

T. D. SKELTON

IBLA 72-340

Decided February 13, 1973

Appeal from a Bureau of Land Management State Office decision rejecting in part an oil and gas lease offer (NM 15026).

Affirmed.

Oil and Gas Leases: Known Geological Structure—Oil and Gas Leases:  
Noncompetitive Leases

Noncompetitive offers to lease certain lands for oil and gas must be rejected where after the filing of the offers, but before the actual issuance of the lease, the land is determined to be within the known geological structure of a producing oil or gas field.

Oil and Gas Leases: Known Geological Structure

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

APPEARANCES: Charles C. Aldridge, Esq., Lynch, Chappell, Allday & Aldridge, Midland, Texas, for appellant.

OPINION BY MR. STUEBING

T. D. Skelton has appealed from a decision dated February 17, 1972, 1/ of the New Mexico State Office, Bureau of Land Management, which required him to sign and return a surface management stipulation, and which also rejected, in part, his noncompetitive oil and gas lease offer, because part of the lands sought had been placed within the known geological structure of a producing oil or gas field.

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1/ Although the State Office decision is dated February 17, 1971, we note that it should have been dated February 17, 1972.

Skelton's offer was simultaneously filed November 22, 1971. By selection at the drawing, it was given first priority among the offers filed for the same land, Parcel No. 67, comprising 440 acres in Roosevelt County, New Mexico. At the time of the filing of the offer and at the time of the public drawing, the BLM records did not show that Parcel No. 67 included certain lands within a known geological structure of a producing oil or gas field. However, on December 16, 1971, the Director of the Geological Survey notified the New Mexico State Office of the Bureau of Land Management that based on the discovery of gas in the NE 1/4 SW 1/4 Sec. 14, T. 6 S., R. 33 E., N.M.P.M., certain lands were to be included in an unnamed, undefined geological structure, effective November 5, 1971. Based on that information, the New Mexico State Office rendered its decision rejecting in part appellant's offer to lease Parcel No. 67 and requiring him to file a surface management stipulation as to the remainder. He has filed the stipulation, but he appeals from the partial rejection of his lease offer.

From the events surrounding the determination that Parcel No. 67 is partially on a known geological structure and based on the law as he reads it, appellant argues that his noncompetitive offer to lease was improperly rejected. Appellant points out that his offer was filed on November 22, 1971. On that date, the land covered by Parcel No. 67 was not denoted as being located on a known geological structure. A public drawing was held on December 8, 1971, and at that time the land was still not listed as part of a known geological structure. However, the February 17, 1972, decision of the State Office stated that a part of Parcel No. 67 had become part of a known geological structure effective November 5, 1971.

Appellant declares that as a factual matter the Government could not have known as of November 5th that the land in question was part of a known geological structure. He bases his assertion upon analysis of the condition of the gas well which he states is the same one upon which the Government bases its finding that a part of Parcel No. 67 is on a known geological structure. Appellant asserts:

On September 30, 1971, William O. Blanks, as Operator, commenced his Federal 1-14 well in NE/4 of SW/4 of above Section 14 as a Basal Pennsylvanian test to be drilled to approximately 7,650 feet subsurface. Thereafter, the well was routinely drilled by a successor operator, Ted Weiner, until it reached total depth of 7,690 feet subsurface on or about October 25, 1971. A drill stem test was conducted by the Operator on October 25, the production string of pipe was run into the well on October 27, and tubing was placed in the well on November 2, 1971. Logging and perforating

occurred on November 4, and some testing occurred on November 5, 1971. On November 5 the well was reacidized and intermittent testing of the well continued from that date at least until early in December, 1971. At the present (April 14, 1972), the well still has not been potentialed [sic]. As mentioned above, Appellant's offer to lease was filed in the New Mexico State Office on November 22, 1971. On that date neither Ted Weiner, the Operator of the well, nor his representatives nor the Geological Survey nor the New Mexico Oil Conservation Commission had before them sufficient data from the well on which to base a conclusion that such well, and the land on which it was located, were productive of oil or gas.

Next, appellant cites 43 CFR 3120.2-2(c) (now 43 CFR 3100.7-3):

In accordance with the long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of the rights which depend upon whether the land is or is not situated within a known geological structure of a producing oil or gas field \* \* \*. (Emphasis supplied by appellant)

Appellant then goes on to cite cases 2/ which he interprets as holding that the date of the filing of the offer to lease is controlling in determining whether the land included in the offer will be leased competitively or noncompetitively. He asserts that if a noncompetitive offer is filed prior to the ascertainment of the facts which establish the producing character of the land, then the land may be leased noncompetitively.

Applying these rules to the facts, appellant submits that on November 22, 1971, the day he filed his offer, no one knew the producing character of the determinative well; therefore it was not possible for the Department to make a ruling on that point and accordingly the land should be leased noncompetitively.

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2/ George E. Conley, GFS BLM-1958-102, NM 024907 (June 16, 1958), and York Montana Oil Company, GFS BLM-1948-8, Great Falls, 085785"N" (November 3, 1948).

Appellant is in error in his use of the time of the filing of the offer as the determinative date to decide whether the land for which the lease offer was filed is to be leased noncompetitively or competitively. The rule is correctly stated in 43 CFR 3110.1-8:

If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

See also F. William Johnson Jr., 3 IBLA 232 (1971); James W. McDade, 3 IBLA 226 (1971); Solicitor's Opinion, 74 I.D. 285 (1967).

Appellant's second contention, that the Government did not have sufficient evidence to declare a part of Parcel No. 67 to be on a known geological structure, is not established. 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. The burden of proof placed upon one who intends to rebut a determination by the Geological Survey that the lands which he wishes to lease are within a known geological structure is extremely heavy. The appellant must make a "clear and definite showing" that the determination was in error. See Charles J. Babington and Joe S. Sheldon, Jr., 4 IBLA 43, 48 (1971). From the evidence presented here we find that appellant has not carried that burden.

Appellant did not present sufficient evidence to rebut the Geological Survey's determination that a part of Parcel No. 67 is on a known geological structure, nor was appellant correct in stating that the determinative date for deciding whether a parcel will be leased noncompetitively or competitively is the date of the offer to lease. As in the situation here, even though the land was not within a known geological structure at the time the offer for the lease was filed, if it is included before a lease is actually issued, the law does not authorize the noncompetitive leasing of land within a known geological structure. 30 U.S.C. § 226(b) (1970); James W. McDade, *supra*. Nor, does the filing of an offer to lease create a vested right in the offeror to receive an oil and gas lease. Solicitor's Opinion, *supra* at 286. Since appellant had not been issued his lease before part of the area which he wished to lease was determined to be on a known geological structure of a producing oil or gas field, the land may only be leased competitively.

Accordingly, 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.

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Edward W. Stuebing, Member

We concur.

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Joan B. Thompson, Member

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Frederick Fishman, Member

