

CHARLES J. BABINGTON
AND
JOE S. SHELDON, JR.

IBLA 70-209

Decided October 29, 1971

Oil and Gas Leases: Known Geological Structure

The Geological Survey's definition of the known geologic structure of a producing oil or gas field will not be disturbed in the absence of a clear and definite showing that it was improperly made.

Oil and Gas Leases: Known Geological Structure

The practice of placing all of a smallest legal subdivision into the known geologic structure of a producing oil and gas field when any part of it is determined to be within one is administratively sound and will be continued.

IBLA 70-209 : BLM-A-054235 (Mississippi)

CHARLES J. BABINGTON : Rental increased and bond JOE S. SHELDON, JR
: required for a noncompetitive
: oil and gas lease

: Affirmed

DECISION

Charles J. Babington and Joe S. Sheldon, Jr., have appealed to the Secretary of the Interior from the decision of June 10, 1970, by the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a decision of the land office dated February 2, 1970, notifying them of an increase in rental and their obligation to furnish a bond because the land covered by their oil and gas lease, BLM-A-054235, had been placed within an undefined known geologic structure of the Crosby field, a producing oil or gas field.

Noncompetitive oil and gas lease BLM-A-054235 1/ encompasses 225.52 acres of land in Wilkinson County, Mississippi, including a 12.06 acre portion of the NE 1/4 SE 1/4 sec. 39, T. 4 N., R. 1 E., Washington Meridian. The land office decision was based upon a memorandum dated January 22, 1970, from the United States Geological Survey stating that:

Based upon an oil extension in the SE 1/4 NE 1/4 SE 1/4 sec. 39, T. 4 N., R. 1 E., the following described lands are within an addition to the undefined known geologic structure of the Crosby field effective December 15, 1969: T. 4 N., R. 1 E., Washington Meridian, Mississippi sec. 39, NE 1/4 SE 1/4.

1/ This Board has been informed by the eastern states land office that this lease expired as of August 31, 1971. However, it is still necessary to dispose of the appeal in order to establish the rental payable to the United States for the lease year of September 1, 1970, to August 31, 1971.

The Survey noted further that: "BLM-A-054235 is affected by this determination."

The land office then notified the appellants that as of September 1, 1970, the annual rental due on their lease would be increased to \$2 an acre or a total of \$452 for their 225.52 acres of leased lands. Additionally, they were required to post a \$1,000 bond.

In their appeal to the Bureau of Land Management, the appellants relied heavily upon a letter from one Robert A. Lee, the owner of the one producing well nearest the leased lands held by appellants. Lee's letter was purportedly in response to an offer from the appellants to Lee of the lease in return for a drilling commitment. It was Lee's opinion, based upon the results of four test holes, that ". . . the West one-half of the NE/4 of the SE/4 of Section 39, T4N, R1E, Wilkinson County, Mississippi, has been adequately tested in the Wilcox formation and proven to be non-productive in the presently established producing reservoir." Appellants therefore requested that ". . . the status of the lease be redefined."

On March 24, 1970, the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, asked the Geological Survey for its comments in view of the points raised by the appeal. In its response of June 1, 1970, the Survey stated:

No structural maps, cross sections, or other proof have been supplied by the appellants to show that the Federal acreage is nonproductive.

Next, they took issue with Mr. Lee's assertion that there were three dry test holes.

An examination by the Survey of drilling data has found that 2 (not 3) 2/ dry holes and 1 oil well are in the NE 1/4 SE 1/4 sec. 39 and that one of the dry holes is about 100 feet from the oil well.

2/ The appellant insists that three dry holes were drilled -- one having re-entered an earlier well and then having been sidetracked into the productive horizon at a new and separate location, also dry. Assuming that this is so, it does not require a change in the Geological Survey's conclusion.

It was further explained that the Survey includes in the known geological structures of producing oil and gas fields all of the acreage presumptively productive, and

. . . the smallest unit used to describe the area of a known geologic structure is the smallest legal subdivision of a governmental survey which is commonly a quarter-quarter section containing 40 acres. Therefore the entire 40-acre tract is considered to be productive if any part of it is productive.

For this reason the NE 1/4 SE 1/4 sec. 39 was considered to be productive because of the oil well in the east half of this quarter-quarter section.

The Survey's examination of the area gave rise to the following conclusion:

The Geological Survey has also completed a structural investigation of the McKittrick Sand, Wilcox Formation, Eocene Series, Tertiary, which is the producing zone in the Lee Gunn, No. 1, Parker, well. This study has indicated that the oil well in the NE 1/4 SE 1/4 sec. 39 is on a small structural nose which has a northeast-southwest trend through this quarter-quarter section, that the well has probably penetrated the northern part of a small oil pool, and that the areal extent of the pool probably includes most of the southern half of the NE 1/4 SE 1/4 sec. 39. Therefore, part of the pool seems to be on part of Federal lease BLM-A-054235 in the SW 1/4 NE 1/4 SE 1/4 sec. 39.

The Bureau of Land Management relied upon this report exclusively in affirming the earlier decision. It held that not only had the appellants failed to sustain their burden of proof, ^{3/} but, in any case, the report by the Geological Survey had served to completely refute their (appellants') arguments.

^{3/} Citing Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959) and Duncan Miller, A-30300 (May 13, 1965).

In their appeal to this Board, appellants rely on their prior theory that the lands represented by their lease are unproductive. They note that the one oil producer produces only 30 barrels of oil per day plus abundant amounts of salt water and that the suggestion, by the Survey, "that the productive limit line, i.e., the oil-water contract [sic] in the McKittrick reservoir could be as distant as the east line of the captioned Lease is to tax the imagination of the most seasoned petroleum technician."

Appellants conclude that the Survey's policy of considering nothing less than quarter-quarter sections of 40 acres is completely inequitable. To dispose with this contention first, it is enough to say the smallest legal subdivision rule is administratively sound and will be adhered to.

As the Bureau said, the burden of disproving a classification or definition of a producing field is upon the party seeking to overturn it and a determination will be overturned only upon a clear and definite showing that it is in error. Duncan Miller, A-30300 (May 13, 1965). The Geological Survey is the delegate of the Secretary of the Interior, which has been entrusted with the task of determining

. . . the extent of the geological structure of a field on which there is production. Such determinations do not . . . guarantee the productive quality of the land included in a structure; they do no more than to announce that on the basis of geological evidence, the Department has found that a certain geological structure constitutes a trap in which oil or gas, or both, have accumulated. The thing known is the existence of a continuous entrapping structure on some part of which there is production; there is no prediction as to future productivity or statement as an existing fact that anything is known about the productivity of all the land included in a structure.[4/]

The appellants' position appears to be predicated upon just the sort of demand for exactitude which the Department has

4/ Columbian Carbon Company, A-28706 (October 10, 1962).

consistently held to be unnecessary. This ". . . demand for exactness would require the United States to perform very extensive exploratory operations to define the producing fields." 5/

Admittedly, the burden of proof placed upon an oil or gas lessee who attempts to rebut a determination by the Geological Survey that the lands represented by his lease are within an undefined known geologic structure is extremely high. Nevertheless, that burden exists, and, as set forth above, we do not feel that it is unreasonably harsh. 6/ Accordingly, it is concluded that the appellants have failed to make a clear and definite showing that the determination was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Martin Ritvo, Member

We concur:

Francis E. Mayhue, Member

Frederick Fishman, Member.

5/ C. W. MacMillan, A-29050 (October 11, 1962).

6/ The drilling of dry holes in the immediate area does not, of itself, warrant a finding that the determination that land is in a known geologic structure is erroneous. Andrea R. Greyber, A-31040 (December 19, 1969).

