

COORS ENERGY CO.

IBLA 84-255

Decided August 22, 1984

Appeal from decision by the Colorado State Office, Bureau of Land Management, declaring certain acreage not to be committed to a unit. CO-922.

Set aside and remanded.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Where a unit operator seeks to include certain acreage in a unit, BLM may properly declare the acreage not committed if all working interests have not been committed; however, such a determination will be set aside where on appeal BLM expresses its willingness to consider the acreage partially committed.

APPEARANCES: J. O. Young, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Department Counsel, Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Coors Energy Company (Coors) has appealed from a November 1, 1983, decision of the Deputy State Director for Mineral Resources, Colorado State Office, Bureau of Land Management (BLM), declaring Tract 40 lands as not committed to the Dry Fork Unit, and, therefore, not eligible for participation in Initial Dakota-Morrison Formation Participating Area "B." 1/

Coors is the unit operator of the Dry Fork Unit, No. 14-08-0001-18107, approved by the Geological Survey (GS) effective October 29, 1979. The Dry Fork Unit covers 19,512.96 acres of Federal land and 5,412.14 acres of patented land in Tps. 7 and 8 S., Rs. 99 and 100 W., sixth principal meridian. Approval did not include Tract 40. Thus, Tract 40 was not committed to the unit.

By application dated August 17, 1981, Coors sought approval of the Initial Dakota-Morrison Formation Participating Area "B" consisting of 654.15 acres, including the 144.85 acres in Tract 40.

1/ The Tract 40 land in question consists of 144.85 acres of patented land described as sec. 36: Lots 7, 8, 9, 10, T. 7 S., R. 99 W., sixth principal meridian.

On November 30, 1981, GS approved the application for the "B" participating area, effective April 30, 1981, but modified the approval to "reflect the non-committed status of Patented Tract 40 land." The effect of the modification was to exclude the Tract 40 land from participation in the production from the well on the participating area.

By letter to BLM dated April 14, 1983, Coors sought modification of the November 30, 1981, determination. It requested that Tract 40 be considered a partially committed tract entitled to its percentage production from the Spears 2-36 DF Well. The letter related that 95.4171 percent of the royalty and working interests in the tract was committed to the unit and that the remaining 4.5829 percent was unleased.

On June 17, 1983, BLM sent Coors a decision approving partial commitment for Tract 40. However, on November 1, 1983, BLM rescinded that determination stating:

This rescindment is based upon the proposition that Mineral Interest Owners of fee tracts who have not leased their interests are considered as Working Interest Owners. In that capacity, if they have not joined the unit agreement and unit operating agreement, their respective tract(s) cannot be considered as committed to the unit. At the time the unit was approved, on October 29, 1979, tract 40 was classified as non-committed.

Therefore, tract 40 of the subject participating area is hereby declared to be non-committed to the unit and is, therefore, not eligible for participation in the participating area.

BLM concluded that in order to be committed the mineral interest owners representing 4.5829 percent interest in the tract would have to commit to the unit by joining the unit agreement and the unit operating agreement. ^{2/}

It is this decision to which Coors objects. ^{3/} On appeal Coors argues that there is nothing in the pertinent regulations or the form unit agreement which prohibits treatment of Tract 40 as partially committed. It contends

^{2/} In the answer to the statement of reasons BLM explains that the June 17, 1983, decision was based on incorrect information. It states that one BLM employee told another that

"as far as Tract 40 was concerned, all lessees and working interest owners had committed their interest but that some lessors had not. No mention was made that unleased mineral interest owners (working interest owners) had not committed their interest to the unit agreement or unit operating agreement. On this basis, the incorrect decision to classify Tract 40 from not committed to partially committed was made."

(Answer at 3-4).

^{3/} Coors relates that by letter dated Nov. 10, 1983, it described to BLM its efforts to get full commitment to the unit, and it sought withdrawal of the Nov. 1, 1983, decision. It states that it was verbally informed by BLM to continue its efforts to obtain full commitment and that the State Director would seek an opinion by the Regional Solicitor whether partial commitment was possible.

that failure to treat the tract as partially committed will deprive the committed owners from sharing in the proceeds from production, and that they have no control over the situation. The acreage in question is located, it asserts, so that no well would be drilled there under the normal spacing contemplated for the Dakota-Morrison formations in the unit. Coors states that the interests of uncommitted owners in the production allocated to Tract 40 can be placed in suspense by the operator and held for the benefit of those owners, if and when they are located.

