

Editor's Note: Motion for Reconsideration Denied, Order of December 16, 2004.

Editor's Note: Director's review of decision; 32 OHA 61, Dec. 22, 2005. Vacated in part, modified, and remanded.

SAMEDAN OIL CORP.
AERA ENERGY LLC

IBLA 2000-142, 2000-144

Decided September 7, 2004

Appeals from separate decisions of the Regional Director, Pacific OCS Region, Minerals Management Service, excluding Outer Continental Shelf oil and gas leases from the Gato Canyon and Santa Maria Units and denying requested suspensions of production for the leases. OCS-P 0462, 0420, 0424, and 0429.

Set aside and referred for an evidentiary hearing.

1. Administrative Procedure: Administrative Record

It is incumbent upon MMS to ensure that its decision is supported by a rational basis which is explained in the decision and substantiated by the administrative record in the case file. A decision which fails to meet this basic requirement is properly set aside and remanded.

2. Administrative Procedure: Hearings--Hearings--Rules of Practice: Appeals: Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

APPEARANCES: E. Edward Bruce, Esq., Stephen J. Rosenbaum, Esq. and Gregory M. Williams, Esq., for appellants; Barry E. Crowell, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Samedan Oil Corporation has brought an appeal (IBLA 2000-142) from an August 13, 1999, decision of the Regional Director, Pacific OCS Region, Minerals Management Service (MMS), issued in response to a request for suspension of production (SOP) through December 31, 2002, for Outer Continental Shelf (OCS) oil and gas lease OCS-P 0462 and other leases committed to the Gato Canyon Unit (GCU). The decision extended a previously-ordered suspension of operations (SOO) which was set to expire on August 16, 1999, with respect to the other leases (OCS-P 0460 and 0464) in the GCU, but declined to either extend the SOO or adjudicate the request for a SOP with respect to OCS-P 0462. Rather, with respect to the latter lease, the decision stated that MMS had “determined that the geological and geophysical data and interpretation no longer support inclusion of Lease OCS-P 0462 within the Gato Canyon Unit.” (Decision of Aug. 13, 1999, at 1.) Accordingly, MMS held that the lease would expire on August 16, 1999, at the end of the SOO for the GCU previously granted through that date. Id.

Aera Energy LLC has filed an appeal (IBLA 2000-144) of a similar MMS decision of the same date with regard to the nearby Santa Maria Unit (SMU). That decision also extended an existing SOO only for certain leases committed to the unit (OCS-P 0425, 0430, 0431, 0433, and 0434). With respect to certain other unit leases (OCS-P 0420, 0424, and 0429), MMS neither extended the SOO nor granted Aera’s request for a SOP. Instead, as with the Samedan lease, MMS stated it had “determined that the geological and geophysical data and interpretation no longer support inclusion” of the latter leases within the unit. Consequently, MMS held the latter leases would expire at the end of the prior SOO on August 16, 1999. Because of the similar factual context and the similar issues presented, we have consolidated these two cases for review.

It appears from the record that lease OCS-P 0462 was issued in 1982 pursuant to a competitive oil and gas lease sale. (Statement of Reasons (SOR) for Appeal at 5.) Subsequently, in 1985 an exploratory well was drilled on lease OCS-P 0460 which MMS found to be capable of production in paying quantities. Id. at 6. Thereafter, the lease OCS-P 0462 was committed to the GCU by agreement approved by MMS effective July 30, 1987. (SOR at Ex. 5.) Other leases included in the unit under the agreement were OCS-P 0460 and 0464. Id. Simultaneously, MMS approved Samedan’s plan of operation for the unit and its request for a SOP under 30 CFR 250.12(b)(1) (1987)^{1/} through July 31, 1989. Id. In January 1989 Samedan drilled another exploratory well on unitized lease OCS-P 0460, which after

^{1/} Under this regulation, the SOP had the effect of extending the term of the lease for the period that the extension is in effect. 30 CFR 250.12(d)(1) (1987).

testing was also deemed by MMS to be a well capable of production in paying quantities. (SOR at 8.) After the drilling of the latter well, MMS approved Samedan's requests for extension of the SOP for the leases in the GCU through July 31, 1991, and, subsequently, through July 31, 1994. (SOR at Exs. 6, 8.) Although the latter extension was issued in contemplation of the drilling of another unit well to be spudded by December 31, 1993, no drilling has occurred since that time.

The leases involved in the Aera appeal were issued in July 1981 in response to high bids at a competitive oil and gas lease sale. These leases were committed, in whole or in part, to the SMU approved by MMS effective July 11, 1986. (SOR at Ex. 4.) Aera subsequently drilled an exploratory well on one of the unit leases (OCS-P 0434) which was determined to be a discovery well capable of producing oil or gas in paying quantities. (SOR at 7.) After drilling that well, Aera requested a SOP which was granted by MMS through November 12, 1987, finding that the request included a plan of operation "reasonably designed to lead to the commencement of production" on the SMU. (SOR at Ex. 6.) Subsequent requests for a SOP were granted by MMS through June 30, 1994, based on a plan of operations calling for the spudding of a further unit well by the end of 1993. (SOR at 8; see Ex. 9.) The planned drilling did not occur.

The failure to drill additional wells cannot be attributed to the operator in the circumstances of this case. In order to facilitate the participation, as requested by MMS, of Samedan (and other California OCS operators) in a study regarding the onshore impacts of OCS development ^{2/} a SOO was directed by MMS ^{3/} effective January 1, 1993, and this was subsequently extended through August 16, 1999. (SOR at Exs. 10 through 19, 21.) By September 17, 1998, when the SOO was extended through March 30, 1999, the number of California OCS leases suspended pending this study was 40, including the 3 leases in the GCU and the 8 leases in the SMU. (Ex. 17 to SOR.) It appears from the record that suspensions were subsequently granted for 36 of the 40 leases, excluding the 4 leases in the GCU and the SMU involved in these appeals. (MMS Answer at 18-19.)

By June 1999, objections to further extension of the 40 undeveloped OCS leases were expressed by both United States Senators and a Member of Congress representing the State of California, as well as the Governor. (Exs. 36 through 39

^{2/} This study is identified in the record as the California Offshore Oil and Gas Energy Resources (COOGER) Study.

^{3/} When a SOO is directed by MMS, the term of the lease is extended by the period the suspension is in effect. 30 CFR 250.10(f) (1997); 30 CFR 250.12(d)(1) (1987).

to SOR.) In a letter to the Secretary of the Interior dated July 27, 1999, the California Coastal Commission asserted that MMS:

should hold its approval of the SOPs [for the 40 leases] in abeyance and direct the applicants for the SOPs to submit to the Commission the SOPs, a certification that all activities will be conducted in a manner consistent with California's federally approved coastal management program, and all necessary supporting information and data.

(Ex. 40 to SOR at 3.) Further, the Commission asserted that MMS cannot approve the SOP's until the Commission has concurred with the consistency certifications or, after any objection, the Secretary of Commerce upholds the action. *Id.* In support, the Commission cited its authority under section 307(c)(3) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(3) (2000).

After issuance of suspensions for the 36 leases which are not before us on appeal, the State of California sued the Department contending its approval of the suspensions violated requirements of the CZMA, 16 U.S.C. §§ 1451-1465 (2000), and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370f (2000). Upon judicial review, the courts held that suspension of these leases was subject to consistency review under the CZMA, 16 U.S.C. § 1456(C)(1)(A) (2000), and required further environmental analysis under NEPA at least to the extent of explaining why the suspensions do not fall within one of the exceptions to the categorical exclusion relied upon by MMS. *State of California v. Norton*, 311 F.3d 1162 (9th Cir. 2002), *aff'g California ex rel. California Coastal Commission v. Norton*, 150 F. Supp 2d 1046 (N.D. Cal. 2001). Accordingly, the suspension decisions were remanded to the Department.^{4/}

In support of the appeals, appellants argue that a decision on a request for approval of a SOP for unitized leases is properly made with respect to the unit in its entirety and not on a lease-by-lease basis. Appellants assert that the requirements of joint operation of an entire production reservoir or a prospectively productive area dictate that unitized leases be treated uniformly, as if they were a single lease. Appellants note that these units are still in the exploration phase with additional wells to be drilled to determine which unitized tracts are actually capable of producing oil or gas in paying quantities. Appellants also contend that MMS has failed to provide a rational basis for treating these leases differently from the rest of the units in its decisions.

^{4/} Appellant states that the 4 leases for which a suspension was not granted, as well as the 36 leases which were suspended and which were the subject of the litigation, are now the subject of a breach of contract lawsuit in the Court of Federal Claims.

Appellants further assert that MMS approval of the unit and subsequent SOP's necessarily entails a finding that the leases include part of a geologic structure involving a potential hydrocarbon accumulation. Appellants contend that no new information has been developed since unitization which would contradict this finding that lands in the unit are prospectively productive. In this regard, Samedan notes that the only well drilled on the unit since approval of the unit agreement was determined to be capable of production in paying quantities and that no further exploratory wells have been permitted in light of the SOO's directed by MMS because of the COOGER Study. Aera similarly points to the drilling of a discovery well in the SMU. Absent any new factual information and a reasoned explanation which would support a finding that the excluded leases are not prospectively productive, appellants contend that the MMS decisions are arbitrary and capricious. Appellants further argue that the conclusory assertion in the MMS decisions that the data no longer supports inclusion of the excluded leases in the units does not meet the requirement that a rational basis be provided for the decision.

Appellants also contend that the MMS decisions to exclude these leases from the units and thus terminate the leases, which were in their extended term, but not producing, were issued in response to political pressure from elected officials in the State of California. In this regard, they tender documents showing that MMS officials were cognizant of substantial pressure from elected officials in the State of California to terminate OCS leases located off the California coast.

Further, appellants present on appeal some of the information which supports their assertion that the terminated leases are properly assumed to be potentially productive of oil and gas. At the least, appellants contend the record creates significant unresolved issues which require referring the case for an evidentiary hearing.

In its answer, MMS contends that the August 13, 1999, decisions excluding leases from the GCU and the SMU are properly distinguished from decisions adjudicating the SOP's for the other leases in the units which were ultimately approved. Thus, MMS asserts it did not deviate from the concept of approving suspensions on a unit-wide basis. Upon exclusion of the leases from the units, MMS contends that these leases, which were already in their extended term, expired in the absence of production or a suspension. It is argued by MMS that the evidence does not support a finding that the productive reservoir in the units extends to the excluded leases. In defending its conclusory decisions finding that the leases were properly excluded from the unit, MMS contends it is entitled to rely upon the reasoned analysis of its experts and, more problematically, that it was not required to provide a reasoned analysis supporting its decisions in these cases.

Oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (OCSLA), are issued for an initial term of 5 years^{5/} and as long thereafter as oil or gas is produced from the area in paying quantities or drilling operations as approved by the Secretary are conducted thereon. 43 U.S.C. § 1337(b)(2) (2000); 30 CFR 256.37(a) and (b). Section 5(a)(4) of OCSLA, as amended, 43 U.S.C. § 1334(a)(4) (2000), authorizes the Secretary to promulgate necessary rules and regulations relating to offshore leasing, including provisions for “unitization.” Unitization has been defined as “an agreement to jointly operate an entire producing reservoir or a prospectively productive area of oil and/or gas.” Lewis C. Cox, Jr., Unitization and Communitization, § 18.01[2] in 2 Law of Federal Oil and Gas Leases, Rocky Mountain Mineral Law Foundation (2003) (Ex. 26 to SOR). Drilling, producing, or well-workover operations conducted on a lease within a unit which would serve to continue the lease in effect are considered to be undertaken for the benefit of all unit leases, and the terms of all the leases may be extended as long as there are such operations within the unit. 30 CFR 250.1302(g); 30 CFR 250.51(g) (1987). If, however, the unit area is adjusted so that no part of a lease remains within the unit boundaries, that lease expires unless its initial term of years has not expired; drilling, reworking, or producing operations are conducted on the lease; or MMS approves a SOO or SOP for the lease. 30 CFR 250.1302(f); 30 CFR 250.51(h) (1987). Thus, in the context of this case, resolution of the issue of whether the leases were properly excluded from the GCU and the SMU determines whether the leases terminated on August 16, 1999, at the end of the previously granted SOO.

A request for unitization of OCS leases may be approved if unitized operations will promote and expedite exploration and development. 30 CFR 250.1301(a); see 30 CFR 250.50(a) (1987). The unit area shall include “the minimum number of leases that will allow the lessees to minimize the number of platforms, facility installations, and wells necessary for efficient exploration, development, and production of mineral deposits, oil and gas reservoirs, or potential hydrocarbon accumulations.” 30 CFR 250.1301(c); 30 CFR 250.50(b) (1987). Lessees seeking approval of a unit shall accompany their request with supporting geological, geophysical, and engineering data. 30 CFR 250.1303(a)(3); 30 CFR 250.51-1(b) (1987). Unitization may not be approved until a finding is made that the delineation of any potential hydrocarbon accumulation has been reasonably established. 30 CFR 250.51(c) (1987).^{6/} Accordingly, the unitized leases were necessarily found to

^{5/} An initial term of up to 10 years may be authorized by the Secretary when a longer period is required to encourage exploration or development because of adverse conditions. 43 U.S.C. § 1337(b)(2)(B).

^{6/} Although the regulations in effect at the time of unit approval and the latest regulatory codification generally contain similar provisions, this principle is implicit
(continued...)

include a potential hydrocarbon accumulation when inclusion of the leases in the GCU and the SMU was approved.

In its answer, MMS contends that its decisions were based on an analysis of the facts rather than any response to political pressure and that we should defer to the expertise of MMS officials delegated the authority to determine when lands are properly excluded from a unit. With respect to the evidence relied upon to find the leases should be excluded from the unit, MMS contends appellants have full knowledge of the relevant information relied upon and, hence, MMS was not required to provide a reasoned explanation for its decision. The fundamental flaw in these arguments is that the record before us does not establish the basis for MMS' conclusory findings in the August 13, 1999, decisions that the "geophysical data and interpretation no longer support inclusion" of the excluded leases within their respective units. (Decisions at 1.) While there are numerous representations of fact in the record, most of which have been submitted since the appeals were filed, many of them appear to be conflicting. Thus, for example, one MMS official observed in June 1999:

[T]he units that include the forty leases were formed after exploratory drilling had taken place. They were formed shortly before the end of the original lease term. The units were formed based on the geologic information and interpretation available at the time. The company requested the unit and provided reasonable justification that the proposed leases contained part of the field they had mapped. MMS concurred and signed the unit agreement.

Obviously, the geological realities are no different now than in the past. Our and the company[']s interpretations may vary with additional analysis of the data. The basic justification for these units are valid today.

