

BENSON-MONTIN-GREER DRILLING CORP.

IBLA 90-520

Decided February 14, 1991

Appeal from a decision of the State Director, Wyoming State Office, Bureau of Land Management, affirming a decision by the Rawlins, Wyoming, District Office, Bureau of Land Management, denying a proposal for a logical exploratory unit. SDR No. WY-90-26.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

A determination by the Bureau of Land Management to deny a proposal for an exploratory unit will not be set aside where there has not been a definite showing that the decision was in error. A difference in opinion on the interpretation of available information is not sufficient to show error.

APPEARANCES: R. Charles Gentry, Esq., Austin, Texas, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Benson-Montin-Greer Drilling Corp. (B-M-G) appeals from a decision of the State Director, Wyoming State Office, Bureau of Land Management (BLM), dated August 7, 1990, affirming the denial of a proposed logical exploratory unit by the Rawlins, Wyoming, District Office, BLM. We have expedited consideration of this appeal based on B-M-G's allegations of economic hardship. See Dorothy A. Towne, 115 IBLA 31, 34 (1990).

On July 2, 1990, B-M-G submitted an application, including the proposed Unit Agreement, for the designation of the Sand Hills Unit, as a standard exploratory unit, with an effective date of September 1, 1990. 1/ The

1/ Statement of reasons (SOR) at 2, 5. B-M-G's accounts of the events leading to the appeal, begin with a reference to an informal meeting with personnel of the Rawlins District Office held on June 7, 1990. B-M-G states that it approached BLM about the possibilities of an exploratory unit based on "a significant discovery" since there are already producing wells within the proposed area. According to B-M-G, BLM responded that it

proposed unit was to include 37 Federal oil and gas leases, of which 26 were held by B-M-G. By decision dated July 13, 1990, the Rawlins District Office held that the Sand Hills Unit application was rejected:

Our reasons for rejecting Sand Hills as a logical unit are twofold. First, the area you proposed to include in Sand Hills was contracted out of the Cherokee Creek Unit in September 1989. The Cherokee Creek Unit was formed in 1983 to explore the Shannon Formation, which is the same formation you proposed to explore in Sand Hills. There have been numerous wells drilled in the Shannon structure and there are currently five (5) wells in the Cherokee Creek Unit, Shannon PA. The existence of this many wells and the known delineation of the Shannon structure indicate that this area should not be logically developed under an exploratory unit. Secondly, the Engineering Report that accompanied Sand Hills indicated the main potential was secondary recovery of the Shannon Formation. An exploratory unit is not the proper vehicle for development of this type, a secondary recovery unit is.

B-M-G appealed to the State Director by letter dated July 16, 1990, arguing that the District Office's stated reasons for denial were incorrect:

The first reason: ". . . [and] the known delineation of the Shannon structure indicate that this area should not be logically developed under an exploratory unit" is factually incorrect insofar as the basic intent of exploratory units is concerned. Many units are formed with more precise - particularly seismic - geological delineation of a structure. What is significant here (as well as for any exploratory unit) is the delineation of the productive reservoir (which requires the drilling of exploratory wells). Here there are oil wells above the 2900' contour interval, known water at the 2200' contour interval and some oil and

fn. 1 (continued)

would not approve a unit agreement under the significant discovery guidelines but would entertain an application under the typical exploratory unit agreement. See Appeal to State Director, July 16, 1990; SOR at 4.

Appellant argued before the Director, and continues to argue here, that BLM did not have sufficient reason to deny an unit agreement under the significant discovery guidelines, in light of regulations providing for such an approach. However, as appellant recognizes in its SOR, it has no means to appeal this point because it did make such an application and, thus, there is no appealable decision of the matter. Regardless, the State Director correctly noted in his decision that the "significant discovery" provision does not appear as a Departmental regulation, but is rather, a guideline on page 23 of the BLM Unitization Handbook H-3180-1. The State Director opined that application of the "significant discovery" proviso would not have been in the public interest in this case because the area in question had already been included in a logical exploratory unit using the "significant discovery" guideline and the prior unit had not been developed.

water - not commercial - at the 2500' contour interval \* \* \*. The downdip limits of the oil producing section clearly have not been delineated.

The second reason for rejection: "An exploratory unit is not the proper vehicle for development of this type, a secondary recovery unit is." We contend there is not enough information as to the areal extent of the reservoir to propose a secondary recovery unit at this time: additional exploration is required. \* \* \* the reservoir has not been delineated to the point that secondary recovery can be logically instituted; so the statement that a secondary recovery unit should be proposed at this time is incorrect. [Emphasis in original.]

(Appeal to State Director at 2-3).

Affirming the District Office's denial of the proposed Sand Hills unit, the State Director held that "the proposed Sand Hills unit area has already been subject to logical development under the [Cherokee Creek Unit] which helped define the productive limits of the reservoir" and therefore the proposed unit area should not be logically developed under an exploratory unit. With respect to the secondary recovery unit issue, the State Director agreed with B-M-G that it may be premature to institute such a unit, observing that the District Office's comments regarding this matter only resulted from B-M-G's statement in the unit application that the main potential of the Shannon Formation prospect is secondary recovery.

