LIBERTY PETROLEUM CORP.

IBLA 87-625 Decided Novemer 21, 1989

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, increasing rental on an oil and gas lease because part of the lease embraced land within the known geologic structure of a producing oil or gas field. NM 66259.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Rentals

   BLM may properly require the holder of a noncompetitive oil and gas lease to pay an increased rental of $2 per acre for the entire leasehold pursuant to 43 CFR 3103.2-2(d) (1987), where BLM determines during the lease term that any part of the lands included in the lease is within a known geologic structure of a producing oil or gas field.

2. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Rentals

   An individual who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of establishing, by a preponderance of the evidence, that the determination is in error.

APPEARANCES: Gregor Klurfeld, President, Liberty Petroleum Corporation, New York, New York, for appellant; Margaret C. Miller, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Liberty Petroleum Corporation (Liberty) has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 19, 1987, notifying Liberty that, since it had been determined that all or part of oil and gas lease NM 66259 was within the boundaries of a known geologic structure of a producing oil or gas field, the annual rental

would be increased to $2 per acre or fraction thereof. 1/ Liberty timely filed a notice of appeal from this determination. For the reasons set forth below, we affirm.

Noncompetitive oil and gas lease NM 66259 was issued to appellant pursuant to the simultaneous leasing system, effective August 1, 1986, embracing the NE^, E\ NW^, S\ sec. 35, T. 23 S., R. 22 E., and lots 1, 2, and S\ NE^ sec. 2, T. 24 S., R. 22 E., New Mexico Principal Meridian, aggregating approximately 721.05 acres. Pursuant to the regulations then applicable, rental for the lease was due at the rate of $1 per acre, or fraction thereof, for the first 5 years, and thereafter at the rate of $3 per acre for each remaining lease year. See 43 CFR 3103.2-2(a) (1987).

By memorandum dated March 10, 1987, the Roswell District Manager, BLM, informed the State Director that, based on development drilling in Ts. 21 through 24 South, Rs. 22 through 26 East, various described lands had been determined to be within an addition to the Indian Basin and a consolidation of the existing Bandanna Point KGS. Included therein was the E\ sec. 35, T. 23 S., R. 22 E., embracing land within the subject lease.

[1] Initially, we note that it is well established that when BLM has determined that any part of the lands embraced within a noncompetitive oil and gas lease is within an addition to a KGS, the lessee is properly required to pay an increase of annual rental of $2 per acre or fraction thereof for the entire leasehold pursuant to 43 CFR 3103.2-2(d) (1987). See James D. Creighton, 87 IBLA 79 (1985), and cases cited. Appellant does not challenge this aspect of the decision below. Rather, appellant contends that the land within its lease is not properly included within the Bandanna Point KGS.

In its statement of reasons (SOR) in support of the appeal, Liberty argues that the acreage in the lease is 3 miles southwest of the Bandanna Point field and is separated therefrom by dry holes, including a shut-in well in sec. 36, T. 23 S., R. 22 E. Appellant argues that rather than being "presumptively productive," the acreage is, in fact, "presumptively unproductive" (SOR at 1).

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1/ The BLM form decision cited 43 CFR 3103.3-2(b)(1) as authority for the increase in rentals. At one point in the past, 43 CFR 3103.3-2(b)(1) did, indeed, cover the increase in rentals due when land under lease was classified as within a known geologic structure (KGS). On July 22, 1983, however, the Department undertook a general revision of the oil and gas leasing regulations. As a result, the regulation relating to KGS rentals was recodified at 43 CFR 3103.2-2(d). See 48 FR 33662 (July 22, 1983). The regulations at 43 CFR 3103.3-2 now deal with minimum royalties. While the Board recognizes the general utility of form decisions on matters such as rental increases, State Offices should take care to revise such forms as appropriate in order to assure that the references to regulations continue to remain current.

In response to appellant's assertions, BLM has submitted a copy of a memorandum from the District Manager which explores in greater detail the specific factors which led BLM to decide that the E\ sec. 35 was within the KGS. While the District Manager admitted that the Bandanna Point field is more than 3 miles distant from the subject parcel, he pointed out that the BLM Manual

> requires all KGS determinations to be named for the major producing field in the study area. Due to the large areal extent of the study and the inclusion of many major fields, the KGS name for this determination was taken from a centrally located physiographic feature, Bandanna Point. Use of this name does not imply the determination is solely dependent on the data from the Bandanna Point field.

(Memorandum from the District Manager to the Field Solicitor, dated July 29, 1987, at 1).

The District Manager also took issue with appellant's conclusion that the lack of production from the American Quasar No. 1 Huber, which had been drilled in sec. 36, established that the E\ sec. 35 was not "presumptively productive." The District Manager noted that the No. 1 Huber "was perforated in the Morrow Formation interval 10,052-10,137 feet, with an initial potential of 750 MCFGPD," and further pointed out that additional tests had tested positive for hydrocarbons in the 9,945-10,090 and the 10,085-10,261 foot intervals (Memorandum at 2). A 35-foot interval of this study area, he argued, correlated with the criteria necessary for inclusion in the KGS addition, the limits of which were the zero isopach and the Huapache Fault System, which cut through the E\ sec. 35. Accordingly, the District Manager concluded that the E\ sec. 35 was properly included in the KGS addition.

[2] We believe that the showing of the District Manager was more than adequate to overcome the inferences which appellant sought to draw from the plugged-in hole in sec. 36. Moreover, we note that appellant incorrectly assumes that BLM must show that land is "presumptively productive" as a precondition for inclusion of that land in a KGS. But, as we have noted in the past, "delineation of a KGS recognizes the existence of a continuous entrapping structure, on some part of which is production, or of numerous related, but nevertheless independent, stratigraphic as well as structural traps." Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom. Planet Corp. v. Hodel, CV No. 86-679 HB (D.N.M., May 6, 1987). Thus, lands properly placed within a KGS are presumptively productive by the mere fact of their inclusion therein. Id.; Pamela S. Crocker-Davis, 94 IBLA 328 (1986).

Appellant, as the party challenging the KGS determination, bore the burden of showing, by a preponderance of the evidence, that the BLM decision was in error. J. A. Masek, 92 IBLA 12 (1986); Mary Lee H. Picou, 88 IBLA 356 (1985). This burden it did not discharge. Accordingly, the decision of BLM must be sustained.

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.

James L. Burski
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge