 43 C.F.R. § 3185.1.⁴

On July 31, 2006, the Deputy State Director dismissed Three Forks’ appeal because it was “not filed in a timely manner” under 43 C.F.R. § 3165.3(b). SDR Decision at 1. Despite that representation, the Deputy State Director offered no rationale for determining that the appeal was untimely.⁵ Instead, he stated that, because the unleased mineral interests held by Three Forks had not been committed to the unit, “Three Forks Ranch is not a party to the Focus Ranch Unit agreement and can[]not be adversely affected by BLM decisions relating to the administration of the Focus Ranch Unit agreement.” *Id.* He concluded that “the provisions of 43 C.F.R. 3165.3(b) are not available for use by Three Forks Ranch as they may pertain to the administration of the Focus Ranch Unit.” *Id.* Thus, while the Deputy State Director ostensibly dismissed the appeal as “untimely,” he concluded essentially that, even if the SDR request had been timely, he would not entertain it because Three Forks was not a party to the Unit Agreement and, therefore, could not avail itself of SDR of the May 30, 2006, decision. Three Forks filed a timely appeal.

Analysis

CWE has moved to dismiss the appeal, arguing, first, that this Board has no jurisdiction to entertain an appeal where the appellant failed to seek SDR timely, citing *Conley P. Smith Oil Producers*, 131 IBLA 313, 320 (1994), and, second, that Three Forks is not adversely affected by either the May 30, 2006, decision allowing expansion or the July 31, 2006, decision dismissing the request for SDR. We construe that pleading also to be a request for intervention in the appeal and grant intervention in light of CWE’s position as the unit operator.

⁴ That regulation states that “[a]ny party adversely affected by an instruction, order, or decision issued under the regulations in this part [43 C.F.R. Part 3180--“Onshore Oil and Gas Unit Agreements: Unproven Areas”] may request an administrative review before the State Director under § 3165.3 of this title.”

⁵ Presumably, BLM based that determination on Three Forks’ failure to file for SDR within 20 business days of receipt of the decision by the unit operator. However, the record does not indicate the date CWE received the May 30, 2006, decision.

We deny the motion to dismiss and reverse BLM's decision on the basis that Three Forks was a party who should have been served with a copy of BLM's May 30, 2006, decision; that its time to appeal should have dated from its receipt of a copy of that decision; and that, because it filed its appeal within 20 business days of gaining actual knowledge of that decision, its appeal was timely filed under 43 C.F.R. § 3165.3(b). We also remand the case to the State Director for consideration of the SDR request because we find that Three Forks was adversely affected by the decision approving expansion of the unit.

While unstated in the SDR decision, BLM's determination that 43 C.F.R. § 3165.3(b) is "not available" to Three Forks is apparently premised on this Board's decision in *Orvin Froholm*, 132 IBLA 301 (1995), a case involving the appeal of an SDR decision affirming the approval of unit agreements and the establishment of participating areas within those units. Therein, we held that receipt by the unit operator's agent of the unit approvals and the approvals of the participating areas for each unit constituted constructive service on all interest owners who had joined the units, and that, under 43 C.F.R. § 3165.3, any appeal of those approvals had to be filed within 20 business days of such receipt. 132 IBLA at 309. In addition, we stated:

As we held in *Global Natural Resources Corp.*, [121 IBLA 286, 289 (1991)], receipt by the unit operator of notice of BLM actions regarding general unit operation constitutes constructive receipt by all parties signatory to the unit. BLM's only obligation is to serve the unit operator and that service is considered constructive service on all unit signatories. Interest owners who have not joined the unit are not entitled to any notice from BLM regarding general unit operation actions and they cannot be considered adversely affected by them.

132 IBLA at 311.

[1] While *Froholm* holds that BLM has no obligation to inform any person other than the unit operator regarding BLM actions concerning general unit operations, which include approval of development plans and other matters related to operation of the unit, that holding is not controlling in this case because, based on the obligations imposed on the unit operator by the Focus Ranch Unit Agreement, we conclude that expansion of the unit does not fall within the term "general unit operations," and that BLM may have an obligation to serve parties, in addition to the unit operator, with a decision approving expansion of the unit.

