

PLANS OF DEVELOPMENT AND UNIT EXPANSIONS

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PLANS OF DEVELOPMENT AND UNIT EXPANSIONS

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I. INTRODUCTION

Plans of development and summaries of operations are filed to show activity in the unit in the past year and planned activity in the next year. Unit expansions are initiated if an expansion of the unit area is needed to accomplish the purposes of the unit agreement. Both plans of development and unit expansions, therefore, relate to the geology of the unit area and reflect the goal of producing unitized substances efficiently based on the characteristics of the pool or field covered by the unit area.

II. PLANS OF DEVELOPMENT

A. Generally

Plans of development are required by Section 10 of the model form onshore federal exploratory unit agreement.¹ The unit operator is required to submit for the approval of the authorized officer an acceptable plan of development and operation for the unitized land. When the plan of development is approved by the authorized officer, it shall constitute the further drilling and development obligations of the unit operator under the unit agreement for the period specified in the plan of development. Section 10 of the unit agreement provides reasonable diligence shall be exercised in complying with the obligations of the approved plan of development and operation.

Operators must submit three counterparts of all plans of development and operation for approval under an approved agreement.²

B. Timing

The first plan of development is to be filed within six months after completion of a well capable of producing unitized substances in paying quantities. The authorized officer can grant a reasonable extension of the six month period prescribed in the unit agreement for submission of an initial plan of development and operation where such action is justified because of unusual conditions or circumstances. Thereafter, before the expiration of any existing plan, the unit operator shall submit for the approval of the authorized officer a plan for an additional specified period for the development and operation of the unitized land. The unit agreement provides that subsequent plans shall normally be filed on a calendar year basis not later than March 1 each year. Any

¹ 43 C.F.R. § 3186.1 (2006). References in this paper to the unit agreement refer to the model form published in the regulations.

² 43 C.F.R. § 3183.6 (2006).

proposed modification or addition to the existing plan is to be filed as a supplement to the plan.

After completion of a well capable of producing unitized substances in paying quantities, no further wells, except as may be necessary to afford protection against operations not under the agreement and such as may be specifically approved by the authorized officer, shall be drilled except in accordance with an approved plan of development and operation.

C. Contents

Section 10 of the unit agreement provides the plan shall “(a) specify the number and locations of any wells to be drilled and the proposed order and time for such drilling; and (b) provide a summary of operations and production for the previous year.”

The Draft Bureau of Land Management (“BLM”) Manual provides the initial plan of development and operations should describe all anticipated unit operations for the next 6 to 12 months, including the drilling, completing, conversion, and production of unit wells, and other surface disturbing operations.³ Generally, all work that would change a well’s producing formation or status, or operations that would require the prior approval of the authorized officer (such as drill deeper, plug back, abandonment, or conversion to an injection well), should be included in the plan of development. Routine stimulation and workover operations need not be covered by a plan of development as long as the resulting producing interval of the well remains within the productive limits of the participating area for the well.⁴

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. The unit agreement provides the plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely development and proper conservation of the oil and gas resources in the unitized area.

The Draft BLM Handbook provides that until the limits of paying production in each participating area have been determined, the number of proposed exploratory wells should approximate the number of proposed development wells. The Handbook qualifies this, however, by providing the authorized officer should exercise reasonable judgment in determining this ratio.⁵

³ Draft BLM Manual – Unitization (Exploratory), Section 3180.12(D.) The BLM Manual and Handbook are referred to as Draft documents, because they have not been formally adopted. They do provide helpful guidance and reflect BLM’s approach to many issues.

⁴ Draft BLM Handbook H-3180-1-Unitization (Exploratory) Section II.H.2.

⁵ Draft BLM Handbook H-3180-1-Unitization (Exploratory) Section II.H.1.

A BLM representative has advised that the BLM would like to see in a plan of development and summary of operations updated maps, especially field maps showing new wells, pipelines, roads and facilities.

Any proprietary geologic information should be marked on each page as **CONFIDENTIAL INFORMATION**.

When the unit area has been fully developed, the authorized officer may require an annual summary of operations to be filed, without a plan of development.⁶

D. Supplements

Section 10 of the unit agreement provides plans shall be modified or supplemented when necessary to meet changed conditions or to protect the interests of all parties to the agreement.

E. Unit Operating Agreement Procedures

Article 7 of the unit operating agreement relates to plans of development.⁷ Section 7.1 requires the unit operator to submit plans of development to the authorized officer. The unit operator shall initiate each proposed plan by submitting it in writing to each party to the unit operating agreement at least 30 days before filing it with the authorized officer. If, within the 30-day period, the plan receives the approval of the parties (defined as the percentage of approval required in the unit operating agreement) or no written objection is received, then the plan shall be filed.⁸ During the 30-day period, any party may submit to the unit operator written objections to the plan. If, despite such objections, the plan receives the approval of the parties, then the party making the objections may renew the objections before the authorized officer. If the plan does not receive the approval of the parties and the unit operator receives written objections to the plan, the unit operator shall submit a revised plan to the parties taking into account the objections made to the first plan. However, if no plan receives the approval of the parties within 60 days from the submission of the first plan, the unit operator shall file with the authorized officer a plan reflecting as nearly as practicable the various views expressed by the parties.

If a plan filed by the unit operator is rejected by the BLM, the operator shall initiate a new plan following the same procedures required in Section 7.2.

If and when a plan has been approved or disapproved by the BLM, the unit operator shall give prompt notice of the approval or disapproval to each party to the unit operating agreement.

⁶ Draft BLM Handbook H-3180-1-Unitization (Exploratory) Section II.H.3.

⁷ References to the unit operating agreement in this paper are to the Rocky Mountain Unit Operating Agreement, Form 2 (Divided Interest), 1994, published by the Rocky Mountain Mineral Law Foundation.

⁸ Section 7.2, Model Form Operating Agreement.

The unit operating agreement provides for the unit operator to submit a supplemental plan to the authorized officer, or to request the authorized officer to consent to the operation, if consent is sufficient, in the event that the parties have elected to proceed with certain operations under the unit operating agreement which are not provided for in the then-current plan of development approved by the authorized officer. Also, if any approved plan provides for cessation of any drilling or other operation under certain circumstances, the unit operator shall promptly cease such drilling or other operation and not incur any additional costs in connection with such operation, absent additional approval from the parties.

F. Available on WOGCC Website

Plans of development and operation affecting Wyoming properties are now being posted on the website of the Wyoming Oil and Gas Conservation Commission.⁹

III. UNIT EXPANSIONS

A. Procedure to Expand the Unit Area under the Unit Agreement

Section 2 of the model form unit agreement provides that the unit area shall when practicable be expanded to include any additional lands whenever such expansion is deemed to be necessary or advisable to conform with the purposes of the unit agreement. The unit agreement sets out four steps to take to accomplish expansion of a unit:

(a) Unit operator, on its own motion (after preliminary concurrence by the authorized officer), or on demand of the authorized officer, shall prepare a notice of proposed expansion describing the contemplated changes in the boundaries of the unit area, the reasons therefor, any plans for additional drilling, and the proposed effective date of the expansion or contraction, preferably the first day of a month subsequent to the date of notice.

(b) The notice shall be delivered to the proper BLM office, and copies thereof mailed to the last known address of each working interest owner, lessee and lessor whose interests are affected, advising that 30 days will be allowed for submission to the unit operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b), unit operator shall file with the authorized officer evidence of mailing of the notice of expansion and a copy of any objections thereto which have been filed with the unit operator, together with an application in triplicate, for approval of the expansion and with appropriate joinders.

⁹ <http://wogcc.state.wy.us>. In order to access a plan of development, choose the Units/CAs category on the website's home page, enter the unit name or number, and choose plan of development.

(d) After due consideration of all pertinent information, the expansion shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice thereof or such other appropriate date.

Thus, the first step for a unit operator that wishes to expand a unit is to obtain the preliminary concurrence of the authorized officer. This may be done by a letter requesting preliminary approval. The unit operator also often makes a presentation to the BLM to show the geologic reasons for unit expansion, similar to an area and depth meeting at the outset of a unit. Any data considered proprietary should be marked on each page as **CONFIDENTIAL INFORMATION**.

After obtaining BLM preliminary approval, the unit operator obtains ratifications and joinders from owners in the proposed expansion area. The operator also sends the notice of proposed expansion required in Section 2(b). A plat showing the current area and the area to be added should be included with the notice.¹⁰

Revised Exhibits A and B to the unit agreement are to be submitted to the BLM. Also, ratifications and joinders are to be filed with the BLM. Parties who own an interest in the original unit area, and an interest in the expansion area, must submit an additional joinder to the unit agreement, and, if a working interest owner, to the unit operating agreement.¹¹

The Draft BLM Handbook contains Guidelines for Expanding the Unit Area, which are attached to this paper as Exhibit A.

B. BLM Approval of Expansion

The Interior Board of Land Appeals (“IBLA”) has rejected an argument that a unit expansion should not have been approved by the BLM because there was no specific finding that the expansion was in the public interest. In the *Celsius Energy Co.* case,¹² the IBLA found that the Crawford Draw Unit Agreement allowed expansion of the unit when it “is deemed to be necessary or advisable to conform with the purposes of this agreement.” The Crawford Draw Unit Agreement provided that it was created in order to conserve natural resources and prevent waste. The IBLA found that the agreement did not specifically require consideration of the public interest in revising the unit, but the public interest is protected by the requirement that the revision be deemed necessary or advisable to conform to the purposes of the agreement.

In the *Celsius* case, the lands added to the unit by the expansion had been reasonably proven productive. The Crawford Draw Unit had contracted to 1,240 acres, which were the lands included within the first revision of the participating area. Unit Well Nos. 9 and 10 were drilled in the participating area. The operator, W. A. Moncrief Jr., requested preliminary approval for a unit expansion based on Unit Well Nos. 9 and

¹⁰ Draft BLM Handbook H-3180-1-Unitization (Exploratory) Section II.I.2.

¹¹ Draft BLM Handbook H-3180-1-Unitization (Exploratory) Section II.I.5.

¹² *Celsius Energy Co.*, 136 IBLA 293, GFS (O&G) 24 (1996).

10, relying on 640-acre circles drawn around the unit wells, using the circle tangent method. The Casper office of the BLM notified Moncrief that further evaluation indicated the productive potential of Unit Well Nos. 9 and 10 showed that 320-acre circles should be used to identify the lands reasonably proven productive and to define the lands to be included in the unit expansion. Moncrief submitted an application for preliminary approval for the first expansion, to add 120 acres of federal land based upon the completion of Unit Well No. 10. Unit Well No. 10 was completed inside the unit, within 500 feet of the unit boundary, on a patented lease offsetting a federal lease. Owners of 3.8% of the working interest objected to the proposed expansion of the unit. The BLM approved the unit expansion of 120 acres.

Celsius argued that the unit should not have been expanded based upon a well on lands already in a participating area. The IBLA found, however, that because of its location, Unit Well No. 10 had the potential to test unexplored acreage outside the unit area. One of Celsius's objections was that correlative rights were not being protected by the unit expansion, and Celsius argued it was prejudicial treatment to allow Moncrief to benefit by drilling within the participating area and to expand the unit to encompass his own lands. The IBLA found that it would be contrary to the purpose of the agreement for BLM to make its decision based upon land ownership.

Celsius also made an argument based upon its view that the risk of a dry hole was disproportionately allocated, again because Unit Well No. 10 was drilled in an existing participating area. The IBLA noted that the unit operating agreement governs how costs and ownership are apportioned among the working interest owners, both for wells drilled within and outside participating areas. The BLM does not approve the unit operating agreement, which is a private agreement among the parties to the unit agreement concerning how they will carry out their business. The IBLA stated that the BLM is neither a party to nor an arbiter of such disputes, including the determination to drill a development well instead of an exploratory well, which is a matter for the unit parties to work out. This portion of the *Celsius* case highlights that it is the terms of the unit agreement which govern the criteria for expanding a unit.

The IBLA has also found that the reasonableness of a unit expansion proposal must be considered by the Department of the Interior when deciding whether the unit area should be expanded.¹³

C. Required Well and Other Terms

The BLM usually requires an obligation well to be drilled to validate a unit expansion. If the expansion covers a large area, there may be more than one obligation well. The obligation well must be drilled to validate the expansion. As in the *Celsius*¹⁴ case, an obligation well may not be required if the lands in the expanded area have already been proved productive by a well drilled in the unit but near the unit boundary.

¹³ *Chevron U.S.A. Inc.*, 111 IBLA 96, GFS (O&G) 104 (1989).

¹⁴ *Celsius*, *supra*, Note 12.

D. Effective Date of Expansion

In *Celsius*¹⁵ the IBLA noted that the unit agreement provides the unit operator prepares a notice of proposed expansion with a proposed effective date, preferably the first day of the month following notice. The operator in *Celsius* had included in its notice a proposed effective date that was different than the first day of the month following the notice. The BLM had approved the requested effective date in the operator's notice. The effective date was challenged by Celsius, and the IBLA agreed that there was nothing in the record of the appeal to overcome the stated preference for the expansion to be effective the first day of the month after notice of the proposed expansion. The IBLA found that when no reason is provided for selecting a different date by the record on appeal, the BLM decision on the effective date would be reversed and the preferred date of the first day of the month after the notice of proposed expansion was given would be the effective date.

E. Required Joinder to Expansion

In *Chevron U.S.A. Inc.*,¹⁶ the IBLA addressed whether the BLM can require a lessee to commit its lease to an expanded unit. The IBLA found that BLM does have this power, under the terms of 30 U.S.C. §226(m), which is the statute authorizing unitization of federal leases, as well as the lease terms and the terms of the unit agreement. The IBLA stated that "having the authority to expand or contract units and participating areas, the Secretary also has the concomitant authority to order such joinder as is necessary to implement that decision." The IBLA recognized that the BLM did not have the authority, however, to force a lessee to ratify the unit operating agreement.

IV. CONCLUSION

Plans of development and summaries of operations are a required filing under the unit agreement. They show the past year's activity and next year's planned activity. The unit agreement, Draft BLM Handbook and Draft BLM Manual set out the items to be covered in the plan of development and summary of operations.

Unit expansions may be initiated if the unit needs to be expanded to accomplish the purposes of the unit agreement. Thus, they are driven by the geology of the area. BLM approval and joinders by affected parties must be obtained to expand the unit. The unit agreement and Draft BLM Handbook set out the procedure for expanding a unit.

¹⁵ *Celsius*, *supra*, Note 12.

¹⁶ *Chevron*, *supra*, Note 13.

H-3180-1 UNITIZATION (EXPLORATORY)

GUIDELINES FOR EXPANDING OR CONTRACTING
THE UNIT AREA

It is necessary to secure the preliminary concurrence of the authorized officer for a change in a unit boundary before notices reflecting the proposed change are sent to the interested parties. Most agreements include provisions that set forth the procedures to be followed in changing the unit boundaries.

An application for final approval of an expansion or contraction of a unit area should not be submitted until all pertinent provisions of the unit agreement have been satisfied.

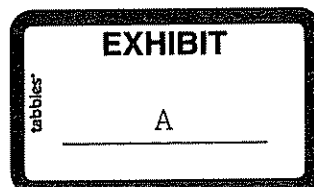
The procedures recommended in connection with expansion or contraction of unit areas are outlined below.

1. Preliminary approval (submit request in quadruplicate). (This action is comparable to designation of an area as logically subject to unitization.)

The request for preliminary approval of the proposed action (contraction or expansion) may be in letter form. It must contain sufficient information and supporting data to justify the proposed action. The supporting engineering and geologic data may be submitted as a separate report. Any data considered proprietary should be clearly marked on each page as CONFIDENTIAL INFORMATION.

2. Notice to interested parties (submit four copies to authorized officer).

Notices of the proposed change in the unit area should be sent to all parties whose interest will be affected only after the authorized officer gives preliminary concurrence in the proposal. Extreme care should be taken to see that each principal is notified of the proposal. The date of proper notice establishes the start of the 30-day period allowed for the submission of objections to the unit operator. The effective date for the proposed expansion or contraction should be specified in the notice. (The first day of a month subsequent to the dispatching of the notice is suggested as a desirable effective date.) The notice should include a small plat that clearly shows the current unit area and the area to be added and/or eliminated.



H-3180-1 UNITIZATION (EXPLORATORY)

3. Request for final approval (submit in quadruplicate).

The request for final approval may be submitted after the required 30-day waiting period has expired. The application should summarize the procedures followed and show that all requirements prescribed in the unit agreement have been fulfilled. If the application requests approval for expansion of the unit area, joinders to the unit agreement and, when appropriate, to the unit operating agreement must accompany the request. Joinders must be submitted by the owners of interests within the area being added, even though the interest owner is already a party to the unit agreement. Copies of any objections to the proposed expansion and/or contraction should be submitted with the request for final approval, along with the operator's reply and/or discussion of the relative merits of the objections received.

4. Revised Exhibits A and B.

Revised Exhibits A and B must be submitted concurrently with a request for approval of an expansion of the unit area and should be submitted concurrently with or immediately following approval of a request for contraction of the unit area. Revised exhibits prepared in connection with an expansion or contraction should retain the tract numbers contained in the original exhibits. Lands being added to the unit area should be assigned tract numbers that follow the original tract numbers in proper sequence.