

CELSIUS ENERGY CO.

IBLA 92-269

Decided October 1, 1996

Appeal from a decision of the Deputy State Director for Mineral Resources, Wyoming State Office, Bureau of Land Management, affirming approval by the Casper, Wyoming, District Office of an expansion of the Crawford Draw Unit. SDR WY-92-4.

Affirmed in part, reversed in part.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Approval of expansion of a unit by a well drilled within unit boundaries is affirmed when an appellant fails to show, by a preponderance of the evidence of record, that BLM's action incorrectly interpreted the unit agreement; when, however, in a related action, the record fails to support an effective date set by BLM for unit expansion that is not the preferred date stated in the unit agreement, BLM is reversed.

APPEARANCES: T. C. Jepperson, Esq., Celsius Energy Company, Salt Lake City, Utah; Melvin L. May, Esq., Arlington, Texas, for W. A. Moncrief, Jr.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Celsius Energy Company (Celsius) has appealed from a February 5, 1992, decision of the Deputy State Director for Mineral Resources upholding approval by the Casper District Office (Casper) of the First Expansion of the Crawford Draw Unit (CDU) in Johnson County, Wyoming, effective September 1, 1990. Unit expansion resulted from a development well drilled within an existing participating area.

Casper approved the CDU Agreement for the Development and Operation of the unit comprising 12,801 acres of Federal, State, and patented lands on July 6, 1984 (CDU Agreement). In accordance with section 7 of the CDU Agreement the working interest owners also signed a Crawford Draw Unit Operating Agreement (CDOA) in July 1984. The CDOA defines how duties, obligations, costs, and production are shared and allocated among working interest owners. Celsius is a working interest owner in the CDU. W. A. Moncrief, Jr. is the designated unit operator. On February 1, 1985, Casper approved an Initial First Frontier Formation Participating Area "A" (PA) of 560 acres around Unit Well No. 1, with an effective date of July 29, 1984.

The First Revision of the PA for Unit Well No. 2 was approved on August 26, 1985, for a total PA of 1,240 acres. Casper later determined that Unit Well Nos. 3, 6, and 7 were nonpaying unit wells and Unit Well No. 8 was completed as a dry hole. (There were no Unit Wells Nos. 4 or 5.) Based on this history, Casper approved contraction of the CDU to 1,240 acres, the lands included within the PA following the First Revision, on September 22, 1989, with an effective date of July 29, 1989.

On December 20, 1990, Moncrief requested preliminary approval for unit expansion based on the completion of Unit Wells Nos. 9 and 10. Lands included in the proposed unit expansion were determined by using 640-acre circles drawn around the unit wells, utilizing the circle tangent method. In a letter dated October 25, 1991, Casper notified Moncrief that further evaluation indicated the productive potential of Unit Wells Nos. 9 and 10 showed that 320-acre circles should be used to identify the lands reasonable proven productive and to define lands to be included in the unit expansion. Moncrief submitted an application for preliminary approval for the first expansion of the CDU area on October 30, 1991. The proposed expansion would add 120 acres of Federal lands based on the completion of CDU Unit Well No. 10, completed as a paying well on September 19, 1990. (The completion of paying Unit Well No. 9 did not require an expansion of the CDU area.) Unit Well No. 10 was completed inside the unit, within 500 feet of the unit boundary, on a patented lease offsetting a Federal lease.

Moncrief gave notice of the proposed first expansion of the CDU area to all parties owning interests in the CDU. Working interest owners representing approximately 3.8 percent of the CDU filed objections to the proposed unit expansion. However, on December 20, 1991, Casper approved the unit expansion of 120 acres, thereby increasing the total unit to 1,360 acres. Celsius requested State Director review of Casper approval of the unit expansion and the effective date of the expansion. In that review the Deputy State Director (DSD) upheld the determination by Casper.

[1] Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(m) (1994) authorizes lessees to unite to more properly conserve natural resources of any oil or gas field in collectively adopting and operating under a unit plan of development or operation "whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest." The CDU Agreement was established under this authority. The Federal regulations governing unit agreements are found at 43 CFR Subpart 3180. 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; it is essentially a contract between private parties, approved by the Department when Federal mineral estates are present, setting forth the rights and liabilities of the parties to the agreement. Orvin Froholm, 132 IBLA 301 (1995). A unit plan may be adopted for an unproven oil and gas field considered suitable for exploration and operation as a unit. 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." 43 CFR 3183.4(a). The CDU Agreement and the CDOA, made in accordance with the CDU Agreement, govern the relationships of the parties and the operation of the unit, including revision of the unit area and participating areas. Therefore, we must look at these agreements in making our decision.

In its statement of reasons, Celsius argues that the Authorized Officer (AO) should not have approved the unit expansion absent a finding that such expansion was in the public interest. Celsius reasons that, because the stated purpose of the CDU Agreement is to "more properly conserv[e] the natural resources [of the federal leases] whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest" (CDU Agreement at 1), the overall public policy to be advanced by unitization requires that all unit administration be judged by a public interest standard and that the public interest is the efficient development of oil and gas and protection of correlative rights. It is also maintained that to allow expansion of a unit based upon a well on lands already shown to be productive is not in the public interest. Celsius contends that the public interest of having oil and gas reserves developed with as few wells as possible would best be served by requiring drilling outside of the unit which would increase the information available.

The CDU was created in order to conserve natural resources and prevent waste (CDU Agreement at 1). The expansion of the unit is governed by section 2 of the agreement, which states that such revision is to be done whenever it "is deemed to be necessary or advisable to conform with the purposes of this agreement" (CDU Agreement, Section 2). The agreement sets out how such a revision is to be accomplished, including notice and effective date, as well as requiring the AO to consider all pertinent information. While the agreement does not specifically require consideration of the public interest in revising the unit, the public interest is protected by the requirement that the revision be deemed necessary or advisable to conform to the purposes of the agreement. While the agreement does not specifically require consideration of the public interest in revising the unit, the public interest is protected by a requirement that the revision be deemed necessary or advisable in order to conform to the purposes of the agreement; this does not require an expressed conclusion by BLM that such expansion is in the public interest. Consideration of whether a proposed expansion is justified, provided lands to be included are reasonably proven productive, protects the public interest. Casper considered the productive potential of Unit Well No. 10 and defined the lands to be included in the unit expansion. To have refused to expand the unit to include land which had been shown to be reasonably productive because of the location of the well would not have conserved natural resources or prevented waste; such action would have been contrary to the agreement and harmful to the public interest. Celsius has not argued that the land included in the expansion is not productive nor that it is not being drained by the well.

There is no requirement in the CDU Agreement or in BLM's Units Manual/Handbook (3180 and H-3180-1) that the unit operator obtain prior approval to drill a well that would expand the unit area, nor is it required that such a well be drilled outside unitized lands. In this case the unit area has been expanded to include only those lands that have been reasonably proven productive, which is in accord with purposes of the agreement. The argument that the public interest would best be served by requiring drilling outside the unit ignores the possibility that the most efficient production might come from a well located in the unit; to prohibit such wells could conceivably result in less efficient production which would be contrary to the purpose of the agreement. Moreover, the CDOA recognizes that wells will be drilled within a participating area as it defines a development well as a "well Drilled within a participating area and projected to the pool or zone for which the participating area was established" (CDOA, Article 1) and also establishes cost allocation for such wells (CDOA, Article 6).

Celsius maintains that a lessee's correlative rights are to be protected and that BLM has a duty to treat all lessees equally and not approve unit operations that violate correlative rights of some of them. It is asserted that it was prejudicial treatment to allow Moncrief to benefit by drilling within the PA and to expand to encompass his own lands. Nonetheless, it would be contrary to the purpose of the agreement were BLM to make such decision based on land ownership. Because of its location, Unit Well No. 10 had the potential to test unexplored acreage outside the unit area. Unit expansion based upon this well was not, therefore, contrary to the purposes of the CDU Agreement, nor has Celsius shown that unit expansion was contrary to the public interest. Unit Well No. 10 was determined to be a paying well and, as such, expansion of the unit based on that well was appropriate.

Celsius also objects to the approval of the expansion because it contends the risk of a dry hole was disproportionately allocated. It complains that when Moncrief proposed the Unit Well No. 10, only the working interest owners in the Initial Frontier Formation PA bore the risk that the well would be a dry hole, but, as lessee of the lands added by the expansion, Moncrief would receive a windfall of increased participation without bearing any risk of drilling a dry hole. Celsius argues that if Moncrief was drilling to test the outer boundaries of the productive lands he should have proposed an expansion of the unit, formed a drilling block, and drilled an exploratory well under article 9 of the CDOA instead of a development well under article 8.

Section 7 of the CDU Agreement states that costs and expenses incurred by the Unit Operator will be paid and apportioned among working interest owners in accord with operating agreements entered into with the Unit Operator. The parties entered into the CDOA in July 1984. Article 6 of that agreement establishes the manner in which costs and ownership are apportioned, both for wells drilled within and outside participating areas. While the CDOA implements the CDU Agreement, BLM does not approve CDOA

terms or conditions. The CDOA is a private agreement among the parties to a unit agreement concerning how they will carry out their business; it addresses how decisions will be made among parties and how revenues and expenses will be shared among them. The determination to drill a development well instead of an exploratory well (a determination which controls cost sharing) is a matter for the unit parties to work out as BLM is neither a party to nor an arbiter of such disputes. BLM's decision approving expansion of the unit is therefore affirmed.

Celsius contends that if the expansion is approved, the effective date thereof should be December 1, 1991, which was the 1st day of the month after the November 13, 1991, approval of the unit expansion by the AO, not September 1, 1990, which was the 1st day of the month of the completion of Unit Well No. 10. In making this argument it relies on section 11 of the CDU Agreement which states that the effective date of any revision to a PA is to be the "first of the month in which the knowledge or information is obtained on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the AO." Celsius notes that in his decision the Deputy State Director stated that normally this would be the 1st day of the month following approval of the revision by the AO (in this case, December 1, 1991); Celsius argues that Moncrief did not justify deviating from the usual date because no geological support was given for the expansion. It is also maintained that the Deputy State Director did not show that a preponderance of the evidence supported his determination that September 1, 1990, was a more appropriate effective date of the revision than the date established by the unit agreement.

Expansion of a unit is accomplished pursuant to the CDU Agreement. Revisions to the unit area are controlled by section 2 of the CDU Agreement. Section 2(a) of the agreement requires the unit operator to prepare a notice of proposed expansion with a proposed effective date, preferably the 1st day of the month following notice. Moncrief provided this notice on November 15, 1991, but identified September 1, 1990, as the BLM approved effective date, not December 1, 1991, which would have been the 1st day of the month following notice.

Under section 2(d) of the agreement, BLM approves expansion of the unit after considering all pertinent information, and expansion becomes "effective as of the date prescribed in the notice or such other appropriate date." It is possible that the 1st of the month in which a well was completed might be justified as an appropriate date for unit expansion. Nevertheless, while section 2(d) of the CDU Agreement permits the use of "such other appropriate date," section 2(a) makes clear that the preferred date is the 1st day of the month after notice of proposed expansion, or, in this case, December 1, 1991. There is nothing in this record on appeal to overcome that stated preference. In approving expansion of the CDU on November 13, 1991, BLM identified September 1, 1990, as the effective date, simply because that was the month in which the well was completed. In affirming that date, the Deputy State Director relied on section 11 of

the agreement, but, as explained above, that section does not apply to unit expansion. Consequently, BLM has failed to provide a rational basis for ignoring the preference stated in the CDU Agreement for establishment of an effective date in this case. When no reason is provided for selecting a different date by the record on appeal, the BLM decision establishing another effective date than the preferred date for unit expansion must be reversed. Under section 2 of the CDU Agreement the effective date for expansion of the unit is December 1, 1991.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, so much of the BLM decision appealed from as approved unit expansion is affirmed; the determination that the effective date of the unit should be other than the preferred date established by the CDU Agreement, however, is reversed.

Franklin D. Amess
Administrative Judge

I concur.

James L. Burski
Administrative Judge

