



NOTE: This disposition is nonprecedential.

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IBLA 2015-260)	SDR No. WY-2015-13
)	
TRANSWORLD SYSTEMS)	Onshore Oil and Gas Exploratory
PETROLEUM, INC.)	Unit
)	
)	Decision Set Aside and Remanded

ORDER

Transworld Systems Petroleum, Inc. (Transworld) appeals from an August 25, 2015, decision of the State Director, Wyoming State Office, Bureau of Land Management (BLM), affirming a decision issued by the Reservoir Management Group (RMG) of BLM’s Wyoming State Office that denied Transworld’s request to suspend its drilling obligations for the Breckenridge Shallow Exploratory Unit. SDR No. WY-2015-13. For the reasons discussed below, we find that BLM’s decision lacks a rational basis for rejecting Transworld’s request and therefore, we set aside the decision and remand the case to BLM for reconsideration of the matter.

Background

The Breckenridge Shallow Exploratory Unit (serialized as WY-2015-13) (Unit) was approved by the RMG effective October 24, 2007. BLM and Transworld state that under the terms of the governing Unit Agreement and subsequent modifications by BLM, Transworld, the designated operator of the Unit, is required to drill two wells on unitized lands by January 25, 2016. Statement of Reasons (SOR) at 5; Answer at 2. If the two wells are not drilled by this deadline, the Unit will automatically contract in size.¹

¹ The Unit originally included 9,035.72 acres. On Sept. 25, 2014, BLM approved an expansion of the Unit by 4.148 acres, effective Apr. 1, 2014. Transworld was required to commence drilling one well in the expansion acreage by Mar. 15, 2014. However, on Aug. 4, 2015, BLM granted Transworld relief from this requirement until 60 days after Transworld obtains all necessary approvals to commence drilling the well. Transworld has not yet received those approvals.

On May 27, 2015, BLM received an “Application” with an accompanying “Memorandum of Law” from Transworld seeking a suspension of the Unit agreement’s drilling requirements until December 31, 2016, and a suspension of the automatic contraction of the Unit. Transworld explained in a letter transmitting the application and memorandum that the suspension was warranted “because of market conditions.” Transworld Letter, dated May 26, 2015. Transworld explained that because of “the unprecedented decline in oil prices since the summer of 2014, the likelihood of further oil price declines in 2015, and the uncertain outlook for any significant improvement of U.S. or global oil markets in the foreseeable future,” drilling any wells would not be “consistent with the public interest.” Application for Suspension, dated May 26, 2015, at 6.

Transworld’s application and memorandum argued that suspension is proper, and supported by three provisions of the Unit Agreement. First, Transworld argued that section 21 of the Unit Agreement provides BLM with the authority to modify any of the Unit Agreement’s drilling requirements if doing so is in the public interest and consistent with the conservation objectives in the Unit Agreement. *See* Application for Suspension, dated May 26, 2015, at 32. Second, Transworld argued that section 9 of the Unit Agreement provides BLM with the authority to waive the Unit Agreement’s drilling obligations where “the unit operator demonstrates that a well will not produce in paying quantities.” *Id.* at 33. Third, Transworld stated that section 25 of the Unit Agreement, Unavoidable Delay, “obligates BLM to suspend all obligations under the Unit Agreement where matters beyond Transworld’s reasonable control prevent it from meeting its unit obligations.” *Id.* at 34. Here, Transworld argued, the “substantial downturn in the price of oil as well as the increase in the supply of oil is beyond Transworld’s control,” and thus requires BLM to grant the suspension. *Id.* Transworld also argued that because it has demonstrated that it is commercially impracticable to drill at this time, section 25 supports granting a suspension “until it becomes commercially practicable and of utility to both Transworld and the United States to commence drilling obligations.” Memorandum of Law, dated May 26, 2015, at 4; *see id.* at 7 (“Because Transworld has demonstrated that it has been unavoidably delayed in meeting its drilling obligations, the BLM is obligated to suspend its drilling obligations.”).

The Chief of the RMG denied Transworld’s request for suspension in a decision dated June 16, 2015 (RMG Decision). Noting that BLM had informally advised Transworld that it “do[es] not consider that relief from unit agreement obligations can be granted based on economic reasons,” the Chief stated that “[t]he terms and provisions set forth in the standard model form agreement for exploratory units do not address or take into account economics and depressed market conditions.” RMG Decision at unpaginated (unp.) 1.

Transworld sought State Director review of that RMG Decision via letter dated June 22, 2015. Transworld attached its earlier, May 26, 2015, Application for Suspension and Memorandum of Law, and reiterated its position that the Unit Agreement “mandates a suspension of drilling requirements where factors ‘beyond the reasonable control of the Unit Operator’ make complying with drilling obligations impossible or unreasonably burdensome.” Letter from Transworld seeking State Director Review, dated June 22, 2015, at unp. 2.

The State Director issued the decision now on appeal on August 25, 2015, affirming the RMG Decision denying Transworld’s request to grant a suspension of the Unit’s drilling requirements and automatic elimination provisions. In reaching his decision, the State Director relied on the policy in BLM’s Draft Handbook H-3180-1 Unitization (Exploratory) as to what constitutes “unavoidable delay” under section 25 of a standard exploratory unit agreement like the one at issue in this appeal. As the State Director explained in the decision, the Handbook provides three general circumstances that may constitute grounds for claiming unavoidable delay:

- (1) when actions by the BLM (or other surface management agency) taken in the interest of conservation prohibit the unit operator from beneficially using the unit area;
- (2) when events beyond the control of the operator prevent operations in the unit area (force majeure); and
- (3) when there is a lack of product market due to remote location or, in certain cases, a lack of sufficient demand.

Decision at 2 (quoting Section II.J.I of the Draft Handbook). The State Director further noted that the Handbook states that “[w]here a product market is available but the operator wants more for the oil and gas than a purchaser will offer, a suspension should not be granted unless the [authorized officer] determines that the price offered is significantly less than what that purchaser and other purchasers are offering for like quality oil and gas in the area.” *Id.* The State Director concluded that because Transworld did not provide evidence that there was no market for oil, or evidence that Transworld was offered a price significantly less than offered for like quality oil in the area, it had not demonstrated unavoidable delay that would require BLM to grant a suspension. *Id.* at 2-3.

Transworld filed a timely Notice of Appeal on September 23, 2015, and an SOR on October 21, 2015. On October 30, 2015, we granted Transworld’s Motion to Expedite the appeal. BLM filed an Answer on November 20, 2015, and Transworld filed a Reply on December 1, 2015. The matter is now ripe for disposition.

Legal Framework

Through the Mineral Leasing Act, Congress invested the Secretary of the Interior with broad authority to approve any unit plan deemed necessary or proper to

secure the protection of the public interest, to mandate unitization, and to prescribe a plan that protects the rights of all parties in interest, including the United States. 30 U.S.C. § 226(m) (2012). The Department's implementing regulations direct how BLM is to exercise its delegated authority in managing the varied aspects of Federal units. See 43 C.F.R. Part 3180. These rules contain a model unit agreement, at 43 C.F.R. § 3186.1, which is a "model" parties may use or adopt as they wish. *Gas Development Corporation*, 177 IBLA 201, 209 (2009); *Colorado Open Space Council*, 109 IBLA 274, 287 n.10 (1989). We therefore refer to the provisions of specific unit agreements when interpreting and applying their terms to a unit. *Gas Development Corporation*, 177 IBLA at 209. The relevant provisions of the Unit Agreement at issue in this case are identical to those found in the model at 43 C.F.R. § 3186.1.

Section 2(e) of the Unit Agreement provides for the automatic contraction of the Unit to eliminate lands not within a participating area "on or before the fifth anniversary of the effective date of the first initial participating area established under this unit agreement" in the absence of "diligent drilling operations." Unit Agreement at 2; see also 43 C.F.R. § 3186.1. As mentioned above, Transworld has received several extensions on this requirement, such that if two wells are not drilled by January 25, 2016, this automatic contraction will occur.

Section 9 sets forth the requirements for Transworld to "drill[] to discovery" within the Unit. Unit Agreement at 4; see also 43 C.F.R. § 3186.1. The second paragraph of section 9 provides that an Authorized Officer of the BLM "may modify any of the drilling requirements of this section by granting reasonable extensions of time when, in his opinion, such action is warranted." *Id.* The requirement that Transworld, as unit operator, diligently drill to discovery pursuant to section 9 is based upon the terms of 43 C.F.R. § 3183.4(b), which provides that "[t]he 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."

Section 21 provides that BLM may alter or modify the quantity and rate of production under the Unit Agreement when doing so is in the public interest or in the interest of attaining conservation objectives stated in the Agreement. Unit Agreement at 10; see also 43 C.F.R. § 3186.1. The conservation provision in the Unit Agreement is found at section 16, which states that operations under the agreement "shall be conducted to provide for the most economical and efficient recovery of [oil] without waste, as defined by or pursuant to State or Federal law or regulations." Unit Agreement at 8; see also 43 C.F.R. § 3186.1. This section is consistent with section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (2012), which authorizes the Secretary to suspend operations and production under a mineral lease "in the interest of

conservation,” to prevent damage to the environment or loss of mineral resources. *Vaquero Energy Inc.*, 185 IBLA 233, 236 (2013) (citing *Savoy Energy, L.P.*, 178 IBLA 313, 322 (2010) and *5M, Inc.*, 148 IBLA 36, 41 (1999)).

Section 25 of the Unit Agreement, entitled “Unavoidable Delay,” provides:

All obligations under this agreement requiring the Unit Operator to commence or continue drilling, or to operate on, or produce unitized substances from any of the lands covered by this agreement, shall be suspended while the Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State, or municipal law or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in the open market, or other matters beyond the reasonable control of the Unit Operator, whether similar to matters herein enumerated or not.

Unit Agreement at 11; *see also* 43 C.F.R. § 3186.1.

We have held that a lessee bears the burden of demonstrating its entitlement to a lease suspension. *Vaquero Energy Inc.*, 185 IBLA at 236 (citing *Atchee CBM, LLC*, 183 IBLA 389, 413 (2013); *Harvey E. Yates Co.*, 156 IBLA 100, 104, 105 (2001)). Further, where an appellant, as here, challenges a State Director decision interpreting the unit agreement, it “must ‘show that the State Director’s decision was arbitrary or against the weight of the evidence.’” *Devon Energy Production Company, L.P.*, 176 IBLA 396, 407 (2009) (quoting *Universal Resources Corp.*, 141 IBLA 244, 248 (1997)). We have also consistently held that “an agency decision, made in the exercise of its discretionary authority” like that at issue here “must be supported by a proper administrative record, including a reasoned analysis of the facts leading to the decision, which provides a rational connection between the facts found and the choice made – in short, a rational basis for its decision.” *Graham Pass, LLC*, 182 IBLA 79, 92 (2012) (citations omitted). We have explained that this is necessary to provide an appellant with “a reasoned and factual explanation for [the decision]” and that the rational basis “must be adequate so that this Board [in the exercise of its objective, independent review authority] can determine its correctness if disputed on appeal.” *Id.* (citing *Southern Union Exploration Co.*, 51 IBLA 89, 92 (1980)). “Absent the necessary support in the administrative record for an agency decision, we have long held that it is appropriate to set aside the decision, and remand the case to the agency for compilation of a more complete record and readjudication of the matter.” *Id.* (citations omitted); *see also Stanley Energy, Inc.* 179 IBLA 8, 13 (2010) (BLM’s exercise of discretion must be supported by a rational and defensible basis set forth in the decision, or it will be found to be arbitrary and capricious, and be set aside by the Board and remanded to BLM).

Discussion

Transworld presents three arguments in its challenge to the State Director's decision. First, Transworld argues that the decision was not supported by a rational basis because it did not address Transworld's argument that "the severe plunge in oil prices supported a suspension of Transworld's drilling obligations on 'force majeure' grounds" and "is based fundamentally on an argument Transworld did not make." SOR at 8-13; Reply at 9-10. Transworld states that BLM's decision incorrectly reframed its argument as one of lack of demand that may provide a basis for unavoidable delay under section 25 and accordingly did not analyze Transworld's evidence and arguments regarding suspension for reasons of force majeure. *Id.* at 9-10. In support, Transworld presents the same argument it previously made to the RMG and the State Director that the "oil price crash of 2015" was an unforeseeable event that has made complying with the drilling requirements on the Unit commercially impracticable, which qualifies as an "unavoidable delay" mandating suspension of those drilling requirements under section 25 of the Unit Agreement. SOR at 13-23.

