

MERITAGE ENERGY PARTNERS, LLC
WESTPORT OIL AND GAS COMPANY (RESPONDENT)

IBLA 2002-388

Decided April 7, 2005

Appeal from a decision of the Deputy State Director, Wyoming State Office, Bureau of Land Management, affirming the approval of a successor unit operator for the Table Mountain (Shannon Sand) Unit. SDR WY-2002-10.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

BLM properly approves the selection of a successor unit operator according to the terms of a unit agreement which provides for selection by a majority of working interest owners according to their respective tract participation in the unitized land.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellant Meritage Energy Partners, LLC; Terri L. Debin, Esq., Office of the Regional Solicitor, Rocky Mountain Region, Lakewood, Colorado, for BLM; Craig R. Carver, Esq., Denver, Colorado, for Respondent Westport Oil and Gas Company.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Meritage Energy Partners, LLC (Meritage), appeals a decision of the Deputy State Director (DSD), Wyoming State Office, Bureau of Land Management (BLM), dated May 7, 2002, affirming the April 5, 2002, approval by the Casper District Office, BLM, Reservoir Management Group (RMG) of a successor unit operator for the Table Mountain Unit.^{1/} The RMG decision approved Westport Oil and Gas Company (Westport) as the successor unit operator and thereby precluded the approval of Meritage in that role.

^{1/} The Table Mountain Unit is also referred to in the record as the “Table Mountain Shannon Unit.”

On July 31, 1992, the Casper District Office, BLM, approved the Table Mountain Unit Agreement, effective August 1, 1992, as a secondary recovery (pressure maintenance) unit, unitizing Federal and non-Federal leases covering the Shannon Sand formation within 880 acres of land located in T. 45 N., R. 77 W., 6th Principal Meridian, Wyoming. The record shows that, in order to form this unit, certain lands formerly part of the Heldt Draw Unit were removed from coverage of that unit and made part of the Table Mountain Unit. BLM approved the unit agreement in a “Certification – Determination” signed on July 31, 1992.^{2/}

Section 6 of the unit agreement designates Presidio Exploration, Inc. (Presidio), as the initial unit operator for the unit. Section 7 is entitled “Resignation or Removal of Unit Operator,” and defines the legal contours of a departing unit operator’s continuing duties and obligations for the unit. With respect to resignation, section 7 permits the unit operator to “resign at any time,” but conditions any release of the unit operator’s obligations upon “a new Unit Operator hav[ing been] selected and accepted” and taking over the obligations of the unit operator.^{3/} Section 7 permits working interest holders to remove a unit operator for cause on “an affirmative vote of the Working Interest Owners of at least ninety percent (90%) of the voting interest remaining after excluding the voting interest of the Unit Operator.” Section 7 goes on to specify the continuing liability of the departing unit operator.

Section 7 having covered a departing unit operator, section 8 is the provision covering the incoming unit operator successor. It establishes that the working interest owners shall select the successor. This selection occurs whenever (a) a unit operator resigns; or (b) a unit operator is removed by 90 percent of the working interest owners as provided in section 7; or (c) a change is negotiated by working interest owners. The selection occurs upon a majority approval.

^{2/} In response to a Board request, RMG submitted the Government’s approval document with this Board by fax on Oct. 25, 2004.

^{3/} This portion of section 7 provides:

“Unit Operator shall have the right to resign at any time, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate that Unit Operator’s rights as such for a period of six (6) months after notice of intention to resign has been served by Unit Operator on all Working Interest Owners and the Authorized Officer, and until all wells are placed in a satisfactory condition for suspension or abandonment, whichever is required by the Authorized Officer, unless a new Unit Operator shall have been selected and accepted and shall have taken over and assumed the duties of and obligations of Unit Operator prior to the expiration of said period.”

(Unit agreement at section 7 (emphasis added).)

8. SUCCESSOR UNIT OPERATOR. Whenever the Unit Operator shall tender his or its resignation as Unit Operator or shall be removed as hereinabove provided, or a change of Unit Operator is negotiated by the Working Interest Owners, a successor Unit Operator shall be selected by Working Interest Owners voting according to their respective Tract participation in all unitized land by a majority vote; provided, that, if a majority but less than seventy-five percent (75 %) of the Working Interests qualified to vote are owned by one party to this Unit Agreement, a concurring vote of one or more additional Working Interest Owners shall be required to select a new Unit Operator. Such selection shall not become effective until:

(a) A Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and

(b) The selection shall have been approved by the Authorized Officer.

