

PAUL T. WALTON

IBLA 88-545

Decided April 24, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting in part oil and gas lease offer W-93211.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

An appellant who challenges a determination by BLM that land is within the KGS of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error. An appellant must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question. Absent such a showing, the determination will not be disturbed on appeal.

APPEARANCES: Robert G. Pruitt, Jr., Esq., Pruitt, Gushee & Fletcher, Salt Lake City, Utah, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Paul T. Walton has appealed from a May 6, 1988, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting in part noncompetitive oil and gas lease offer W-93211. The first-drawn offer for the lease was rejected (see Kerogen Crushers, 95 IBLA 63 (1986)) and appellant's offer was subsequently selected in a second drawing.

Effective March 3, 1988, the SW $\frac{1}{4}$ of sec. 24, T. 36 N., R. 76 W., sixth principal meridian, Converse County, Wyoming, which is one-half of the land described in appellant's lease offer, was determined by BLM to be within the Sand Dunes Known Geologic Structure (KGS). In the appealed decision, BLM rejected that portion of the offer within the KGS and issued a lease, effective June 1, 1988, for the remainder. Appellant appeals the rejection of a portion of the lease offer.

In his statement of reasons (SOR), appellant argues that industry interest in the area and proximity of productive wells, rather than sound geologic principles, prompted the KGS designation. ^{1/} Appellant contends

that three separate formations and many different stratigraphic traps underlie the area surrounding lease W-93211, and that the conditions for KGS designation are therefore not met. In its answer, BLM argues that appellant has failed to meet its burden of establishing by a preponderance of evidence that the KGS determination is incorrect. BLM's Sand Dunes Known Geologic Structure Addition Geologic Report (Geologic Report), which is dated April 20, 1988, and became effective on March 3, 1988, is submitted with the BLM answer.

The applicable regulation defines a KGS as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.5(l) (1987). The Secretary of the Interior has delegated the duty for determination of the existence and extent of a KGS to his technical experts in the field. When the experts make such a determination, the Secretary is entitled to rely upon their reasoned opinions. Bruce Anderson, 63 IBLA 111, 113 (1982). A determination by Departmental technical experts will ordinarily not be set aside where it is not arbitrary or capricious and is supported by competent evidence. Ralph E. Peterson, 94 IBLA 340, 342 (1986). Thus, we may properly rely on BLM's geologic report concerning the addition to the Sand Dunes KGS.

[1] An offeror who challenges a determination by BLM that land is within the KGS of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error. Lowell J. Simons, 104 IBLA 129 (1988). An appellant must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question. Source Petroleum Co., 112 IBLA 184, 189 (1989); Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom., Planet Corp. v. Hodel, No. 86-679 HB (D.N.M. May 6, 1987). We find that appellant has not met this burden.

^{1/} The SOR also refers to appellant's suspicion that the delay in processing the offer was conspiratorial. Although this is not presented as a grounds for reversal, we note that the Secretary of the Interior is under no obligation to issue or reject leases within a certain period of time and failure to process offers for several years is not unlawful. Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1156 (D.D.C. 1984). Moreover, a portion of a lease offer may be suspended pending additional KGS study. Ervin R. Wepplo, 112 IBLA 69 (1989). It is well established that a noncompetitive lease offer must be rejected if found to be within a KGS, even though the KGS determination was made after the offer was submitted. Id.; Terra Resources Inc., 112 IBLA 94 (1989).

Appellant has failed to submit its own geologic analysis or data, and has not pointed to any error in the Geologic Report. The report states:

An analysis of the well logs yielded the values attributed on the maps. All logs were reviewed, and the actual hydrocarbon-bearing footages were contoured. The zero-foot isopach line for each formation is taken as the boundary limit of that reservoir.

The aggregate of all 40-acre tracts cut by the zero-foot isopach for each formation comprises this KGS addition action.

(Geologic Report at 2). Appellant asserts that the BLM decision was based on proximity to producing wells rather than geology; however, the Geologic Report submitted by BLM belies that assertion.

Appellant argues a KGS determination is inappropriate because oil and gas in the vicinity of the lease are found in stratigraphic traps. However, we have previously held that lands underlain by stratigraphic traps of oil or gas may properly be designated as KGS lands. Leonard J. Olheiser, 106 IBLA 214, 216 (1988); Carol Ann Hoffman, 100 IBLA 139, 141 (1987).

Appellant contends a KGS designation is inappropriate due to the fact that more than one producing formation exists in the area. However, it is clear the BLM geologists considered this fact and yet determined a KGS designation is appropriate. Appellant has not shown multiple formations to be a basis for rejecting a KGS determination. Moreover, we have previously affirmed KGS designations in areas with more than one formation. See Terra Resources, Inc., supra; Judy P. Clifton, 105 IBLA 319 (1988). Thus, we find no basis for disturbing the BLM decision to add the subject land to the Sand Dunes KGS.

Lands within a KGS may be leased only by competitive bidding. 30 U.S.C. § 226(b)(1) (1982).
2/ Where lands are determined to be within a KGS prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected. Lowell J. Simons, supra at 130. Thus, we conclude BLM's rejection of a portion of the lease offer was proper. 3/

2/ We note that the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 110-203, 101 Stat. 1330-259 (Dec. 22, 1987), eliminated the simultaneous system of awarding noncompetitive leases. However, pursuant to section 5106(a) of that Act, noncompetitive offers pending on the date of enactment remain subject to provisions of the prior law.

3/ In light of our finding herein and the absence of any material issue of fact arising from the evidence, appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

John H. Kelly
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge