

Editor's note: Overruled in part, Orvin Froholm, 132 IBLA 301 (1995).

CHEVRON U.S.A. INC.

IBLA 87-194

Decided September 28, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, instructing Chevron U.S.A. Inc. to execute ratification and joinders to the expansion of the Madden Deep Unit Area. W-96764.

Affirmed in part, reversed in part, and remanded.

1. Administrative Procedure: Administrative Review--Appeals: Generally--
Notice: Generally--Oil and Gas Leases: Unit and Cooperative
Agreements

A party is not required to appeal from a BLM letter which does not adversely affect it, is informative in nature, and does not set forth appeal rights.

2. Oil and Gas Leases: Generally--Oil and Gas Leases:
Unit and Cooperative Agreements

For onshore operations, the congressional grant of authority, found at 30 U.S.C. | 226(j) (1982), authorizes the Secretary to order the combining of units and participating areas for conservation reasons. Included in this grant is the authority to approve any unit plan he may deem necessary or proper to secure the proper protection of the public interest, to mandate unitization, and to prescribe a plan which shall adequately protect the rights of all parties in interest, including the United States, and this authority may be exercised over the objections of working and royalty interest owners affected by that action. Having the authority to create, expand, or contract units and participating areas, the Secretary also has the concomitant authority to order such joinder as is necessary to implement that decision.

3. Oil and Gas Leases: Generally--Oil and Gas Leases: Unit and
Cooperative Agreements

Under 30 U.S.C. | 226(j) (1982), as a condition precedent to establishing, expanding, or contracting a unit,

the "reasonableness" of the proposal must be considered by the Department.

4. Oil and Gas Leases: Unit and Cooperative Agreements

A unit operating agreement is a private contract document between one or more working interest owners and the unit operator providing for payment and allocation of costs and expenses incurred by the unit operator when conducting unit operations. Once a unit operating agreement has become effective, BLM lacks the authority to amend the agreement without the parties' consent.

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OPINION BY ADMINISTRATIVE JUDGE MULLEN

Chevron U.S.A. Inc. (Chevron) appeals from an October 24, 1986, decision of the Wyoming State Office, Bureau of Land Management (BLM), affirming instructions issued by the Rawlins District Office, BLM, calling for Chevron's execution of ratification and joinders to the expansion of the Madden Deep Unit Area (MDUA) pursuant to section 2(b) of lease W-96764.

This controversy originated on February 12, 1986, when Monsanto Oil Company (Monsanto), as unit operator, filed with BLM a request for preliminary approval of a proposed expansion of the MDUA and concurrent contraction of the "Battle Butte (Deep)" (Battle Butte) and "Cedar Gap (Deep)" (Cedar Gap) Unit Areas, situated in Fremont and Natrona Counties, Wyoming. ^{1/} Under this proposal, the participating areas within the Battle Butte and Cedar Gap units would become subject to the Madden Deep Unit Agreement, and the Battle Butte and Cedar Gap Unit Agreements would terminate because no lands would remain subject to those agreements. Monsanto stated that it would solicit ratifications and joinders to the MDUA from all the working and royalty interest owners within the expanded area.

On March 21, 1986, the Rawlins District Manager, BLM, concurred in the expansion proposal, provided that it was accomplished pursuant to the applicable sections of the unit agreements, and that a proposal was submitted to drill a well to test the Madison Formation in the expanded unit area. By

^{1/} As proposed the MDUA would include the total acreage previously in the Battle Butte and Cedar Gap Unit Areas, and contain 69,253.20 acres, of which 58,026.29 acres (83.79 percent) are Federal, 3,959.88 acres (5.72 percent) belonged to the State of Wyoming, and 7,267.03 acres (10.49 percent) are privately owned.

letter dated March 31, 1986, Monsanto notified the working and royalty interest owners of the expansion proposal, stating the following reasons for the expansion:

This expansion of the Madden Deep Unit Area is deemed necessary and advisable to include all lands in the Unit believed to overlay the potentially productive limits of the Madden Anticline and will allow a unitized plan of further development of this common pool or source of supply so as to best preserve the natural resources of this field. This expansion is especially necessary and advisable to allow the most efficient development of the Cretaceous and older formations on the Madden Anticline following the recent successful completion of the Bighorn #1-5 Well at almost 24,000 feet in the Madison formation in the Madden Deep Unit Area.

The letter also advised the various parties that a 24,100-foot test well would be drilled to test the Madison formation somewhere in the MDUA. Monsanto stated that, pursuant to section 2 of the Madden Deep Unit Agreement, BLM had given preliminary approval to its expansion proposal, and gave the owners 30 days to submit objections.

Chevron informed Monsanto that it would not approve the expansion proposal by letter dated April 28, 1986. In this notice Chevron raised specific geologic and engineering objections to the expansion and stated that Monsanto had violated Article 17.1.E of the Madden Deep Unit Operating Agreement when it failed to obtain approval of 70 percent of the working interests prior to seeking BLM preliminary approval. Chevron asserted, *inter alia*, that the dissimilarity in initial potentials between the MDUA and the Battle Butte and Cedar Gap units "eliminates any possibility that the reservoirs in the three units are continuous."

Despite Chevron's objection, by letter dated June 6, 1986, BHP Petroleum Company, Inc. (BHP), submitted an application for final approval of the expansion proposal to BLM. ^{2/} BHP listed the working and royalty interest owners who had ratified the expansion and noted several others, including the State of Wyoming, whose commitments were expected. BHP stated that it had made a diligent attempt to contact all parties affected by the expansion proposal by mail, but had been unable to contact some of them. The application also indicated that not all of the parties contacted had committed to the expansion proposal and listed the uncommitted interest holders, including Chevron.

At the same time BHP submitted a specific proposal for drilling the obligation well (#2-3 Bighorn Well), to be commenced within 6 months after final BLM approval of the unit expansion. The proposed well would be

^{2/} It appears that BHP assumed the duties of unit operator some time after the date Monsanto filed the application.

drilled to test the Madison Formation from a site in sec. 3, T. 38 N., R. 90 W, which is within the original (pre-expansion) boundaries of the MDUA.

On July 16, 1986, BLM informed BHP that it was approving the expansion proposal, effective April 1, 1986. BLM also approved BHP's obligation well proposal, noting that the drilling must commence before midnight January 16, 1987. BLM enclosed a copy of the approved expansion and instructed BHP to tender evidence of the approval to all interested parties.

On August 14, 1986, BLM wrote Chevron instructing Chevron "to execute ratification and joinders to the expansion of the Madden Deep Unit Area pursuant to Section 2(b) of the lease terms, within 30 days of receipt of [the] letter." BLM stated that its demand was made "to more properly conserve the natural resources" and that the joinders would be considered "late joinders," effective April 1, 1986, the effective date of the MDUA expansion.

By letter dated August 29, 1986, Chevron requested a technical and procedural review (TPR) of BLM's August 14, 1986, instructions. Chevron supplemented its request by submitting additional information under cover of a letter dated October 1, 1986. It argued that: (1) the expansion proposal was not reasonable because of the limited geologic information then available; (2) BLM should have specified that the obligation well be located outside existing participating areas; ^{3/} (3) Chevron had satisfied its obligation to join a "reasonable" plan of exploratory unit development, imposed by paragraph 2(b) of its lease, by joining the Cedar Gap Unit in 1982, and had thus complied with 30 U.S.C. | 226(j) (1982); ^{4/} (4) considering the size of the proposed expanded unit, BLM had violated its own guidelines by requiring an insufficient number of obligation wells; and (5) although the existing operating agreement for the MDUA was inadequate, Chevron was afforded no opportunity to decline the agreement's application to the expanded acreage.

The Wyoming State Office, BLM, reviewed Chevron's objections and issued a decision on October 24, 1986. After finding several of Chevron's arguments to be related to the expansion proposal rather than the forced joinder, BLM held that the time for objecting to the approval of the expansion proposal had expired. BLM found that the District Manager's decision requiring Chevron to submit a ratification and joinder was based both on his earlier approval of the unit expansion and on the fact that "the required 85 percent ratification and joinders by interest holders had been exceeded." Accordingly, the State Office upheld the issuance of instructions to execute ratification and joinders to the expansion of the MDUA. Chevron appealed this decision to the Board.

^{3/} Chevron was apparently not aware that BHP had proposed drilling the #2-3 Bighorn Well within the original, pre-expansion MDUA.

^{4/} All further references to the United States Code are to the 1982 edition.

On appeal, Chevron asserts that it did not appeal the approval of the expansion proposal because it believed its ultimate relief from an unreasonable unit expansion would be to decline to join the expanded unit. In response BLM argues that Chevron is actually objecting to BLM's July 16, 1986, letter to BHP approving the expansion proposal rather than the decision of August 14, 1986, instructing it to execute ratification and joinders to the expanded MDUA. BLM contends that Chevron was precluded from challenging the expansion proposal by it and failed to appeal the July 1986 decision.

[1] Under 43 CFR 3165.3(b), "[a]ny adversely affected party that contests * * * an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director * * *. Such request * * * shall be filed in writing with the appropriate State Director within 20 business days" of receipt of the instruction, order or decision. In order to determine whether Chevron is barred from contesting the expansion proposal, we must first determine whether Chevron was required to appeal the July 16, 1986, letter.

A careful review of BLM's July 16, 1986, letter indicates that the intent of this letter was to inform BHP that the expansion proposal had been approved. We found nothing in that letter to indicate that this letter was delivered to Chevron. We further note that Chevron was not adversely affected by the decision until BLM directed Chevron to join the expanded MDUA in its August 14, 1986, decision. The July 16, 1986, letter did not inform Chevron, or any other working and royalty interest owner of any appeal rights, thus indicating that BLM did not regard it as an appealable action. See Mobil Oil Corp., 65 IBLA 295 (1982); Inexco Oil Co., 45 IBLA 377 (1980).

In the final paragraph of BLM's July 16, 1986, letter, it instructed BHP to inform all interested parties of the approval of the expansion proposal, but there is no evidence in the record to indicate whether or when Chevron was served with a copy of the letter. This fact is crucial when determining timely filing. When considering whether appeals before it are timely filed, the Board has held that it will not dismiss an appeal as untimely if the date upon which the appellant was served with the decision cannot be determined from the record transmitted with the appeal. See Sun Exploration & Production Co., 104 IBLA 178, 183 (1988); Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173 (1986).

Chevron filed a timely and proper appeal from BLM's decision of August 14, 1986. In addition there are two bases for finding that its appeal from BLM's decision of July 16, 1986, was timely: 1) BLM did not inform Chevron, or any other working and royalty interest owner of their appeal rights, thus failing to treat the July 16, 1986, decision as an appealable action; and 2) the date of service upon Chevron cannot be determined from the record transmitted with the appeal. Therefore we find Chevron is entitled to challenge the expansion proposal in the present appeal and reverse BLM's October 24, 1986, determination that Chevron had not filed a timely notice of appeal of the expansion proposal approval.

[2] We next address whether the Secretary has the authority to force Chevron to ratify and join the expanded unit.

The Department clearly has authority to order the combining of leases and participating areas for conservation reasons for offshore leases. Section 5(a) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. | 1334(a), authorizes the Secretary to "prescribe and amend such rules and regulations as he deems to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein." In Tenneco Oil Co., 57 IBLA 85 (1981), the Board upheld a decision of the Survey ordering unitization of five outer continental shelf leases. The Board quoted with approval Survey's decision, setting out justifying reasons for requiring compulsory unitization:

Where a unitization agreement is in effect, the participating lessees share in unit production without regard to the location of the wells generating the production. For this reason, unitization enables the lessees to maximize the efficient production of hydrocarbons with complete disregard of the competitive interests of the lessees under the individual leases. Thus, unitization promotes development and operating procedures designed to conserve resources without detriment to the legitimate interests of the different leaseholders.

Unitization is particularly appropriate in a situation involving a large common reservoir where, as here, the operator of a lease overlying a small part of the original reserves drills early and aggressively along the lease boundary. In the absence of unitization, development of the leases overlying the remainder of the reservoir would have become a race designed to protect the opposing interest of the lessees. Development plans would have been geared to the protection of correlative rights instead of being oriented towards the maximum production of hydrocarbons from the common reservoir with the least number of wells. Accordingly, unitization prevented the drilling of unnecessary wells and was in the interest of conservation.

Id. at 88. See also Sun Oil Co., 67 IBLA 80 (1982); Placid Oil Co., 46 IBLA 392 (1980).

We find that similar considerations justify a holding that the Congressional grant of authority for onshore operations, found at 30 U.S.C. | 226(j) (1982), also authorizes combining leases and participating areas. This section provides in pertinent part:

For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof * * *, lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or

like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. * * * The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States. [Emphasis added.]

Section 2 of Chevron's lease implements section 226(j):

Section 2. The lessee agrees:

* * * * *

(b) Cooperative and unit plan. -- Within 30 days of demand, or, if the leased land is committed to an approved unit or cooperative plan and such plan is terminated prior to the expiration of this lease, within 30 days of demand made thereafter, to subscribe to and to operate under such reasonable cooperative or unit plan for the development and operation of the area, field, or pool or part thereof, embracing the lands included herein as the Secretary of the Interior may then determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States. [Emphasis added.]