Second, Transworld argues that the doctrine of commercial impracticability should apply under section 25 of the Unit Agreement, and that the State Director erred in not considering Transworld's legal arguments and supporting evidence arguing commercial impracticability. SOR at 13-23; Reply at 3-8.

Third, Transworld claims that the State Director's decision is arbitrary, capricious, and an abuse of discretion because he failed to consider whether the unit obligations should have been suspended in the interests of conservation under section 21 of the Unit Agreement, and under the "broad authority" granted by section 9 of the Unit Agreement to suspend drilling obligations. SOR at 23-29; Reply at 8-9.

In its Answer, BLM states that Transworld's "multiple arguments . . . may all be resolved with the answer to a single question: should the obligations to drill exploratory wells under the unit agreement be suspended under Section 25 on the basis of the 'severe, unforeseen collapse in oil prices'" as put forth by Transworld. Answer at 4 (quoting SOR at 16). BLM argues that economic conditions do not support suspension of unit drilling obligations under section 25, or suspension of the resulting contraction under section 2(e). *Id.* at 5.

The record shows that Transworld asserted in its application for suspension of its drilling obligations that both sections 9 and 21 provided independent bases for BLM to grant a suspension. Application for Suspension, dated May 26, 2015, at 32-33. In the decision on appeal, the State Director recognized that Transworld, in addition to arguing that section 25 of the Unit Agreement mandated a suspension, "further argue[d] that it is in the public interest to conserve hydrocarbon resources rather than drill and produce additional wells." Decision at unp. 2. That, however, is

the only mention of Transworld's conservation or public interest arguments in the decision. The remainder of the decision considers and rejects Transworld's arguments concerning unavoidable delay under section 25, concluding with the statement that BLM "disagree[s] with Transworld's contention that lack of demand is a reason that may be used as a rationale for granting a Section 25 unavoidable delay." *Id.* On that basis, "[t]he Wyoming State Director affirm[ed] [the] RMG's decision not to grant an unavoidable delay." *Id.* at unp. 3. The decision did not consider Transworld's arguments that sections 9 and 21 required or allowed BLM to suspend drilling operations.

As stated above, we have held that BLM must support a discretionary decision with "a reasoned and factual explanation" providing a rational basis for the decision. *Graham Pass, LLC*, 182 IBLA at 92. More specifically, we have held that when BLM did not provide an explanation in its decision supporting its conclusion that a unit operator had not fulfilled its diligent drilling requirements under section 9 of a unit agreement, the agency did not provide a rational basis for its decision. *Black Resources, Inc.*, 180 IBLA 259, 275 (2010). In that case we vacated and remanded BLM's decision in the absence of a rational basis for the decision. *Id.* at 276-77.

In the present case, the decision on appeal addressed only Transworld's request for suspension of drilling obligations under section 25 of the Unit Agreement. The decision, however, contains no discussion or analysis of Transworld's request under sections 9 or 21, which Transworld argued provided separate and distinct bases for its request for suspension. In failing to address Transworld's request under those sections, BLM provided no analysis or explanation for rejecting Transworld's request under those sections that could satisfy its obligation to provide a rational basis required for doing so. We therefore find that BLM's decision lacks a rational basis for rejecting Transworld's request on the basis of either section 9 or section 21, and accordingly set aside and remand the matter to BLM for further review.²

² Transworld has requested that the Board grant it extraordinary relief, consisting of suspending, retroactive to May 26, 2015, its obligations to drill and the automatic contraction of the Unit. SOR at 30. The jurisdiction of the Board, however, is limited to that authority delegated by the Secretary of the Interior as set forth in the regulations at 43 C.F.R. Part 4. Under those regulations, the Board is authorized to issue final decisions for the Department in appeals from decisions of BLM officials relating to the use and disposition of the public lands and their resources. 43 C.F.R. § 4.1(b)(2). Here, the BLM decision being appealed addressed Transworld's request for a suspension of drilling obligations; therefore, the only issue properly before us on appeal is whether BLM erred in denying Transworld's request for a suspension. *See Bronco Oil & Gas Co.*, 105 IBLA 84, 87 (1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and remanded for action consistent with this order.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
Christina S. Kalavritinos
Administrative Judge