Unit expansion and contraction are governed in the present case by Section 2 of the Focus Ranch Unit Agreement, titled "Unit Area." Subsection (b) thereof imposes express unit obligations on the unit operator, including notification of "each

working interest owner, lessee and lessor whose interests are affected,” allowing time for such persons to file objections with the unit operator, and forwarding those objections to BLM for its consideration, together with an application for approval of expansion or contraction and appropriate joinders.⁶

When a person entitled to notice under the Unit Agreement has received such notification and has filed objections to the expansion of the unit, that person becomes a “party” to the proceeding leading to BLM’s adjudication of the application for expansion of the unit. Herein, by offering objections to expansion, Three Forks became a party to the proceeding leading to BLM’s May 30, 2006, decision. *Cf.* 43 C.F.R. § 4.410(b) (party to a case in an appeal before the Board is one who has participated in the process leading to the decision under appeal). As a party to that proceeding, Three Forks should have been served with a copy of BLM’s decision approving unit expansion.

Having determined that BLM should have served a copy of its May 30, 2006, decision on Three Forks, we also hold that the 20-day period of 43 C.F.R. § 3165.3(b) should have run from the date of Three Forks’ receipt of that decision. In this case, however, BLM did not fulfill its service obligations. Therefore, there is no evidence in the case file forwarded by BLM of receipt of that decision by Three Forks.

When a party who is entitled to service of a BLM decision has not been served, this Board has recognized the principle of notice based upon actual knowledge, such that the party’s right to seek review before the Board is triggered by such notice. *Nabesna Native Corp. (On Reconsideration)*, 83 IBLA 82, 84 (1984), stipulated dismissal with prejudice, *sub nom. Lower Tonsina Inc. v. Babbitt*, No. A86-035 (D. Alaska Apr. 18, 1994). The same should hold true for a party entitled to service of a BLM decision, who is seeking SDR. In this case, Three Forks states that it gained actual knowledge of the decision approving expansion on June 30, 2006. In the absence of any contrary evidence in the record, the Board accepts that date as commencing the period for filing for SDR. The record shows that Three Forks filed its request for SDR within 20 business days of that date. Under the circumstances, we hold that Three Forks timely filed its request for SDR.

Next, we must address the Deputy State Director’s conclusion that, even if the SDR request had been timely, he would not entertain it because Three Forks was not a party to the Unit Agreement and, therefore, could not avail itself of SDR of the May 30, 2006, decision.

⁶ Section 2 of the Focus Ranch Unit Agreement is the same as that section in the Model Unit Agreement found at 43 C.F.R. § 3186.1.

[2] Under 43 C.F.R. § 3185.1, a “party” may request SDR in accordance with 43 C.F.R. § 3165.3(b), if it is “adversely affected” by a decision, order, or instruction issued under the unit agreement regulations. BLM’s determination that Three Forks was not adversely affected by its action is premised on the fact that Three Forks did not join the unit and, therefore, is not entitled to notice from BLM regarding general unit operations. That fact, however, does not control in the present situation involving expansion of the unit, because, as we held above, expansion is a matter beyond general unit operations, and, given Three Forks’ objections to expansion of the unit, it was entitled to service of BLM’s decision on expansion.

Three Forks argues that it is adversely affected by expansion of the unit because expansion will have the effect of continuing leases that would otherwise have expired or that will expire in the near future. It claims that the unit operator may drill wells on such lands, which “are either owned or used by the Appellant in the conduct of its business of providing hunting and fishing opportunities to paying guests at its ranch.” Statement of Reasons at unnumbered 3. It asserts that drilling activities, and to a lesser extent production activities, will interfere with, and detract from, its guests’ wilderness experience and diminish their hunting opportunities. Such allegations support a finding that Three Forks is adversely affected by BLM’s May 30, 2006, decision.⁶ Cf. 43 C.F.R. § 4.410(b) (in an appeal to the Board, a party is adversely affected when it has a legally cognizable interest, and the decision being appealed has caused or is substantially likely to cause injury to that interest); *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 82-84 (2005). Therefore, it is entitled to consideration of its SDR request on the merits.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, CWE’s motion to dismiss is denied. BLM’s July 31, 2006, decision dismissing Three Forks’ request for SDR is reversed and the case is remanded to the State Director for consideration of Three Forks’ request for SDR on its merits.

_____/s/_____
 Bruce R. Harris
 Deputy Chief Administrative Judge

I concur:

_____/s/_____
 H. Barry Holt
 Chief Administrative Judge

⁶ *But see Southern Utah Wilderness Alliance*, 148 IBLA 117, 119 (1999), where we stated, in dicta, that the appellant was not adversely affected by a BLM decision granting the suspension of an oil and gas lease because the allegations of injury were hypothetical, rather than real and immediate.