



LARAMIE ENERGY II, LLC

182 IBLA 317

Decided July 31, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

LARAMIE ENERGY II, LLC

IBLA 2011-123

Decided July 31, 2012

Appeal from a February 4, 2011, decision of the Colorado Deputy State Director for Energy, Lands and Minerals, Bureau of Land Management, upholding BLM's decisions to approve two unit agreements for oil and gas development units in Mesa County, Colorado. SDR CO-11-02.

Dismissed.

1. Rules of Practice: Appeals: Standing to Appeal

In order to pursue an appeal from a BLM decision, the issues raised by the appeal must be ripe for review by the Board and the appellant must have standing to appeal that decision. To establish standing to appeal under 43 C.F.R. § 4.410, the individual or organization must demonstrate status as a party to the case with a legally cognizable interest that is adversely affected by the decision.

2. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Standing to Appeal

Where, on appeal from a State Director's decision denying protests of decisions approving unit agreements for oil and gas development, an appellant fails to show how any legally cognizable interest has been adversely affected by such denial, the appellant lacks standing to appeal and the Board will dismiss the appeal.

3. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Standing to Appeal

As a contingent interest, a top lease is not a present interest, and thus does not constitute a legally cognizable

interest, as required by 43 C.F.R. § 4.410, to provide standing to appeal a decision to the Board.

APPEARANCES: Ezekial J. Williams, Esq., Steven K. Imig, Esq., Denver, Colorado for Laramie Energy II, LLC; Scott M. Campbell, Esq., Nick A. Swartzendruber, Esq., Denver, Colorado for Oxy USA Inc.; Danielle DiMauro, Esq., Office of the Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Laramie Energy II, LLC (Laramie) appeals from a February 4, 2011, decision of the Colorado Deputy State Director for Energy, Lands and Minerals, Bureau of Land Management (BLM), SDR CO-11-02, on State Director Review (SDR Decision), upholding BLM's decision of December 17, 2010, approving the Collbran (Shallow) Unit Agreement and BLM's decision of December 29, 2010, approving the South Collbran (Shallow) Unit Agreement, both proposed by OXY USA Inc. (Oxy) for oil and gas development in Mesa County, Colorado.¹ Oxy and BLM request the Board to dismiss the instant appeal on the ground that Laramie lacks standing to appeal for failure to show that the SDR Decision caused injury to a legally cognizable interest. Motion of Oxy to Dismiss Appeal for Lack of Standing (Oxy Motion to Dismiss); Reply of Oxy in Support of Motion to Dismiss; BLM Answer at 13-17. As explained below, we grant those motions and dismiss the appeal.

BACKGROUND

Collbran Unit

On February 19, 2010, Oxy filed an Application for Designation of Proposed Unit Area and Determination of Test Well for the Collbran (Shallow) Unit Area, requesting that the Colorado State Office (CSO), BLM, designate approximately

¹ The Collbran Unit embraces lands in all or part of Federal leases COC-50945, COC-64792, COC-64793, COC-64794, and COC-72915. The South Collbran Unit embraces lands in all or part of Federal leases COC-64795, COC-64796, and COC-64797. Each unit also includes privately-owned minerals and a small tract of unleased Federal minerals.

5,333.65 acres² of Federal lands and 400 acres of patented lands as a logical Unit Area pursuant to the unitization provisions of the Mineral Leasing Act, 30 U.S.C. § 226(m) (2006). Collbran Application at 1. Oxy also requested BLM to approve a “test well, drilled to a depth of 8,250 feet (TVD [total vertical depth] of 7,500 feet) or to test 250 feet below the top of the Corcoran member of the Iles formation, whichever is the lesser depth, unless commercial production in paying quantities . . . is encountered at a lesser depth.” *Id.*