In its SOR, B-M-G contends that the State Director in the decision appealed from did not attempt to describe the productive limits of the Shannon oil reservoir. Appellant argues that while the information available is adequate to delineate an exploratory unit, it is not sufficient to permit a development program based on enhanced recovery operations (SOR at 12). Moreover, B-M-G asserts that because there is disagreement about whether further exploration is required, an issue of fact exists which requires resolution by hearing. With respect to what B-M-G considers the second major issue of the appeal, i.e., "effective and efficient development of the area in question under current conditions," B-M-G asserts that enhanced recovery is "the only real potential for this prospect" and without unitization, particularly an exploratory unit, an enhanced recovery project will not happen (SOR at 13). B-M-G also considers this latter issue to constitute "essentially factual questions" for which a hearing should be conducted.

In answer, BLM provided the following technical response to B-M-G's contentions:

BMG argues that the denial of the Sand Hills exploratory unit application was improper based on the assertion that the delineation of the Shannon Formation structure is known and therefore not qualified for being logically developed under an exploratory unit. Attachment 1 shows that 16 wells have been drilled in the structure covered by the proposed Sand Hills

Unit with twelve wells penetrating the Shannon Formation. BMG's structure contour map submitted for the proposed unit area, shown in Attachment 2, contains several technical errors. BMG's structure contour map did not use all well data available from the area, did not plot all drilled wells on the structure, and did not honor the structural elevations of the Shannon Formation in all of the wells. \* \* \* In SDR No. WY-90-26, the [Wyoming State Office] noted that well data in the field indicated an oil-water contact existed and that the economic producing limit may be structurally higher than the non-paying CCU B-26 well. In fact, the location of the proposed Sand Hills Unit exploratory obligation well (H-24), does not appear to be structurally down-dip of the known productive limits of the current Shannon [participating area] of the [Cherokee Creek Unit]. [Emphasis in original.]

(Answer at 2). BLM further asserted that "BMG simply wants to determine the down-dip limits of the commercially productive portion of the Shannon Formation, which B-M-G was afforded an opportunity (to explore the commercial limits) under the [Cherokee Creek Unit]." Id. (emphasis in original). BLM maintains that B-M-G has not presented sufficient reason "to logically designate an area under an exploratory unit." Id.

In a response to BLM's answer, B-M-G reasserts that, under the circumstances of this case, the significant discovery provision of the BLM Handbook was an entirely appropriate vehicle for unit designation. It argues that the Rawlins District Office should have recognized that fact and taken positive action on B-M-G's application without regard to external and irrelevant matters. B-M-G contends that BLM has deviated from past policies, practices, and guidelines in this case. With respect to "so-called technical matters" cited by BLM, B-M-G argues that those issues are belated and irrelevant, and do not justify rejection of its unit proposal.

[1] Under the congressional grant of authority for onshore oil and gas operations, the Secretary is empowered to order the combining of units and participating areas for conservation reasons as follows:

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 or 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.

30 U.S.C. § 226(j) (1988). Departmental regulation 43 CFR 3183.4(a), provides that a unit agreement submitted to BLM "shall be approved by the authorized officer upon a determination that such agreement is necessary

or advisable in the public interest and is for the purpose of more properly conserving natural resources." 2/

BLM determined that B-M-G's application for an exploratory unit was not in the public interest because the producing formation had been so well defined that no further exploration was needed. B-M-G's challenge derives from a disagreement between BLM and B-M-G over whether or not the oil and gas structures involved were adequately defined by available technical data. Nothing in the arguments and evidence appellant offers, however, establishes that BLM's decision is in error. In determining whether conditions favorable to the establishment of an exploratory unit exist, the Secretary is entitled to rely on the reasoned opinion of his technical experts. Thus, a decision to deny a unit agreement proposal will not be set aside in the absence of a definite showing that the decision was in error. A difference in opinion concerning the interpretation of available information does not establish such error. Cf. B. K. Killion, 90 IBLA 378, 383-86 (1986); Davis Oil Co., 53 IBLA 62, 67-68 (1981).

Appellant has requested that the matter be referred for a hearing at which "issues of fact" may be more fully explored. However, appellant has not produced evidence contrary to BLM's position which convinces us that such a hearing would be productive of information which might lead to a different conclusion. See Woods Petroleum Co., 86 IBLA 46, 55 (1985). The request is denied. 3/

2/ A unit agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved. Regulations governing procedures for forming a unit are found at 43 CFR Part 3180. See also BLM Manual Part 3180; BLM Handbook H-3180-1 (Exploratory Unitization). A unit plan may be adopted for an unproven oil and gas field considered suitable for exploration and operation as a unit. Cf. 43 CFR 3105.2 (Communitization or drilling agreements). A proposal to unite the owners of right, title, or interest in oil and gas deposits within an area is submitted for acceptance to the Department. Id.

3/ The record sets forth that some of the leases within the proposed Sand Hills Unit were set to expire on Sept. 1, 1990, unless held by production. While the leases to expire were not identified, B-M-G argues that BLM should have granted a suspension of the running of the leases to be committed to the proposed unit. In Jack J. Grynberg, 88 IBLA 330 (1985), the Board held that Departmental consideration of an appeal from a decision not to approve a unit agreement does not constitute a de facto suspension of the oil and gas leases proposed for the unit which would extend the leases. In that case, the appeal was deemed moot by the Board where the leases targeted for inclusion in the unit had all expired while the appeal was pending by the running of their terms without benefit of development or production.

B-M-G's desire to retain the leases was premised on their inclusion in an exploratory unit. Since we affirm the decision not to create that unit, we do not discuss whether or not a suspension of the leases should have been granted when B-M-G appealed to the State Director.

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 affirmed.

Franklin D. Arness  
Administrative Judge

I concur:

Will A. Irwin  
Administrative Judge