If no successor Unit Operator is selected and qualified as herein provided, the Authorized Officer [of BLM] at his election may declare this Unit Agreement terminated.

(Unit agreement at section 8 (emphasis added).)^{4/}

Section 9 specifies that the unit operator and working interest owners shall enter into a separate unit operating agreement, subordinate to the controlling terms of the unit agreement, which will establish the rights and obligations of both. Section 10 sets forth rights and obligations of the unit operator; these rights and obligations are limited to the “rights of possession and use * * * only for purposes herein specified.” While designating the rights and obligations of the unit operator, section 10 does not authorize the unit operator to select its successor unit operator, which selection is covered exclusively in section 8.

Sections 18 and 19 of the unit agreement cover leases and contracts and covenants running with the lands. Of critical importance to Meritage’s arguments, section 19 states:

^{4/} While a majority of working interest owners selects the incoming operator in section 8, a 90 percent vote is required to remove an outgoing operator for cause in section 7. The clause permitting a change to be negotiated by working interest owners therefore covers only the selection of the new operator. The “change” language maintains the provision that the incoming operator is selected by the majority vote, in all circumstances where the unit operator is changed.

19. COVENANTS RUN WITH LAND. The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Unit Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest. No assignment or transfer of any Working Interest shall be binding upon Unit Operator * * * until the first day of the calendar month after Unit Operator * * * is furnished with the original, photostat, or certified copy of the instrument of transfer.

(Unit agreement at section 19 (emphasis added).)

The following facts are not in dispute. As noted, Presidio was originally designated as the unit operator of the Table Mountain Unit. (Unit agreement at section 6.) Presidio was initially the largest single working interest owner in the unit, holding a 28.548694 percent share. (Unit Operating Agreement Exhibit D (Westport Record (WR) at 299-300).)^{5/} The parties agree that Presidio sold half of its working interest to Axem Resources, Inc. (Axem), but remained in its designated role as unit operator. (Westport Answer at 1.) Westport acquired Axem's and eventually others' working interests, so that by the time this appeal arose, Westport owned over 58 percent of the working interest in the Table Mountain Unit. *Id.* at 2.

The parties also agree that Tom Brown, Inc. (TBI), acquired Presidio's remaining interest, and also became the successor unit operator by virtue of documents not in the record before us. The parties agree that by December 2001, TBI had indicated its intention to sell its interests in the Table Mountain Unit and in the nearby Culp Draw Unit.^{6/}

The record indicates that Westport and Meritage each sought to become unit operator and to obtain support from working interest owners or BLM for its "candidacy" for that position in both the Table Mountain and Culp Draw Units. On December 17, 2001, Westport notified other working interest holders in both units that upon "divestment by TBI," Westport aspired to take over operations as unit operator and solicited their express designation of Westport as the successor unit operator. (Dec. 17, 2001, Westport letter to working interest owners (WR at

^{5/} Westport compiled onto compact disc documents submitted to BLM and sequentially paginated them.

^{6/} The Culp Draw Unit is also referred to in the record as the "Culp Draw Shannon Unit."

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Merit Energy Company (Merit) also indicated an interest in taking over operations in the Culp Draw Unit.²⁷ By letter dated December 21, 2001, Merit commented on Westport's letter, stating:

We concur with Westport that an election of Successor Operator must be held in the event that Tom Brown sells their interest in these [Table Mountain and Culp Draw] units. Although Merit Energy Company does not have ownership in the Table Mountain Unit, Merit would also like to express its interest in taking over operations of the Culp Draw Shannon Unit.

(Dec. 21, 2001, letter from Merit Energy Company to Culp Draw Shannon Unit Working Interest Owners (WR at 338) (emphasis added).)

With respect to the Table Mountain Unit, Meritage sought BLM's support in resisting Westport's effort to succeed TBI as unit operator by obtaining working interest support for a Westport designation. By memorandum and letter dated January 17 and 25, 2002, respectively (filed with BLM by fax on those dates), counsel for Meritage sought an interpretation of the "Table Mountain and Culp Draw Unit Agreements" from BLM. Counsel asserted that Meritage was seeking "purchase of the working interests and operating rights of [TBI] in the two units." (Jan. 25, 2002, letter from counsel for Meritage to BLM.) RMG had apparently indicated to Meritage that RMG interpreted the unit agreements in a manner with which Meritage disagreed. Meritage stated: "In our opinion, [TBI] has the right to assign not only its working interests but also its operating rights under the unit agreement. Moreover, we believe that the unit agreement does not allow a mere majority vote to displace the unit operator of that position, without just cause." *Id.* Counsel proceeded to set forth Meritage's view of articles 8 and 19 of the Table Mountain and Culp Draw Unit Agreements, which it contended were the same. This view was that TBI's rights were assignable and that therefore Meritage could purchase by assignment unit operator status for both units from TBI, notwithstanding any selection by the working interest owners. Presumably, Meritage wanted BLM to make this pronouncement so that Westport would cease its efforts and then Meritage would be able to present for approval by BLM an assignment of TBI's operating rights to Meritage. In the absence of any other designation of a successor, BLM presumably would have approved it.

With respect to the Culp Draw Unit, however, Meritage and TBI took the view that the operative language of the Culp Draw Unit Agreement (which Meritage had

²⁷ The record contains no indication that Merit Energy Company is related to Meritage.

explained to BLM was identical in relevant respect to the Table Mountain Unit Agreement) warranted an effort to seek working interest owner selection. Thus, on February 26, 2002, TBI sent a letter to the Culp Draw working interest owners, asserting that TBI had

entered into a Purchase and Sale Agreement with Meritage Energy Partners, LLC (“Meritage”) for the sale of all its interest in the Culp Draw Unit, together with other properties in the immediate vicinity thereof. * * *

Meritage desires to succeed TBI as operator of the Culp Draw Unit and TBI recommends that Meritage succeed TBI as Operator. * * *

Accordingly, TBI hereby solicits your agreement to designate Meritage as successor operator to TBI for the Culp Draw Unit * * * .

(Feb. 26, 2002, letter from TBI to Culp Draw Working Interest Holders (WR at 72).) The letter asked the working interest holders to “execute” a “designation” of Meritage as the unit operator.^{8/}

Concerning the Table Mountain Unit, on March 11, 2002, Westport sent a letter to BLM referencing the February 26, 2002, letter regarding the Culp Draw Unit just discussed. Based upon TBI’s letter with respect to the Culp Draw Unit, Westport stated that it had contacted TBI and Meritage, and that they “have confirmed that the pending sale included Tom Brown’s interest in the Table Mountain (Shannon Sand) Unit.” Westport’s letter advised BLM that it had asked TBI “to call for a Working Interest Owner meeting” for the Table Mountain Unit, in order to select a successor operator.

Simultaneously on March 11, 2002, Westport sent a letter to the Table Mountain Unit working interest owners advising them of TBI’s “impending sale of all of its interest in the Table Mountain Unit to Meritage.” Westport clearly identified its purpose to “solicit” agreement of the working interest owners “to designate Westport as successor operator to [TBI] for the Table Mountain Unit.” (Mar. 11, 2002, Request for Working Interest Owner Meeting.) Westport explained its position regarding the merits of choosing itself as unit operator, and asked for a meeting of the working interest holders.

Based upon this request, Westport received documents approving Westport as successor operator. On March 19, 2002, Westport sent a memorandum to the Table

^{8/} The record contains no indication that such a letter was sent by TBI with respect to the Table Mountain Unit.

Mountain Unit working interest holders advising them that Westport “has entered into agreements with working interest owners of the Table Mountain Unit whereby said owners have agreed to designate Westport successor operator.” (Mar. 19, 2002, memorandum from Westport to Table Mountain working interest owners.) Based upon its success in obtaining these designations, Westport withdrew its request for a working interest owner meeting. Id.

Meritage and TBI proceeded to execute an agreement for the purchase and sale of TBI’s interests in both the Table Mountain and Culp Draw Units. Although no party has submitted information regarding the working interest owners’ response to the request that they support Meritage’s campaign to become the unit operator of the Culp Draw Unit (TBI letter, Feb. 26, 2002), it appears that the solicitation was successful. According to Westport, a majority of working interest holders in the Culp Draw Unit approved Meritage as the successor unit operator of that unit. (Westport Answer at 2.) Meritage does not dispute this assertion in its response. TBI proceeded to prepare an assignment of interest to Meritage whereby it purported to assign its unit operator status to Meritage for the Culp Draw, Table Mountain, and Heldt Draw Units. (“Change in Operator” form (WR at 144-46).)

On March 27, 2002, Westport filed with BLM the various executed agreements it had obtained from the working interest owners in the Table Mountain Unit designating Westport to succeed TBI as unit operator. These agreements represented a majority (over 65 percent) of the working interests in the Table Mountain Unit. (Mar. 27, 2002, letter from Westport to BLM (WR at 106-07) (submitting “originally executed agreements designating Westport * * * as successor Unit Operator under the Table Mountain Unit”).) ^{2/} Westport acknowledged the impending dispute with Meritage and argued that BLM should approve Westport as unit operator.

Meritage may contend that a successor operator can be designated by TBI without a vote by, or concurrence of, the other working interest owners in the Unit. This contention violates the express terms of the Unit Agreement, as interpreted by the IBLA in the case of *Holcomb Oil and Gas, Inc.*, 149 IBLA 226 (1999). * * *

Meritage’s contention also contradicts the position taken by TBI and various working interest owners in the Culp Draw Unit. As you know, TBI is selling its interests in that Unit at the same time, and to the same buyer, as its interests in the Table Mountain Unit. In connection with the sale of those interests, TBI solicited the agreement

^{2/} These certifications were sent to BLM with the Mar. 27, 2002, letter and are in the record accumulated by Westport at WR 151-68. They are also attached to an Apr. 16, 2002, brief submitted to the BLM State Director in WR at 263-85.

of other working interest owners to support Meritage as successor Unit Operator. Working interest owners representing majority ownership in the Culp Draw Unit, including both Merit Energy and Westport, concurred with TBI that a vote was required before a successor operator could be selected. * * *

* * * Westport is currently operating other properties in the vicinity of the Unit and has an experienced and capable staff. As you will see from our enclosed letter to TBI, we are ready to take over operation of the Unit immediately with our existing personnel and facilities in the area. In order that we can make the appropriate arrangements with TBI for an orderly transition, we ask that the BLM immediately approve Westport's appointment as successor Unit Operator, to be effective upon closing of TBI's sale to Meritage, which we understand is currently scheduled for April 5, 2002.

(Mar. 27, 2002, Westport letter to BLM.) On that same date, Westport sent a letter to TBI to the same effect and asking for an orderly transition. (Mar. 27, 2002, Westport letter to TBI.)

Meritage immediately advised BLM of its intent to challenge any action on BLM's part to approve Westport as the successor unit operator. On April 2, 2002, prior to the effective date of the transfer from TBI to Meritage and thus prior to any potential decision by BLM, Meritage submitted a request for stay of any BLM decision approving a successor unit operator. In this letter, Meritage stated that it planned to seek state director review of any decision that might be adverse to Meritage's plans.

On April 5, 2002, Meritage acquired TBI's interests in both units, pursuant to their purchase and sale agreement. On that same day, RMG approved Westport as the successor unit operator of the Table Mountain Unit. (Apr. 5, 2002, RMG Approval (WR at 149-50).) On April 8, 2002, RMG received from Meritage its designation of operator forms which assigned TBI's interests in the Table Mountain, Culp Draw, and Heldt Draw units, which Meritage had sent to RMG on April 4. (Apr. 4, 2002, letter from Meritage to BLM, attaching "Change in Operator" form (WR at 144-46).)

On April 9, 2002, Meritage filed a request for state director review (SDR) of the April 5, 2002, decision approving Westport as successor unit operator. (Apr. 8, 2002, Request for SDR (WR at 179-88).) On April 9, 2002, the Wyoming State Office, BLM granted a stay of the April 5, 2002, RMG decision. (Apr. 9, 2002, "Stay Request Granted" (WR at 237-38).)

By letter to BLM dated April 10, 2002, counsel for Westport objected that Westport had not been informed that Meritage had obtained a stay of BLM's approval of Westport as successor unit operator and complained that "we are apparently not on your office's service list of matters pertaining to Meritage's pending request for [SDR]." (Apr. 10, 2002, letter from Westport to BLM (WR at 239).) Westport requested and was granted the opportunity to participate in the SDR process.

Before the State Director, Meritage argued that the dispute is controlled by the terms of section 19 of the unit agreement. Because that section conditions a transfer of interest in unit land or leases "upon the assumption of all privileges and obligations," Meritage contended that the operator's rights are assignable. Accordingly, Meritage argued that TBI had the right to assign its interest to Meritage, including its status as unit operator, notwithstanding any action by the working interest owners to designate another entity as unit operator, and that BLM's approval of Westport as unit operator ignored the language of the unit agreement. Meritage claimed that prior Departmental (BLM and, previously, the U.S. Geological Survey) practice was to approve designations of successor unit operator by assignment, and that BLM's publication of a model form for changing a unit operator by assignment at 43 CFR 3186.4 indicates that an operator's rights may be assigned and that BLM must approve an assignment.