On March 31, 2010, pursuant to regulations at 43 C.F.R. Part 3180, BLM designated the Collbran Unit as an area logically subject to development under a unit agreement. SOR, Ex. 12 (Collbran Designation Letter) at 1. BLM specified that the unit agreement that Oxy would submit should provide for one obligation well at the location and depth specified by BLM, and explained that approval of the unit agreement would be conditioned on “the full commitment of sufficient lands to afford effective control of operations in the unit area.” *Id.*

Laramie claims surface and mineral ownership within the Collbran Unit because, “in June 2010,” three months after BLM designated the Collbran Unit, “Laramie acquired the [Hawxhurst] Ranch, and the fee lands and minerals within it.” SOR at 9; *see also* SOR, Ex. 18 (Collbran Valley map dated Aug. 13, 2010); Laramie’s Consolidated Reply at 16; Oxy’s Consolidated Statement of Facts at Ex. B (E-mail from Laramie to Oxy dated Aug. 13, 2010). Laramie’s map shows the Hawxhurst Ranch property overlapping the south-central portion of the Collbran Unit and the portions of Tract 8 that lie in the center of the Unit. Laramie claims it acquired a fee

² The Collbran Unit, as proposed and adopted, consists of 10 tracts covering approximately 5,733.65 acres—5,333.65 acres of Federal lands (Tracts 1-7, 93% of the minerals within the Collbran Unit) and 400 acres of patented lands. Collbran Unit Agreement, Exhibit (Ex.) A. The United States owns the minerals to approximately 5,333.65 acres. *Id.* Oxy is the lessee and a 95% working interest owner as to approximately 5,088.92 Federal acres within the Collbran Unit (Tracts 1-5) for all formations from the surface to the stratigraphic equivalent of the base of the Iles Formation, as encountered at a depth of 6,428 feet in the EnCana Hill # 29-3 well, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 29, T. 9 S., R. 94 W., 6th Principal Meridian. Statement of Reasons (SOR), Ex. 3 (hereinafter Collbran Unit Agreement, Ex. B); SOR, Ex. 20. EnCana Oil & Gas USA Inc. (EnCana) owns 5% of the working interest in the leases covering Tracts 1-5 (lands of Tract 5 in secs. 16 and 17 only) to the same depth described above, and 100% of the working interest in that acreage as to all formations below the base of the Iles Formation. SOR, Exs. 3, 20. EnCana also has 100% of the working interest in the lease on Tract 6, which is 80 acres of Federal land, for which Laramie is the lessee of record. Collbran Unit Agreement, Exs. A, B; BLM Answer at 4; Oxy Consolidated Statement of Facts at 2.

mineral interest underlying the Hawxhurst Ranch on Tract 8 and 50% of the minerals underlying Tract 9. SOR at 9-10. BLM's administrative record does not verify these assertions.³ In an E-mail message to Oxy,⁴ Laramie contended that Oxy's access to the western portions of the unit is limited due to topography and a Colorado Department of Wildlife conservation easement over part of the Hawxhurst Ranch property. Acknowledging Oxy's proposed Collbran Unit, Laramie stated that if the unit is approved, "this will hold the leases for a while . . . it will also require a continuous drilling program on leases that are part of the unit which Oxy will be unable to reach unless access is available through the Hawxhurst Ranch." *Id.* Laramie then proposed that Laramie and Oxy form

a joint venture on a 50/50 basis on the Federal lands to the north and east of the Hawxhurst Ranch where by operatorship we can provide access. We are prepared to use our rig to drill wells on the Federal leases about to expire. Because of our in-holdings on the Federal acreage and if we are designated operator on the portion of the leases only accessible through the Hawxhurst, I believe we could include the drilling of these Federal leases in our development plan with the Colorado Department of Wildlife and gain approval for access through the ranch.

E-mail from Laramie to Oxy dated Aug. 13, 2010.