In conclusion, Coors maintains that the decision is arbitrary and asks that it be reversed. It states that Tract 40 should be treated as committed to the unit. ^{4/}

[1] In the answer BLM explains that its policy regarding lease commitment is governed by the guidelines and procedures found in Geological Survey Conservation Division Manual (Manual) 645.1 FF. Lease Commitment Status (Enclosure 4-2 to BLM's Answer). ^{5/} It points out that the present situation is governed by 645.1.3 FF which provides: "4) 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 that Tract 40 was properly classified as not committed since mineral interest owners of unleased fee tracts are considered as working interest owners. However, BLM states in the answer that Coors was informed on November 10, 1983, that BLM

would be agreeable to making a one time exception to our policy regarding the commitment status of fee tracts where some unleased mineral interest owners had not committed their interest to the unit agreement and unit operating agreement. This exception would be granted provided the solicitor felt we could do so in accordance with present laws and regulations. Our policy, as described above, is to classify such tracts as not committed. Regarding Tract 40, [of the] 4.5829 percent of the minerals which remain unleased and uncommitted, parties owning 3.8886 percent cannot be located and parties owning the remaining 0.6943 percent refuse to lease or sell their minerals.^{6/} Because of the reasons listed above and the relatively small percentage (4.5829 percent) of unleased and uncommitted minerals in Tract 40, the Unit Operator was informed by BLM that BLM would be agreeable to classifying Tract 40 as partially committed with 4.5829 percent of the production allocated to Tract 40 being placed in escrow

^{4/} Although all of Coors' arguments address partial commitment, it appears from its conclusion that it seeks a ruling that the tract is fully committed.

^{5/} The functions of the GS Conservation Division were transferred to the Minerals Management Service (MMS), and in December 1982 all onshore minerals management functions of MMS were transferred to BLM. 48 FR 8982 (Mar. 2, 1983).

^{6/} In a letter filed subsequent to BLM's answer Coors provided evidence that the persons holding the 0.6943 percent interest described in the answer as having refused to lease or sell their minerals had, in fact, leased their interests to Coors and on July 9, 1984, BLM had accepted for unit purposes, effective June 1, 1984, the commitment of this interest to the unit.

and held for the benefit of the uncommitted owners if and when they are located.^{7/}

(Answer at 4-5). BLM states that under no circumstance is it agreeable to fully committed status for Tract 40. ^{8/}

We find no basis on which to conclude that Tract 40 should be fully committed to the Dry Fork Unit. BLM's answer, however, states that it would be willing to classify Tract 40 as partially committed, and this may be acceptable to Coors. ^{9/} For this reason we will set aside the decision declaring Tract 40 as uncommitted and remand for BLM to take action consistent with that expressed in the answer. ^{10/}

Accordingly, 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 set aside and the case remanded.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

^{7/} The Manual at 645.1.3 FF states in pertinent part: "3) Partially Committed (PC) - in reference to a patented tract, it indicates the lessor (mineral interest owner) has not signed but the lessee and working interest have committed their interest."

^{8/} The Manual at 645.1.3 FF states:

"1) Fully Committed (FC) - indicates that all interest owners in that tract as shown in Exhibit 13 have signed. This includes the lessor, lessee of record, overrides, if any, and working interests if different from the lessee of record. The working interests must also have signed the operating agreement. A fully committed tract is eligible for all benefits under the lease."

^{9/} In its letter filed subsequent to BLM's answer Coors indicates its willingness, if Tract 40 is treated as committed or partially committed, to place in suspense or in an escrow account 3.8886 percent of production allocated to Tract 40 to be held for the benefit of the uncommitted owners. ^{10/} We assume that BLM's answer constitutes a representation by the Solicitor's Office that it has determined that an exception to accord partial commitment status for Tract 40 is consistent with applicable law.