On May 7, 2002, the DSD affirmed the April 5, 2002, RMG approval decision, found that RMG properly approved Westport as successor unit operator in accordance with the unit agreement, and lifted the stay of the RMG decision. (SDR decision WY-2002-10 (WR at 367-74).) Relying on section 8 of the unit agreement, which governs successor unit operators, the DSD explained that although TBI never formally resigned as unit operator, it effectively resigned by selling its interest. Because sale of all its interests effectively constituted a resignation, the SDR decision concluded that TBI's action initiated the selection process outlined in section 8 of the unit agreement. (SDR decision at 5-6.) The DSD viewed "the majority vote of the interest holders as a 'negotiation' of the working interest owners in the selection of a successor unit operator" and rejected Meritage's invitation to interpret section 8 "to require a separate document indicating a change of unit operator has been negotiated by the working interest owners, when a majority vote clearly indicates the intent of the working interest owners regarding the selection of a successor unit operator." *Id.*

The SDR decision concluded that section 19 of the unit agreement did not "specifically contemplate that the right to operate the unit is assignable upon transfer [of] interests in the land or leases." (SDR decision at 4.) Instead, the DSD refused to interpret section 19 to "provid[e] for the assignment of unit operations by the outgoing party, while the majority of working interest owners have no opportunity to decide who will operate the property on their behalf." *Id.* The SDR decision rejected Meritage's claim that changing unit operators by assignment is the common practice,

and, in any event, distinguished other matters in which such assignments were approved based on their facts.^{10/} (SDR decision at 4-5.)

Meritage timely appealed the SDR decision to this Board. On June 14, 2002, Meritage filed its statement of reasons (SOR) and a Motion for Expedited Consideration, asserting that it would reap economies of scale from joint operation of the Table Mountain Unit with the adjacent Culp Draw Unit. On July 17, 2002, Westport filed an Answer and Response opposing the Motion for Expedited Consideration. The Board denied the Motion by Order dated July 24, 2002.

In its SOR, Meritage asserts that an operator's rights are assignable contract rights and that section 19 ("Covenants Run With Land") of the Table Mountain Unit Agreement allows the previous unit operator to transfer unit operations together with its working interest. Meritage argues that BLM misinterpreted and misapplied sections 7 and 8 of the Table Mountain Unit Agreement in a way that would negate section 19. Meritage argues that section 8 would apply only in a case of actual resignation or removal or a negotiated change among working interest owners. Meritage asserts that, by contrast, TBI sold its working interests and that this is not tantamount to an express resignation. Meritage also points out that section 7 of the unit agreement provides for removal of an operator by a 90 percent vote of the working interest holders, but TBI was not removed, nor was its position changed by negotiation of working interest owners. Therefore, Meritage claims that the section 8 selection process for a successor unit operator was not triggered and, despite its subject title as "Successor Unit Operator," Meritage contends that section 8 simply "does not apply." In addition, Meritage argues that the fact that TBI and Meritage used BLM's model form from 43 CFR 3186.4 demonstrates that an operator's rights can be assigned. Meritage asserts that our decision in Holcomb Oil and Gas, Inc., 149 IBLA 226 (1999), which followed the terms of a unit agreement establishing succession of the unit operator, and which the State Director relied on in his decision, is distinguishable on its facts. Meritage maintains that in that case the operator resigned, but TBI did not do so here.

In its Answer Westport alleges that Meritage attempted to bypass the successor unit operator selection process outlined in the Table Mountain Unit Agreement by claiming it had purchased the role of successor unit operator. Westport asserts that for the adjacent Culp Draw Unit, Meritage had followed a selection process analogous to that found in the Table Mountain Unit Agreement. Westport argues that the only part of the unit agreement to expressly address selection of a successor unit operator is section 8 and that section 19 does not control the process. Westport argues that TBI, the former unit operator, effectively resigned and that "resignation," as the term

^{10/} RMG had acknowledged approving a unit operator assignment in an unrelated unit, when the assignment was unopposed.

is used in section 8 of the unit agreement, need not be a formal process initiated by the operator. Westport argues that no Board or applicable judicial precedent holds that operations in a Federal unit may be assigned over the objection of a majority of the working interest owners, citing Williams v. McWhorter, 218 P. 791, 793 (Wyo. 1923). (Answer at 16-17.) Relying on the decision in Holcomb Oil and Gas, Inc., 149 IBLA at 229, Westport emphasizes that Meritage, as the appellant, bears the burden of proof to show error in the decision being appealed and argues that Meritage has not done so.