Oxy reports it declined to accept Laramie's proposal, calling it a threat "to deny access across its surface unless Oxy agreed to assign Laramie a 50% working interest in the Collbran Unit and designate Laramie as the operator of the unit." Oxy

³ Evidence in the record is unclear. As BLM explains in its Answer, Laramie's evidence at SOR, Exs. A, Updated A, identify Michael S. Starnes as owner of 100% of the minerals in the Collbran Unit Tract 8 and 50% of the minerals in Tract 9, and the Estate of Elbert S. McCurry as owner of the remaining 50% of the minerals in Tract 9. "BLM assumes, without conceding, that Laramie does in fact own the mineral interests it claims to own in [Collbran Unit] Tracts 8 and 9." BLM Answer at 3 n.2. For purposes of this adjudication and in light of our disposition of the appeal, we too adopt this assumption without making a factual determination.

⁴ In its Reply in Support of Motion to Dismiss at 4 n.5, Oxy provides this account of its historical relationship with Laramie:

Laramie is an active operator in the Piceance Basin. Laramie was formed by the same executives, former employees, and by affiliates of the same private equity investors involved with Laramie Energy, LLC ("Laramie I"). Laramie I is the predecessor in title to Oxy's Piceance Basin assets. (See Ex. A to Oxy's Response, ¶ 9.)

Consolidated Statement of Facts at 3; see Laramie's Consolidated Reply at 16 n.6 (denying the accusation).

On August 26, 2010, Laramie submitted a "Protest Under 43 C.F.R. § 4.450-2 by [Laramie] of Proposed Oxy USA Inc. Collbran (Shallow) Unit Agreement, COC74430X." Oxy filed a response and Laramie a reply.

On September 23, 2010, Oxy submitted the proposed Unit Agreement⁵ for the Collbran Unit, noting that the basic royalty interest owners for unleased fee Tracts 8 and 9 were not committed to the unit, since Laramie had declined to join it, and two other parties had not yet replied. The proposed Collbran Unit Agreement describes the formations of oil and gas to be included as unitized substances, designates Oxy as the Unit Operator, and sets forth the diligence requirements and the consequences for failure to adhere to them, including unit agreement termination. Collbran Unit Agreement, sections 3, 4, 9. Section 10 provides that the Unit operator must submit a plan of development and operation to BLM within 6 months after completion of the first well capable of production in paying quantities on a unit basis. It also requires that the plan "shall provide for the timely exploration of the unitized area and for the diligent drilling necessary for determination of the area or areas capable of producing unitized substances in paying quantities in each and every productive formation." Collbran Unit Agreement, section 10.

On December 17, 2010, BLM issued Oxy a decision approving its proposed Unit Agreement for the Collbran Unit (COC-74430X). On the same day, BLM notified Laramie that it had approved the Collbran Unit Agreement, and advised Laramie that any adversely affected party may request administrative review before the Colorado BLM State Director. BLM's Collbran Unit Agreement Decision states:

⁵ A unit agreement approved by BLM under the Mineral Leasing Act, 30 U.S.C. § 226(m) (2006), 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. A unit agreement specifies the method for allocation of production for purposes of determining royalties, overriding royalties, and other non-cost bearing burdens and is not effective until approved by BLM upon its determination that the agreement is "necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources," pursuant to 43 C.F.R. § 3183.4(a). *Gas Development Corporation*, 177 IBLA 201, 208 (2009) (citing "Unitization and Communitization," § 18.01[2], in *Law of Federal Oil and Gas Leases* (Rocky Mountain Mineral Law Foundation 2008); *Jack J. Grynberg*, 88 IBLA 330, 333 n.4 (1985)).

All lands and interests are either fully or effectively committed except Tracts 8 and 9 All parties owning interests within the unit were invited to join the unit agreement.

In view of the foregoing commitment status, effective control of operations within the unit area is assured. We are of the opinion that the agreement is necessary and advisable in the public interest and for the purpose of more properly conserving natural resources.

BLM's Collbran Unit Agreement Decision at unpaginated (unp.) 2.⁶

South Collbran Unit

On September 9, 2010, Oxy filed an Application for Designation of Proposed Unit Area and Determination of Test Well for the South Collbran Unit Area, requesting that the CSO designate approximately 2,520 acres⁷ of Federal lands and 960 acres of patented lands as a logical Unit Area. South Collbran Application at 1. Oxy also requested BLM to approve a "test well, drilled to a depth of 7,624 feet (TVD of 7,500 feet) or to test 250 feet below the top of the Corcoran member of the Iles formation, whichever is the lesser depth, unless commercial production in paying quantities . . . is encountered at a lesser depth." *Id.*

⁶ BLM's decision advises Oxy that "[p]ursuant to 43 C.F.R. § 3183.4(b) and section 9 of the unit agreement, if the Public Interest Requirement is not fulfilled, the unit will be declared invalid and no lease committed to this agreement shall receive the benefits of 43 C.F.R. § 3107.3-2 and 3107.4." *Id.*

⁷ The South Collbran Unit, as proposed and adopted, consists of 10 tracts covering approximately 3,400 acres. SOR, Ex. 5 (hereinafter South Collbran Unit Agreement), Ex. A. The United States owns the minerals to approximately 2,520 acres (Tracts 1-3; 74% of the minerals within the South Collbran Unit). Oxy is the lessee and a 95% working interest owner as to all the Federal acres within the South Collbran Unit for all formations from the surface of the earth to the stratigraphic equivalent of the base of the Iles Formation, as with the Collbran Unit. EnCana owns the remaining 5% of the working interest in that acreage to that depth and 100% of the working interest in that acreage as to all formations below the base of the Iles Formation. South Collbran Unit Agreement; SOR, Ex. 20. Working interest ownership in Tract 6 (80 acres) follows the same allocation as the Federal acreage above. EnCana also is the lessee and 100% working interest holder of Tract 7 (80 acres). Oxy is the lessee and 100% working interest owner, without depth limitation, of Tracts 8-10 (163 acres). South Collbran Unit Agreement, Exs. A, B; BLM Answer at 7-8; Oxy Consolidated Statement of Facts at 4-5.

With its SOR, Laramie submitted evidence that it acquired an interest, called a “top lease,” in Tract 7 on May 17, 2010. SOR, Ex. 19. It also provided evidence of a conveyance of a top lease in Tract 8 executed by the Shirley Miriam Wachler Trust, as lessor, and Shear, Inc., as lessee, on September 10, 2010. Laramie claims it owns top leases in South Collbran Unit Tracts 7 and 8 that “will take effect if the existing leases covering tracts 7 and 8, respectively, expire.” SOR at 6 (citing SOR, Ex. 19).

With approval of the units, Oxy’s and EnCana’s primary lease terms were extended. Thus, any interests that were contingent on expiration of the leases at the end of their primary terms never matured. With respect to the top lease in Tract 8, we further note the absence of any evidence in the administrative record of a conveyance of Shear, Inc.’s interest to Laramie. Laramie states that “Shear Inc.[,] had agreed to assign [the Tract 8] top lease to Laramie, but the assignment never occurred because the formation of the South Collbran Unit prohibited the top lease from vesting.” Laramie’s Consolidated Reply at 17 n.7. Because Shear, Inc.’s interest never vested, it had no interest to assign. See SOR, Ex. 19, Ex. A. Para. 3 states:

Lessor [Shirley Miriam Wachler Trust] represents and agrees that lessor has not entered into and will not enter into any extension, renewal or agreement to renew the existing lease past its primary term. If the existing lease shall be extended beyond April 20, 2011, through any of the provisions contained in it, including but not limited to production or drilling, then the term of this lease will not commence and this lease will have no effect.

On December 23, 2010, BLM designated the South Collbran Unit as an area logically subject to development under a unit agreement, specified that the unit agreement that Oxy would submit should provide for one obligation well at the location and of the depth specified by BLM, and explained that approval of the unit agreement would be conditioned on “the full commitment of sufficient lands to afford effective control of operations in the unit area.” SOR, Ex. 12 (Collbran Unit Designation Letter) at 1.