In addition, section 2 of the unit agreement for MDUA provides for unit expansion as follows:

The above described Unit Area shall when practicable be expanded to include therein any additional tract or tracts regarded as reasonably necessary or advisable for the purpose of this agreement, or shall be contracted to exclude lands not within any participating area whenever such expansion or contraction is necessary or advisable to conform with the purposes of this agreement. Such expansion or contraction shall be effected in the following manner:

(a) Unit Operator, on its own motion or on the demand of the Director of the Geological Survey, [5/] * * * after preliminary concurrence by the Director, shall prepare a notice of proposed expansion or contraction describing the contemplated changes

5/ The Conservation Division, Geological Survey (Survey), was responsible for regulating onshore oil and gas operations and collecting royalties on Federal and Indian oil and gas leases until February 1982, when these responsibilities were transferred to the Minerals Management Service (MMS) by Secretarial Order No. 3071, 47 FR 4751 (Feb. 2, 1982). Subsequently, by Secretarial Order No. 3087 and Amendment No. 1, dated Dec. 3, 1982, and

in the boundaries of the Unit Area, the reasons therefor, and the proposed effective date thereof, preferably the first day of a month subsequent to the date of notice. [Emphasis added.]

As can be seen, 30 U.S.C. § 226(j), the lease terms, and the MDUA all give the Secretary broad authority to approve any unit plan "he may deem necessary or proper to secure the proper protection of the public interest," to mandate unitization, and to prescribe a plan "which shall adequately protect the rights of all parties in interest, including the United States." See Celsius Energy Co., 99 IBLA 53, 68, 94 I.D. 394, 403 (1987).

This holding is consistent with our holding in Margaret Okie, 43 IBLA 326 (1979), that the Department has authority to establish and modify onshore participating areas over objections of working and royalty interest owners affected by that action. In the Okie case, which also involved the MDUA, the Board upheld the Survey's decision to establish and expand the Lance Formation Participating Area against appellants' objections that expansion would be detrimental to its interests by causing "drainage." See also, e.g., Champlin Petroleum Co., 100 IBLA 157 (1987). Considering the events that have transpired in the last 20 years, there can be no doubt that conservation of oil and gas is in the public interest. In addition, the Department, as the steward of the public's interest in Federally owned minerals, has an obligation to ensure that those minerals will be efficiently developed so that optimum recovery will be realized. Thus, BLM has the authority under 30 U.S.C. § 226(j) to require unitization when it deems that doing so will conserve the natural resources of the United States. Having the authority to expand or contract units and participating areas, the Secretary also has the concomitant authority to order such joinder as is necessary to implement that decision. 6/

In view of our holding that other language in 30 U.S.C. | 226(j) authorizes BLM to expand this unit, it is unnecessary to consider whether BLM correctly relied on language in 30 U.S.C. | 226(j) giving the Secretary authority to "alter or modify from time to time the rate of prospecting and

fn. 5 (continued)

Feb. 7, 1983, 48 FR 8983 (Mar. 2, 1983), all onshore minerals management functions not relating to royalty collection were transferred to BLM. The latter order specifically transferred inspection and enforcement authority for onshore minerals on Federal lands to BLM.

6/ Chevron asserts that it satisfied its obligation to subscribe to a reasonable cooperative or unit plan by committing the portion of lease W-96764 at issue to the Cedar Gap Unit in 1982, and that nothing in either the statute or paragraph 2(b) of the lease indicates that these provisions were intended to grant the Secretary the authority to require a lessee to ratify unit boundary modifications after voluntarily joining the original unit. Although the singular form "plan" is used in paragraph 2(b) of the lease, the intent of Congress, as expressed in 30 U.S.C. § 226(j), clearly leads to the conclusion that joining a unit was never intended to be a one-time obligation.

development and the quantity and rate of production under [a unit] plan," as implemented in section 21 of the unit agreement, as authority for the forced joinder.

[3] Substantively, several of Chevron's arguments are intended to show that the expansion proposal is "unreasonable." Chevron contends that, under 30 U.S.C. | 226(j) and paragraph 2(b) of the lease, it is a condition precedent to a lessee's obligation to join a unit that the particular unit plan be "reasonable." Chevron presents three arguments intended to show that the MDUA expansion proposal was unreasonable: (1) there is no geologic or engineering basis for the expansion of the unit area; (2) the placement of the obligation well within the original acreage of the MDUA violates the purpose of 30 U.S.C. | 226(j) by evaluating little of the resources in the expanded acreage; and (3) BLM unreasonably departed from its own conservation manual guidelines by approving a 57,693.25 acre expansion while requiring only one obligation well.

We agree with Chevron that under the express terms of section 226(j), the lease and unit agreement provisions, the "reasonableness" of the expansion proposal must be considered by the Department when deciding whether the unit area should be expanded. The geologic basis of BLM's decision to expand the unit area is its acceptance of Monsanto's conclusion that the Madison Formation (which is deeper than pre-expansion discoveries) underlies the area. Chevron first raised objections to this conclusion at page 2 of its April 28, 1986, letter to Monsanto, in which it declined to approve the expansion proposal. These issues were again raised by Chevron as a part of its request for a TPR. In his TPR decision the State Director, BLM, properly noted that these issues were related to the expansion proposal rather than the forced joinder, held that the time for objecting to the approval of the expansion proposal had expired, and did not address these issues.

As previously noted, the determination that the time for objecting to the expansion proposal had expired was in error. The Department established the TPR procedure to allow a review of the technical and procedural aspects of a decision by BLM officials. See 51 FR 3882, 3886 (January 30, 1986). In almost every appeal to this Board from a decision following a TPR, the decision on appeal has addressed the factual issues raised by the appellant. ^{7/} In such cases we are able to examine the facts relied upon when making the initial determination, the facts presented by the appellant, and the decision makers explanation of why certain facts were found to be more relevant to the determination than others. In this case, however, Chevron made a timely presentation of its objections to the unitization, made a detailed statement of reasons for its objections, and submitted support for its contentions, but there is nothing in the record indicating that these facts were considered in the course of the TPR, which was disposed of on purely procedural grounds.

^{7/} In many instances the State Director has modified the initial decision as a result of the additional information received as a part of the TPR request.

The determination approving the proposed expansion of the MDUA is based upon highly technical geologic evidence. In similar cases the Secretary and this Board often rely on BLM's findings when presented with the issue of interpretation of such evidence. In Amoco Production Co., 41 IBLA 348, 353 (1979), we noted that "[t]he Survey [8/] is the Secretary's technical expert in geologic evaluation, and the Secretary is entitled to rely on its reasoned analysis." See Woods Petroleum Co., 86 IBLA 46, 52 (1985); Getty Oil Co., 27 IBLA 269, 274 (1976); Arkla Exploration Co., 25 IBLA 220, 222 (1976). However, in this case, we have nothing in the record upon which to base a determination that the unitization decision remained supportable after considering the arguments advanced by Chevron. If we were to make this determination, we would be doing so without benefit of an analysis of Chevron's contentions by the Secretary's technical experts in geologic evaluation. Not having the benefit of such analysis, we are not now willing to make a determination regarding the "reasonableness" of the expansion proposal. This being the case, we will remand the decision to the State Director for analysis of the reasonableness of the expansion of the MDUA. Such analysis should address all of the technical and factual arguments presented by both Monsanto (or its successor) and Chevron. The parties should be afforded an opportunity to submit additional information in support of their respective position.

[4] Finally, Chevron argues that even if it can be forced to join the expanded unit, it cannot be forced to ratify the unit operating agreement. The unit agreement, based on the model form presently set forth in 43 CFR 3186.1, is the document under which the unit is to be developed. In distinction, a unit operating agreement is a private contract document between one or more working interest owners and the unit operator providing for payment and allocation of costs and expenses incurred by the unit operator when conducting unit operations.

We do not read BLM's October 24, 1986, decision as requiring Chevron to ratify the pre-expansion unit operating agreement. The decision stated at page 3:

Paragraph 2(b) of the lease terms does not require a lessee to ratify an existing Unit Operating Agreement as a Unit Operating Agreement is between working interests and the Unit Operator. However, Section 7 of the unit agreement says:

". . . and in case of any inconsistency or conflict between this agreement and the unit operating agree-ment, this agreement shall prevail."
[Emphasis added.]

Chevron interprets this statement as "apparently conclud[ing] that because the unit agreement controls over any contrary operating agreement provision

8/ The onshore branch of the Conservation Division of Survey was transferred to BLM in 1983. See note 5, supra. BLM now serves as the Department's technical expert.

***, Chevron may be implicitly ordered under paragraph 2(b) to accept the [Madden Deep Unit] Operating Agreement, as well as the unit agreement, as to the expanded unit area" (Statement of Reasons at 4).

We do not read BLM's statement in this manner. BLM held that Chevron could not be forced to accept the unit operating agreement and was free to negotiate an operating agreement with the unit operator. Once a unit operating agreement has become effective BLM is without authority to amend the agreement without consent of the parties. Coors Energy Co., 110 IBLA 250 (1989). We further interpret BLM's reference to section 7 of the unit agreement as an admonition to Chevron (i.e., BLM was advising Chevron that any unit operating agreement it may reach was subject to the overriding provisions of the unit agreement).

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 in part and reversed in part, and the case file is remanded to the Wyoming State Office for further action in accordance with this decision.

R. W. Mullen
Administrative Judge

I concur

David L. Hughes
Administrative Judge