On July 12, 2002, BLM submitted as its answer a memorandum from the Acting DSD, Minerals and Lands. On August 19, 2002, Meritage filed a response to Westport reiterating its interpretation of section 19 of the unit agreement as controlling this dispute.

[1] An appellant carries the burden of proof to show error in the decision being appealed. In the absence of such a showing, the decision will be affirmed. Dale Daugherty, 139 IBLA 56, 65 (1997); Glenn B. Sheldon, 128 IBLA 188, 191 (1994). A party who appeals a BLM approval of the designation of a successor unit operator or refusal to approve the designation of a successor unit operator must show that BLM's determination is incorrect. Holcomb Oil and Gas, Inc., 149 IBLA at 229.

With this placement of burden on Meritage to prove error in the SDR decision, it is important at this juncture to identify the precise issue before us. Meritage's position is that the Board must reverse the SDR decision because we must find, as a matter of law and contract interpretation, that section 19 of the unit agreement compels the conclusion that TBI was permitted to assign the unit operator position to Meritage. Under Meritage's construction, section 8, which specifically addresses the "successor unit operator" (and which, if applicable, would repudiate Meritage's position), cannot come into play because TBI did not resign, and because the working interest owners did not remove the unit operator (presumably, TBI) by a 90 percent vote under section 7. Under Meritage's reading, if we do not endorse its point of view and reverse the SDR decision, a series of broad consequences will ensue, including the general repudiation of (1) the terms of the Table Mountain Unit Agreement which are similar to common terms in unit agreements; (2) the general intent of the parties to the agreement; (3) consistent agency practice of approving unit operator assignments; and (4) the agency form effectuating such a purpose at 43 CFR 3186.4.

We reject Meritage's general postulation of the question before us and the breadth of the implications of a ruling in this case. The facts of this case and the matter before the RMG and the agency on SDR are narrow and confined. Contrary to Meritage's suggestion, RMG was not presented with the question of whether it was authorized to approve an assignment of operating rights from TBI to Meritage. What

was before the RMG was whether to approve the majority working interest support and selection of Westport for designation as a unit operator in the Table Mountain Unit. It did so.

Thus, the question before us, simply stated, is whether, on the facts before us, the DSD erred in affirming the RMG's decision to approve Westport's designation as operator by more than 65 percent of the working interest holders. We agree with the DSD that RMG's decision was entirely rational. RMG was faced with a successful campaign by Westport to obtain express designation as successor unit operator by a majority of the working interest holders of the Table Mountain Unit.^{11/} RMG approved that designation. We find no error in this conclusion.

Responding to Meritage's arguments, we do not find that they meet Meritage's burden of proving error in the decision. We find nothing in the Table Mountain Unit Agreement, the law governing Federally approved unit agreements, BLM regulations, or precedent that would require anything but this outcome.

By way of background, the right of Federal lessees to unitize comes from the Mineral Leasing Act, which also authorizes the Secretary to issue Federal oil and gas leases. 30 U.S.C. § 181 (2000). The statute provides that Federal oil and gas lessees "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 * * * whenever determined and certified by the Secretary"; it also gives the Secretary the discretion to establish regulations "as necessary or proper to secure the proper protection of the public interest." 30 U.S.C. § 226(m) (2000).

The regulation governing unit operators makes clear that when an operator for a unit is designated, the expectation is that it must be selected by working interest holders. Addressing "Qualifications of Unit Operator," 43 CFR 3182.1 provides:

^{11/} RMG faced an open battle for the unit operator position of the Table Mountain Unit from the time it became clear that TBI was departing. Westport, a working interest owner with considerable interest in the unit, sought the position and Meritage sought to acquire TBI's working interest and become the unit operator. Both of these goals appear to have been reasonable business choices. In the Culp Draw Unit, Meritage believed it could be successful in seeking, and sought and received, working interest owner support. Meritage apparently did not seek to compete in direct solicitation to the working interest holders of the Table Mountain Unit. Instead, it asked BLM for advance certification that Meritage could buy TBI's interests and thereby become unit operator of the Table Mountain Unit, notwithstanding Westport's garnering of working interest support for its designation as the unit operator.

The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of or change in a unit operator will become effective until approved by the authorized officer [of the Department], and no such approval will be granted unless the successor unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

(Emphasis added). Thus, this regulation makes clear that the working interest owners are expected to have a say in designating the unit operator. RMG's decision to approve the working interest owners' majority designation was entirely reasonable. Meritage's position would have us reverse the DSD, and the RMG, for allowing the working interest owners to make that designation, a conclusion that would contravene 43 CFR 3182.1.

The terms of the unit agreement are consistent with that regulation. Section 8 specifies the manner in which a majority of working interest holders may designate a unit operator. We agree with the DSD that section 8 is the only provision to address unit operator succession in the Table Mountain Unit. It provides that "[w]henver * * * a change of Unit Operator is negotiated by the Working Interest Owners, a successor Unit Operator shall be selected by Working Interest Owners voting according to their respective Tract participation in all unitized land by a majority vote." When TBI announced its intention to depart, Westport successfully negotiated a change in unit operator status with the majority of working interest owners, obtaining approval of a majority of such owners according to their respective tract participation in the unitized land. Therefore, BLM properly approved selection of the successor unit operator by a majority of the working interest owners according to their tract participation. Holcomb Oil and Gas, Inc., 149 IBLA at 230.^{12/} We find it difficult to imagine facts justifying reversal of such a majority selection.

Meritage argues that the selection clause of section 8, just quoted, was not pertinent to the choice of successor unit operator because the departing unit operator neither resigned nor was removed. Thus, Meritage contends that the only way the change in operator may be negotiated by the working interest owners is after such a resignation or removal. We disagree with Meritage's entire construction of the unit agreement. As we discussed in the facts above, we construe section 7 as governing the departing unit operator and section 8 as governing the successor or the future operator. The significant language of section 8 for purposes of this dispute, therefore, is that the successor unit operator is to be "selected by Working Interest

^{12/} In fact, the provision governing succession of the unit operator quoted in Holcomb, 149 IBLA at 230, is virtually identical to section 8 in this case.

Owners.” Nothing in section 8 supports, let alone compels, the conclusion Meritage insists upon, that this operative language controls only those successor unit operators that follow a prior operator removed for cause or that choose to couch their departures in an express formal resignation, as opposed to some other terminology.

Put another way, Meritage’s construction is entirely dependant on its view that sections 7 and 8 divide departing and incoming unit operators into categories, only some of which these provisions expressly cover. Meritage believes that section 7 covers departing operators that are “removed,” or declare a “resignation,” but presumes there are other unidentified unit operators not covered. Meritage contends that section 8 covers selection of an incoming (successor) unit operator only when the subset of departing unit operators is involved that Meritage has described – again, those that are removed or declare a resignation – but that when this other undefined class of departing operators is found, neither section 7 nor 8 applies. We find this construction to impose an artificial and unduly complicated construction on a simple and straightforward contract, based on importing unconvincing interpretations on the use of plain words such as “resignation” and “change.” The value of creating such a dual system, however, although it supports Meritage’s interest in winning the unit operator position, is not supported by sound contract interpretation.

To the contrary, adopting Meritage’s construction would establish unjustifiable loopholes for outgoing operators both within sections 7 and 8 of the unit agreement, which we do not believe were ever intended. While section 7 sets forth the contractual obligations of departing unit operators and advises them that their liability continues for certain prior and future periods, Meritage would construe that section to cover only some departing unit operators, leaving out others who, as did TBI here, depart but refuse to identify themselves as “resigning.” This construction would irresponsibly create a loophole in the liability coverage for outgoing operators expressly identified in section 7. Likewise, section 8 meant to establish that incoming operators would be subject to selection by the working interest owners. Once again, Meritage argues that there is a subset of incoming operators that may be selected by outgoing operators, and not the working interest owners. As with section 7, we view Meritage’s self-interested arguments both to create and then to exploit an entirely unjustified ambiguity. Even if we were to agree that there was ambiguity in section 8, we would not resolve it by dispensing with the plain intent of the contract term that the working interests select the unit operator. This is especially true when the only governing regulation, 43 CFR 3182.1, compels this result in providing that the “unit operator may be * * * such other party as may be selected by the owners of working interests.” We construe section 8 to be consistent, not inconsistent, with operative government regulations.

Our construction avoids the need to decide whether TBI’s action must be legally defined for purposes of the unit agreement as a “resignation” or otherwise.

TBI chose to depart.^{13/} Section 7 covers departing unit operators and establishes the extent of TBI's ongoing liabilities. In that sense, we believe "resignation" within section 7 meant to cover voluntary departures by unit operators, while the "removal" terms covered involuntary departures. Meritage does not explain how, under its construction of "resignation," TBI could be held to any liabilities and obligations established for all departing operators in section 7.

Nor are we persuaded by Meritage's stated concerns that strict procedures governing "resignation" or "negotiation" were not followed by TBI or Westport. The unit agreement requires no such procedures. The absence of particularized procedures for resignation reinforces our view that the parties anticipated a common sense approach to selection of the successor unit operator by the working interest owners. In Holcomb, 149 IBLA at 233, we approved the conclusion of the SDR decision in that appeal, construing language almost identical to that in section 8, that no formal resignation document was required: "There is no need to secure a corresponding resignation or removal of a unit operator." We reach the same conclusion with respect to section 8.

What is unequivocal in section 8 is that a majority of working interest owners could select a unit operator successor. By contrast, no language in the unit agreement suggests that a departing unit operator would have the exclusive right to determine who would operate the unit after its departure, notwithstanding the choice of the majority of working interest owners, merely by identifying its departure and sale as a "non-resignation." We will not adopt Meritage's construction of the unit agreement to create such a result.

We reject Meritage's argument that the DSD and RMG decisions render section 19 a nullity. Section 19 ensures that a grantee obtains all privileges and obligations of the grantor "of interest in land or leases." A "transfer * * * of interest in land or leases subject hereto shall be * * * conditioned upon the assumption of all privileges and obligations hereunder by the * * * transferee." (Unit agreement at section 19.) There is no issue in section 19 of an assignment of a contract right to be a unit operator. Failure to construe it to address that topic does no violence to the topic actually covered by section 19. In fact, Meritage acknowledges that the transfer of unit operator status is not automatic with a transfer of working interest ownership in the unit. Though it claims that the "operator's contractual rights" are "covenants running with the land" (Meritage Response at 4), Meritage implicitly concedes that

^{13/} We agree with Meritage that TBI was not removed for cause. We disagree that our construction of the agreement amounts to permitting TBI to be removed at a less than 90 percent vote. TBI was not removed by the owners. TBI formally announced its impending departure. At that point, the working interest owners were free to negotiate the selection of the successor by majority vote.

no covenant “runs” with the transfer of the working interest by accepting that a separate designation of operator is necessary to establish the identity of the unit operator. Otherwise, Axem, and later Westport, would have obtained operator status by “covenant” by acquiring working interests from Presidio. They did not.

Meritage argues that because BLM approved the assignment of operating rights from TBI to Meritage in the Culp Draw Unit and in other cases, it must necessarily approve an assignment from TBI to Meritage in the Table Mountain Unit. Meritage successfully communicated to working interest owners in the Culp Draw Unit its desire to succeed TBI as operator, and BLM approved its designation as operator in the form of an assignment from TBI. We find no error in BLM’s approval on such facts.^{14/} That it did so there or in any other case does not mean, however, that BLM must do so in the face of opposition by a majority of the working interest holders. Westport is correct that the precedent in Holcomb Oil and Gas, Inc., has already answered that question and rejected Meritage’s contention.

Nor, finally, does the existence of BLM’s form for transfer of an operator status to another by assignment control this case. 43 CFR 3186.4. Meritage claims that the form ensures that, since an operator may transfer its operating interest to another, it may be done in this case by assignment and BLM must accept the transfer of operating rights to Meritage. Meritage errs in suggesting that BLM regulations limit transfers of operator status to assignments from one operator to a successor. Subpart 3186 displays a number of model forms for actions parties may take, including a unit agreement, exhibits to the model agreement, and a bond form.^{15/} At 43 CFR 3186.3, BLM has provided a model form for operator designation by working interest owners. The purpose of these forms is to provide a mechanism for designation and continuation of rights and liabilities from one operator to another subject to approval by BLM. They do not establish a compulsory obligation on BLM to approve them. Cf. 43 CFR 3182.1 (BLM may approve only qualified operators).

^{14/} Westport’s actions in seeking to obtain working interest owner approval for its designation as operator were reasonable and entirely consistent with TBI’s and Meritage’s actions under the same contract language in Meritage’s efforts to seek working interest owner approval for itself as the Culp Draw Unit Operator.

^{15/} We note, as well that the model form for a unit agreement at 43 CFR 3186.1 is consistent with our interpretation of the Table Mountain Unit Agreement.

Therefore, 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.

Lisa Hemmer
Administrative Judge

I concur:

David L. Hughes
Administrative Judge