On November 2, 2010, Laramie filed a protest to the anticipated approval of the proposed South Collbran Unit Agreement, which Oxy later proposed on December 23, 2010, and BLM approved on December 29, 2010. On January 4, 2010, BLM responded to Laramie’s protest in a letter essentially identical to BLM’s December 17, 2010, letter. It notified Laramie of BLM’s approval of the South Collbran Unit Agreement and of the agency’s appeal procedures for SDR.

The South Collbran Unit Agreement (COC-74758X) describes the unit area (identified in BLM’s designation of the South Collbran Unit, as discussed *supra*) and

the formations of oil and gas to be included as unitized substances. South Collbran Unit Agreement §§ 3,4, Ex. A. The diligence requirements of sections 9 and 10 of the South Collbran Unit Agreement are similar to like sections in the Collbran Unit Agreement.

State Director Review

On January 18, 2011, under 43 C.F.R. §§ 3185.1 and 3165.3, Laramie filed a Request for SDR of BLM's decisions approving the Collbran and South Collbran Unit Agreements dated December 17, 2010, and December 29, 2010, respectively. Laramie first asserted standing and then challenged the decisions, contending that formation of the units does not satisfy the public interest requirement because the unit areas are proven, cover a known producing formation (the Williams Fork formation), and are known to contain paying quantities of hydrocarbons. Laramie further contended that any initial test well will not be located sufficiently far from another producing well in the same formation. Laramie argued that the unit formations do not meet the public interest requirement, claiming they benefit only Oxy, by allowing it to hold leases beyond the expiration of their primary terms.⁸ See SDR Request at 4-9. Laramie also averred that Oxy has limited surface access, rendering it incapable of committing sufficient interest to provide reasonably effective control of the Collbran Unit area, and of diligently developing operations. *Id.* at 9-13. Finally, Laramie contended that commitment of only the *shallow* rights in the Unit areas—"formations of the unitized land from the surface of the earth to the base of the Iles Formation, as encountered at a depth of 6,428 feet"—is contrary to BLM policy. *Id.* at 13-14 (quoting Collbran and South Collbran Unit Agreements at 3).

Oxy responded on January 28, 2011, challenging Laramie's standing to appeal before the State Director, and also refuting Laramie's points of appeal. See Oxy's Response to SDR Request.

On February 4, 2011, the Deputy State Director issued the Decision upholding BLM's decisions. SDR Decision at 2. Regarding standing, he stated generally that unitization in the area "may have effects on Laramie," but did not adjudicate whether Laramie satisfied the requirement that a party be adversely affected to have standing to seek SDR under 43 C.F.R. § 3185.1.⁹ *Id.* He described Laramie's "rather tenuous" basis for standing concerning the South Collbran Unit as involving "Laramie's position

⁸ SOR, Ex. 14 (Laramie's Reply in support of Protest, dated Oct. 1, 2010) at 1.

⁹ This regulation states that "[a]ny party adversely affected by an instruction, order, or decision issued under the regulations of this part [43 C.F.R. Part 3180, "Onshore Oil & Gas Agreements: Unproven Areas"] may request administrative review before the State Director under § 3165.3 of this title."

to obtain interests in private leases through expiration and implementation of their top leases and in federal leases if such leases were not prolonged by unitization and were allowed to expire, thereby providing Laramie the opportunity to acquire, at competitive bidding, the federal mineral estate.” *Id.* The Deputy State Director simply “acknowledged” the issue of standing with respect to both units, without deciding it. *Id.* at 7.

DISCUSSION - STANDING

[1] If appellants do not have standing to appeal to the Board under 43 C.F.R. § 4.410, we have no jurisdiction to consider their appeal, and must dismiss it. *See UOS Energy, LLC*, 176 IBLA 286, 291 (2009); *Colorado Environmental Coalition*, 173 IBLA 362, 367 (2008); *Southern Utah Wilderness Alliance*, 140 IBLA 341, 346 (1997), and cases cited. Consequently, we begin by addressing Laramie’s standing.

