

GOLMARK ENGINEERING, INC.

IBLA 97-30 Decided November 4, 1998

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, upholding an order of the Bighorn Basin Resource Area Manager requiring the successful recompletion or plugging and abandonment of Fourbear Unit Well No. 31. W-051801.

Affirmed.

1. Environmental Quality: Generally--Oil and Gas Leases: Production

Pursuant to 43 C.F.R. § 3162.3-4(a), an operator shall promptly plug and abandon, in accordance with a plan approved in writing or prescribed by BLM, each well in which oil or gas is not encountered in paying quantities or which, after being completed as a production well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities. An order to plug and abandon a well will be affirmed where the record shows that the well has not produced for a significant period of time and the operator's plans for a waterflood program have not been implemented.

APPEARANCES: William N. Heiss, Esq., Casper, Wyoming, for Appellant; Brock Wood, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Goldmark Engineering, Inc. (Goldmark or Appellant) has appealed from a September 16, 1996, Decision of the Wyoming State Office, Bureau of Land Management (BLM), upholding an order of the Bighorn Basin Resource Area Manager requiring Appellant to plug or recomplete Fourbear Unit Well No. 31. The Board granted Appellant a stay of the September 16, 1996, Decision on November 8, 1996.

The September 16 Decision required Goldmark to successfully recomplete Fourbear Unit Well 31 (Well 31) as a producer or injector "within a reasonable time to be determined by the Bighorn Basin Resource Area." The Decision further provided that, in the absence of a successful recompletion

or convincing evidence of Well 31's utility to the Tensleep waterflood project, the well shall be promptly plugged and abandoned. Pursuant to the September 16, 1996, Decision, the Area Manager issued an order dated September 26, 1996, requiring that the well be plugged or recompleted by November 15, 1996, and providing for the assessment of penalties if that deadline was not met. The aforementioned stay was subsequently issued.

Appellant's arguments before the Board are included in its Petition for Stay of Effectiveness filed on October 18, 1996, and its Additional Statement of Reasons (Add SOR) filed on November 5, 1996. Goldmark explains that in 1993, it began a limited waterflood program in the south end of the Fourbear field. It claims that almost immediately a response was noted including a decrease in the decline in oil production from nearby wells. (Add SOR at 1.) Appellant explains that this success caused Goldmark to continue its planned systematic expansion of the waterflood program in three phases, over a period of several years, to eventually include the entire field. Id. It further explains that Well 31 is located at the extreme north end of the field, several miles from the area covered by Phase 1 of the waterflood program. The north end of the field will be added to the waterflood in the third phase of the waterflood. Id.

Appellant claims that prior to starting the waterflood program, Goldmark plugged Unit Well 49 (Well 49) at the request of the Wyoming Oil and Gas Conservation Commission. It states that evaluation of the first phase of the waterflood has now demonstrated that Well 49 would have had value to the waterflood project. (Add SOR at 1.) Appellant states that Well 49 is located in an equivalent position at the south end of the field as Well 31 is to the north end of the field. Id. Thus, Goldmark claims, until the waterflood has been implemented in a given area of the field, each well bore has value, and Appellant "does not want to lose any wellbores which may have use in the planned expansion of the waterflood." Id.

Moreover, Appellant states, the actions required by the Authorized Officer directly conflict with certain of Goldmark's obligations under the lease, as well as the unit agreement, and unit operating agreement. Appellant claims the required actions have the potential to adversely affect the interests of the United States by reducing the amount of royalty to which it would be otherwise entitled. (Add SOR at 1-2.) Goldmark states that until Well 31's usefulness in the expansion of the waterflood to the north end of the field has been determined, it may be violating its fiduciary duty and its duty to operate the field as would a reasonable and prudent operator by prematurely plugging the well. (Add SOR at 2.)