(Ex. 31 to SOR.) There are also indications in the record that the MMS decision was based at least in part upon appellants' lack of commitment at this point to drill a well into the prospectively productive formation. Thus, according to the February 21, 2001, affidavit of a MMS official present at the pre-decisional presentation by Samedan, the target formation on lease OCS-P 0462 was estimated to contain 15-20 million barrels of oil, but Samedan acknowledged this target "cannot stand on its own and can only be drilled from [the] platform." (Declaration of Harold Syms,

^{5/} (...continued)

rather than expressly stated in the current regulations. See 30 CFR 250.1301(a) and (c).

attached to MMS answer, at 3.) Samedan explains in its reply brief on appeal that it intends to develop the “resources underlying the GCU, including those underlying Lease OCS-P 0462, from the platform it will build on Lease OCS-P 0460.”^{7/} (Reply Statement in Support of Appeal by Samedan at 12.) Given the purposes of unitization to conserve resources, promote efficient exploration and development, and minimize offshore structures, this would appear to be a dubious basis for excluding lease OCS-P 0462 from the unit. Without an explanation by the MMS decision maker of the basis in fact and the analysis to support the conclusory finding that the lease is properly excluded from the unit, no one reviewing the decision is able to verify the basis for the decision.

We find these cases to be distinguishable from Taylor Energy Company, 148 IBLA 286 (1999), cited by counsel for MMS in briefing before the Board. In the Taylor case there were two levels of decision making at MMS before the case was appealed to the Board. Although the basis given for the decision was apparently rather skimpy at the initial level, a much more substantial basis for decision was set forth in the record before the Director, MMS. While as a general rule, as noted in Taylor, the Department is entitled to rely upon the reasoned analysis of its experts in matters within their expertise, this assumes the decision sets forth a reasoned analysis of the facts relied upon to reach that expert opinion. Such is not the case before us.

[1] It is incumbent upon MMS to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as supported by the administrative record in the case file. Larry Brown & Associates, 133 IBLA 202, 205 (1995); Barnett Oil Company, Inc., 122 IBLA 330, 332 (1992); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). A party adversely affected by a BLM decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Larry Brown & Associates, 133 IBLA at 205; Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 367-68 (1990); Southern Union Exploration Co., 51 IBLA 89, 92 (1980). An administrative decision is properly set aside and remanded if it is not supported by a case record providing this Board the information necessary for an objective, independent review of the basis for the decision. Shell Offshore, Inc., 113 IBLA 226, 233, 97 I.D. 73, 77 (1990); Fred D. Zerfoss, 81 IBLA 14 (1984).^{8/}

^{7/} The productive wells drilled previously were drilled using floating mobile offshore drilling units.

^{8/} As we noted in Shell Offshore, Inc., 113 IBLA at 233-34, 97 I.D. at 78:

“It is well established that, absent a complete record, this Board and a reviewing court are incapable of complying with the requirements statutorily

(continued...)

[2] A hearing is properly granted when significant material issues of fact are raised by the appeal and the evidence in the record is insufficient to resolve them without a hearing allowing introduction of testimony and other evidence. Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); Yates Petroleum Corporation, 131 IBLA 230, 235 (1994); Exxon Company, U.S.A., 98 IBLA 218, 232 (1987); Woods Petroleum Co., 86 IBLA 46, 55 (1985). In view of the apparently conflicting evidence giving rise to material issues of fact, we set aside the decisions below and refer the cases to the Hearings Division for an evidentiary hearing before an administrative law judge.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the MMS decisions are set aside and the cases are referred to the Hearings Division, Office of Hearings and Appeals, for a hearing before an administrative law judge. The administrative law judge's decision shall be final for the Department in the absence of an appeal to this Board.^{2/}

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

^{8/} (...continued)

mandated by relevant provisions of the Administrative Procedure Act, 5 U.S.C. § 706 (2000). See e.g. Higgins v. Kelly, 574 F.2d 789, 792 (3rd Cir. 1978). When the validity of the agency's action is not sustainable on the administrative record compiled by that agency, the courts are obliged to vacate the agency decision and remand the matter for further consideration. See Camp v. Pitts, 411 U.S. 138, 143 (1973)."

^{2/} In the event the decision to exclude any of the leases from the units is reversed after a hearing, it will be necessary for MMS to proceed to adjudicate the requests for a SOO and a SOP.