“In order to pursue an appeal from a BLM decision, the issues raised by the appeal must be ripe for review by the Board and the appellant must have standing to appeal that decision. The requirements of ripeness and standing are generally related, both arising from 43 C.F.R. § 4.410.” *Powder River Basin Resource Council*, 180 IBLA 32, 43 (2010) (citing *Nevada Outdoor Recreation Association*, 158 IBLA 207, 209-10 (2003); *Devon Energy*, 171 IBLA 43, 48 (2007)). The regulation at 43 C.F.R. § 4.410(a) states that, except as otherwise provided, “[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or of an administrative law judge shall have a right to appeal to the Board.” Thus, in order to have standing under 43 C.F.R. § 4.410 to appeal to this Board from a BLM decision, an appellant must be both a “party to [the] case” and “adversely affected” by that decision. *See Center for Biological Diversity*, 181 IBLA 325, 338 (2012), and cases cited; *Powder River Basin Resource Council*, 180 IBLA at 44. Appellants bear the responsibility to demonstrate the requisite elements of standing. *See Center for Biological Diversity*, 181 IBLA at 338-39; *see also Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

Laramie claims to satisfy the party to the case requirement because it protested the approval of both Unit Agreements. Neither Oxy nor BLM dispute this status. Their challenge to Laramie’s standing focuses on the rule’s second prong.

“A party to a case is adversely affected . . . when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” 43 C.F.R. § 4.410(d); *see Center for Biological Diversity*, 181 IBLA at 338-39. The threat of injury must be more than hypothetical; it must be real and imminent. *Concerned Citizens for Nuclear Safety*, 175 IBLA 142, 147 (2008) (citing *Missouri Coalition for the Environment*, 124 IBLA 211, 216 (1992); *Donald K.*

Majors, 123 IBLA 142, 144-45 (1992)). If the adverse impact complained of “is contingent upon some future occurrence” or “is merely hypothetical, it is premature for this Board to decide the matter.” *Nevada Outdoor Recreation Ass’n*, 158 IBLA 207, 209-10 (2003); see *Woods Petroleum Co.*, 86 IBLA 46, 48 (1985) (“The possibility” of being “adversely affected in the event of some future contingency, no matter how probable the prospect that the contingency will occur, does not confer standing.”). “There must, in short, be a causal relationship between the action undertaken and the injury alleged.” *Colorado Open Space Council*, 109 IBLA at 280 (citing *Save Our Ecosystems, Inc.*, 85 IBLA 300, 301 (1985)). Laramie claims the SDR Decision injured its legally cognizable interests in both units—contentions we now address.

Collbran Unit

Laramie asserts legally cognizable interests in this Unit, claiming it “acquired the [Hawxhurst] Ranch, and the fee lands and minerals within it” in June 2010. SOR at 9. In its Consolidated Reply at 17, Laramie alleges the SDR Decision injured these interests.

Here, the BLM and Oxy gave Laramie a Hobson’s choice:
 (1) commit your interests to a lease-holding unit with minimal commitment from the Unit operator to develop Laramie’s minerals; or
 (2) do not commit your interests, and forego the opportunity to participate in a unit at all. Laramie is adversely affected by the terms of the Unit agreement because they are designed to meet Oxy’s objective of holding leases with minimal obligation to develop the proven acreage of known potential in the Unit area The BLM and Oxy claim that Laramie can commit its minerals but cannot appeal the “take-it or leave-it” lease-holding unit that Oxy presented and that the BLM ratified. Laramie has standing to appeal the BLM’s decision to authorize the Unit Agreement because Laramie could have committed its interests to it. 43 C.F.R. § 3181.1.

Throughout its briefings, Laramie appears to challenge BLM’s designation of the Collbran Unit. To the extent Laramie appeals BLM’s March 31, 2010, decision designating the Collbran Unit, that decision is administratively final and we have no jurisdiction to adjudicate it.

