**Editor's Note: Distinguished by Chevron U.S.A. Production Company, 149 IBLA 374 (1999)**

STANLEY MOLLERSTUEN ET AL.

IBLA 96-32 Decided September 24, 1998

Appeal from a decision of the Acting Associate State Director, Colorado State Office, Bureau of Land Management, dismissing a request for State Director Review of the approval of the first revision of the initial Entrada Formation Participating Area "B," Sheep Mountain Unit Agreement, Huerfano County, Colorado. SDR-CO-95-3.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

   When a unit agreement provides that the unit operator has the exclusive right, privilege, and duty of exercising any and all rights of the parties to the agreement, the unit operator is the proper party to seek an expansion of the unit.

2. Oil and Gas Leases: Unit and Cooperative Agreements--Rules of Practice: Appeals: Dismissal

   The regulations at 43 C.F.R. § 3185.1 provide that "[a]ny party adversely affected by an instruction, order, or decision issued under the regulations of this part may request an administrative review before the State Director under § 3165.3 of this title." An overriding royalty interest owner who protests the proposed expansion of a unit, which that owner has joined, does not have a legally cognizable interest that has been adversely affected by denial of the protest, within the meaning of 43 C.F.R. § 3185.1, because the unit operator has the exclusive right, privilege, and duty of exercising any and all rights of the parties to the unit agreement, including the duty to seek an expansion of a participating area, when necessary, and the right to appeal any BLM decision relating to expansion.

APPEARANCES: Thomas W. Niebrugge, Esq., Denver, Colorado, for Appellants, Lowell L. Madsen, Esq., Assistant Regional Solicitor, Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Stanley Mollerstuen, Hal McVey, and Helen McVey have appealed from a September 7, 1995, decision of the Acting Associate State Director, Colorado State Office, Bureau of Land Management (BLM), dismissing their request for State Director Review (SDR), pursuant to 43 C.F.R. § 3185.1, of the July 21, 1995, approval by Richard J. Ryan, a BLM petroleum engineer, of the first revision of the initial Entrada Formation Participating Area "B" (Entrada PA), Sheep Mountain Unit Agreement, Huerfano County, Colorado.

The Sheep Mountain Unit is a Federal exploratory unit approved by BLM effective February 12, 1976. The unitized substance for the unit is carbon dioxide gas. ARCO Permian Corporation (ARCO) is the operator of the unit. Appellants are the owners of a 2-percent overriding royalty interest in Tract 7 (Federal oil and gas lease COC 4422) of the Sheep Mountain Unit and are signatories of the unit agreement.

The initial Entrada PA was established in 1984 following the receipt of an application from ARCO. The initial Entrada PA did not include Tract 7. At the time of establishment of the Entrada PA, a well (4-26-E) was being drilled on the unit. Although that well produced carbon dioxide from the Entrada Formation, it was not included in the PA.

In late 1994, Appellants brought to BLM's attention the fact that well 4-26-E had not been included in the Entrada PA. Appellants' position was that the carbon dioxide reserves under Tract 7 in which they held an overriding royalty interest were being drained without compensation to them under the terms of the unit agreement. They recommended to BLM that ARCO should seek an expansion of the PA and that the expansion should cover 1,440 acres thereby embracing Tract 7.

Under section 11 of the Sheep Mountain Unit Agreement, the Unit operator is required to submit for approval by BLM revisions of PA's "to include additional land then regarded as reasonably proved to be productive in paying quantities or necessary for unit operations." (Sheep Hill Unit Agreement at 12.) Pursuant to the section, BLM requested that ARCO submit an application to expand the Entrada PA.

In January 1995, ARCO filed an application proposing inclusion of 120 acres in the Entrada PA. Upon learning of ARCO's application, Appellants strenuously objected to BLM, arguing that ARCO's proposed expansion was too limited and that any expansion should properly include Tract 7.

Although BLM considered Appellants' submissions, it was not persuaded that Tract 7 should be included in an expansion, and, on July 21, 1995, it approved ARCO's proposed expansion, as submitted, effective as of August 1, 1984. 1/

In the approval letter, BLM did not offer Appellants the opportunity for SDR. Nevertheless, Appellants filed a request for SDR thereof. On September 7, 1995, BLM dismissed Appellants' request for SDR. The basis for dismissal was lack of standing because, as overriding royalty interest owners, Appellants were not adversely affected by the approval. Appellants filed a timely appeal. They request that the Board remand the matter to BLM with instructions to conduct a State Director's Review or, in the alternative, that the case be referred to an administrative law judge for a fact finding hearing. For the following reasons, we affirm BLM's dismissal.

[1] The Federal regulations governing unit agreements are found at 43 C.F.R. Subpart 3180. A unit agreement is a contract between participating parties for joint development and operation of any oil or 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, 305 (1995). 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 C.F.R. § 3183.4(a).

Section 8 of the approved Sheep Hill Unit Agreement provides:

> Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided.

See 43 C.F.R. § 3186.1. Thus, ARCO, as unit operator, had the authority, under the unit agreement, to exercise the rights of all parties to the agreement. In this case, Appellants executed the agreement.

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1/ BLM stated in the approval letter:

"The approval of this first revision of the initial Entrada Formation Participating Area was protested with some supporting geologic information but no reservoir engineering analysis or supporting economics were provided. The information that was submitted for the protest was insufficient and did not offset the information supplied by the operator. The protests are dismissed."

The Acting Associate State Director relied on this Board's decision in Orvin Froholm, supra, in dismissing the request for review. In Orvin Froholm, various royalty interest owners appealed from a BLM decision affirming approval of two unit agreements and the establishment of participating areas within each unit. We concluded that

> the Froholms had their interests committed to the units by Cox [the lessee] and, therefore, had constructive notice of the initial unit and participating area approvals dating from receipt thereof by Moore [agent for Cox] or Cox and failed to file any timely appeals thereof. Further, any timely appeal would have been subject to dismissal because, as mere royalty interest owners, they arguably were not adversely affected by BLM's approvals.
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> Even if there were no constructive service on the Froholms because they never actually signed the unit agreements, we expressly hold that they were not entitled to notice from BLM of any of the approvals. More importantly, as mere royalty interest owners who had not joined the unit, they were not adversely affected by BLM's approvals and, thus, had no right to administrative review of any of those determinations by BLM.

132 IBLA at 309-10.

Appellants seek to distinguish Froholm arguing that, unlike the present case, in that case the overriding royalty interest owners did not execute the unit agreement. That is a distinction without a difference, however, because a Federal lease may be committed to a unit with or without the signatures of overriding royalty owners.

Appellants also argue that BLM should be estopped from asserting a lack of standing because of BLM's actions in inviting their participation in the determination process regarding the expansion. Estoppel does not lie in this case. It is apparent from the approval letter that BLM considered the objections filed by Appellants to ARCO's expansion application to be a protest.

Under 43 C.F.R. § 4.450-2, any objection to any action proposed to be taken by BLM in any proceeding "will be deemed a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances." The action deemed appropriate in the case was that BLM considered Appellants' submissions in making its determination, but it was not persuaded that they had justified an expansion beyond that proposed by ARCO. Accordingly, BLM dismissed Appellants' protest. See n.1, supra.

[2] The regulations at 43 C.F.R. § 3185.1 provide that "[a]ny party adversely affected by an instruction, order, or decision issued under the regulations of this part may request an administrative review before the

State Director under § 3165.3 of this title." In interpreting similar language in 43 C.F.R. § 4.410 relating to appeals to this Board, we have held that a person who is an unsuccessful protestant must show that a legally cognizable interest has been adversely affected by denial of the protest. Oregon Natural Resources Council, 78 IBLA 124, 125-26 (1983); In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982). The same must be shown under 43 C.F.R. § 3185.1.

As mere overriding royalty interest owners, Appellants are unable to make such a showing. They have no legally cognizable interest because under the Sheep Hill Unit Agreement the unit operator has the exclusive right, privilege, and duty of exercising any and all rights of the parties thereto. The unit operator has a duty to seek expansion of a PA, when necessary, and the right to appeal any BLM decision relating to expansion. If Appellants, as overriding royalty interest owners, have a problem regarding the unit operator's expansion of the unit, their dispute is with the unit operator. 2/

Accordingly, 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 affirmed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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James P. Terry
Administrative Judge

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2/ Appellants represent that they have initiated a suit against ARCO in Federal District Court on royalty account issues related to carbon dioxide production from the Sheep Mountain Unit.