In its Answer, BLM states the controlling Federal regulation in this case, 43 C.F.R. § 3162.3-4, has as its intent the prevention of the indefinite prolongation of the life of inoperative but unplugged wells. BLM claims that plugging an inoperative well reduces the safety and environmental hazards the well presents to the surrounding land. (Answer at 2, citing ERC Industries, 124 IBLA 331, 334 (1992).) BLM urges that while the BLM Authorized Officer can authorize, and subsequently reauthorize, delays

in permanent abandonment in increments of 12 months under this regulation, the operator must justify to the Authorized Officer why the 12-month delay is needed. (Answer at 2-3.) BLM claims that Appellant has failed to justify why a 12-month delay of the abandonment should be granted under the regulations, and consequently, the Authorized Officer correctly declined to grant the delay. (Answer at 3.)

BLM states that Well 31 was first drilled in 1960, recompleted in 1974, and shut in 1977. It has not produced since that time. (Answer at 3.) In 1992, after BLM inquiries, Appellant advised BLM that Well 31, among others, would be put back into production within 4 years. To the contrary, however, BLM claims, the well was not put back into production within the 4-year period and there is no indication that it will be. Id. BLM quotes Appellant's own statement in Goldmark's Add SOR: "As noted in the statement in Goldmark's Petition for Stay of Effectiveness filed herein, until the waterflood has been undertaken in this part of the field, it cannot be known with certainty whether [Unit Well 31] will be of any benefit to the waterflood program." (Answer at 3, quoting Add SOR at 2.) From this, BLM asserts, the Authorized Officer had scant reassurance that Well 31 would ever be a producing well. (Answer at 4.)

BLM urges that the facts in this case are substantively the same as those in ERC Industries, supra, where a waterflood program was similarly in place but time dragged on and program efforts did not cause the well in question to produce. (Answer at 4.) BLM states that it cannot wait indefinitely for Well 31 to become a producing well and that vague assertions that the well might produce after the waterflood program is complete are not enough to justify granting another 12-month delay. Id.

[1] Regulation 43 C.F.R. § 3162.3-4 controls resolution of this dispute. This regulation states in part:

(a) The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

* * * * *

(c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent

abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months.

(Emphasis added.)

Paragraph (c) above clearly contemplates that an operator may delay the plugging and abandonment of a well for as long as 12 months with BLM's prior approval. At the conclusion of such 12-month period, a further delay may be authorized by the agency when justified. No limit to the number of such authorized delays is imposed by the regulation.

Authorization for such delays is, however, dependent upon the operator showing justification for this action. In the instant case, the record shows that BLM approached Appellant in 1992, and received Appellant's commitment that the well would be producing in 4 years. Not only did this not happen, but the waterflood program has not even begun among the wells, to include Well 31, in phase three of that program. Nor has a timetable been offered for phase three wells. We upheld a BLM order in a similar case, ERC Industries, 124 IBLA 331, 334 (1992), where we observed:

Authorization for such delays, is, however, dependent upon the operator showing justification for this action. In the instant case, the record shows that BLM first sought the plugging and abandonment of well No. 44-31 in April 1978, approximately 2 years after the well stopped producing. No action resulted. Again, in 1988 the agency renewed its efforts and learned by correspondence dated August 26, 1988, that a waterflood program was under study. Some 4 years later, the program has yet to be implemented.

As in ERC Industries, *supra*, we believe the record demonstrates that BLM has given Goldmark ample time to implement its waterflood program with respect to Well 31. In the absence of progress here, BLM acted within its discretion in ordering Appellant to plug and abandon Well 31 and eliminate the risk of environmental harm posed by the shut-in well. Moreover, our decision to affirm BLM's September 16, 1996, Decision finds support in other prior case law of this Board. In Viking Exploration, Inc., 119 IBLA 73 (1991), the Board found that BLM had allowed Viking a reasonable time, 18 months after initial notice, to plug or produce its well. In that case, as here, Viking sought to delay abandonment. In Chaveroo Operating Co., 136 IBLA 102 (1996), the Board likewise affirmed a BLM order to either test or plug and abandon shut-in wells on a Federal lease where the wells had been inactive for more than 3 years. BLM's Decision of September 16, 1996, is well within the parameters established by Chaveroo Operating Co., *supra*, Viking Exploration, Inc., *supra*, and ERC Industries, *supra*.

Therefore, 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 of the Wyoming State Office is affirmed.

James P. Terry
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