[2] Laramie’s assertion that it is “adversely affected by the terms of the Unit agreement because they are designed to meet Oxy’s objective of holding leases with minimal obligation to develop the proven acreage of known potential in the Unit area” (Laramie’s Consolidated Reply at 17) does not satisfy its burden to demonstrate standing. The vague and speculative contention fails to show us how the SDR

Decision upholding BLM's decision to approve the Unit Agreement injures any of Laramie's legally cognizable interests. Its claim alleging impact to its "ability to develop its own fee minerals" falls short for the same reason. See SOR at 10. We will not construct a missing analysis. See *Center for Biological Diversity*, 181 IBLA at 338-39. By not providing any facts or rationale to support its general assertions, Laramie has failed to demonstrate that the SDR Decision upholding BLM's approval of the Collbran Unit Agreement adversely affected any of Laramie's legally cognizable interests.¹⁰

South Collbran Unit

Laramie claims to have acquired surface ownership within the South Collbran Unit, by its acquisition on May 17, 2010, of a "top lease" of Tract 7, and on September 10, 2010, of a top lease of Tract 8, each of which would take effect if the respective primary terms of the leases covering those tracts expire. Laramie's Consolidated Reply at 17-18; SOR at 10-11, Ex. 19. Asserting injury to these top lease interests by their failure to take effect, Laramie claims to satisfy the adverse effect element required for standing before us to appeal the SDR Decision.

Laramie's top leases will take effect if the leases covering tracts seven and eight expire. See Ex. 19. The BLM's approval of the South Collbran Unit allows leases covering tracts seven and eight to be held past their primary term, and prevents Laramie's top leases from taking effect. BLM authorization of the South Collbran Unit adversely affected Laramie's legally cognizable interest in its top leases by allowing Oxy to hold the underlying fee leases.

¹⁰ Laramie's Consolidated Reply apparently abandons earlier arguments advanced to support standing, including its assertion that "development pressure caused by Oxy's use of the Hawxhurst Ranch will impact Laramie's surface interests." SOR at 10. Oxy responded that, contrary to Laramie's contention, it may not be necessary to use any land owned by Laramie for drilling and development of the unit and that those decisions will be made and approved in the future. Oxy's Motion to Dismiss at 7; see also SOR, Ex. 26 at 16-17. Even addressing Laramie's earlier argument, we do not find it satisfies the adverse effect element of standing because the alleged injury to its interests is speculative. *Nevada Outdoor Recreation Association*, 158 IBLA at 209-10. Laramie has not shown how BLM's approval of the Collbran Unit Agreement injures or authorizes an activity that will injure Laramie's surface interests. See *Colorado Open Space Council*, 109 IBLA at 280; *Save Our Ecosystems, Inc.*, 85 IBLA 300, 301 (1985).

Laramie’s Consolidated Reply at 18. Despite Laramie’s assertions, these interests lack the certainty essential for their recognition as legally cognizable interests under 43 C.F.R. § 4.410. They are not “present interest[s].” *George Schultz*, 94 IBLA 173, 178 (1986). BLM summarizes and addresses appellant’s argument:

In essence, Laramie’s complaint is that Oxy’s lawful exercise of its rights as a lessee prevented Laramie’s contingent interests from vesting. *See* SOR at 11. Yet even in the absence of unitization, Oxy could have extended its leases by drilling a well capable of producing in paying quantities.^[11] The expiration of Oxy’s leases therefore was not assured, even if the unit approval were denied. Thus, the approval of the South Collbran Unit did not “cause” any injury to whatever interests Laramie Claims. *See* 43 C.F.R. § 4.410(d). Laramie’s interests have not vested; it has only speculative, contingent interests that were not guaranteed to vest even in the absence of unitization. As it is devoid of a “legally cognizable interest” that is “adversely affected” by the Decision to uphold the approval of the South Collbran Unit, Laramie has no standing to challenge the Decision.

BLM’s Answer at 16-17. We agree, and find that Laramie proffers no evidence of a legally cognizable interest for the reasons we articulated in an analogous situation.

[3] In *Geo-Energy Partners–1983 LTD*, 177 IBLA 187 (2009), Geo-Energy Partners–1983 Ltd. (Geo-83) and Jack McNamara, Geo-83’s general partner, appealed from a BLM Record of Decision (ROD) approving noncompetitive leasing and requiring commitment to a geothermal unit of the geothermal resources within an area of BLM-managed public lands. McNamara had submitted three executed noncompetitive geothermal lease applications for identified tracts within the Area. Geo-83 and McNamara challenged the compulsory unitization requirement. They represented that Geo-83 “is the designated ‘Assignee’ . . . of as yet unfiled assignments of all right, title, and interest” in the three leases for which McNamara applied. 177 IBLA at 194 (quoting SOR at 2-3). McNamara had not filed any request to transfer record title or operating rights in any lease to Geo-83, and could not, “in view of the fact that no leases have been issued to McNamara.” *Id.* Consequently, McNamara had no interest to assign to Geo-83, as we stated at 177 IBLA at 194:

Being a potential assignee or successor-in-interest to geothermal leases that may be issued in the future as a result of McNamara’s

¹¹ Oxy states that if BLM had not approved the Unit, “Oxy would have had about four months to obtain a permit to drill on Tract 8, which is more than sufficient.” Oxy’s Reply at 2 (citing Oxy’s Response, Ex. 2).

applications does not give Geo-83 any legally cognizable interest to which the ROD could cause any injury. *See Stanley Energy, Inc.*, 122 IBLA 118, 121 (1992). Geo-83 therefore lacks standing to appeal from the ROD. Accordingly, we dismiss the appeal as to Geo-83.

Laramie's basis for supporting its claim of a legally cognizable interest for purposes of standing is certainly no less tenuous. At most, Laramie is a potential assignee or successor-in-interest, holding an interest that, like Geo-83, is insufficient to qualify as a "legally cognizable interest." Laramie claims, with respect to Tract 8, to have an undocumented promise of an assignment (*i.e.*, an alleged contingent assignment)¹² from Shear, Inc., of a top lease interest that was never conveyed by assignment to Shear, Inc., by the Wachler Trust because of the expiration of the agreement to assign the Trust's contingent (top lease) interest. Laramie's only interest in Tract 7—a top lease interest—is contingent as well. Laramie's asserted interests in top leases fail to qualify as legally cognizable interests under 43 C.F.R. § 4.410. As a contingent interest, a top lease is not a present interest, and thus does not constitute a legally cognizable interest, as required by 43 C.F.R. § 4.410, to provide standing to appeal a decision to the Board. *See George Schultz*, 94 IBLA at 178. We thus hold that Laramie has failed to carry its burden of identifying a legally cognizable interest sufficient to establish standing. *See Geo-Energy Partners-1983 LTD*, 177 IBLA at 194. Status as holder of a contingent top lease or as a potential assignee or successor-in-interest to top leases does not provide appellant any legally cognizable interest to which the decision on appeal, denying a protest of BLM decisions approving the Unit Agreements, could cause injury for purposes of establishing standing before the Board under 43 C.F.R. § 4.410.

¹² As indicated, Laramie never received, from Shear, Inc., the holder of the top lease covering Tract 8, an assignment of a top lease interest, and Shear, Inc.'s contingent assignment of a top lease interest in Tract 8 from the Shirley Miriam Wachler Trust never matured to effectiveness because the underlying lease did not expire by the date provided in the assignment instrument. Laramie Consolidated Reply at 17 n.7; *see* SOR, Ex. 19.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we grant the motions to dismiss the appeal filed by BLM and Oxy, and dismiss Laramie's appeal on the grounds that it has failed to establish standing to appeal before the Board.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge