

ROBERT D. SNYDER ET AL.

IBLA 73-266

Decided November 8, 1973

Appeal from a decision of the Montana State Office, Bureau of Land Management, notifying lessees of an increase in rental and requiring the filing of a bond for oil and gas lease M-2227.

Affirmed.

Oil and Gas Leases: Known Geological Structure! ! Geological Survey

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1), and furnish a lease bond as required by 43 CFR 3104.1(b).

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Words and Phrases

A "shut! in well" includes a producing well that has been closed down temporarily for repairs, cleaning out, building of pressure, lack of market, etc.

APPEARANCES: Robert D. Snyder, John Snyder, and K. M. Doze, President of Overseas Management, Inc., for appellants.

OPINION BY MR. FISHMAN

Robert D. Snyder, John Snyder, and Overseas Management, Inc., have appealed from a decision (M 2227) of the Montana State Office, Bureau of Land Management, dated January 9, 1973, which notified appellants of an increase in rental on a lease held by them for the reason that land described in their lease had been determined by the Geological Survey to be within an undefined known geologic structure. The decision also recited that a surety bond was required to be filed.

The land described in the lease held by appellants is located in Custer County, Montana, and is described as the E 1/2 sec. 18, and the N 1/2 sec. 20, T. 1 N., R. 45 E., P.M., Montana. The lease was issued noncompetitively effective as of August 1, 1967. By memorandum dated December 18, 1972, the Director, Geological Survey, notified the Montana State Office that, based on a gas discovery in the SE 1/4 NW 1/4 NW 1/4 sec. 19, T. 1 N., R. 45 E., P.M., certain lands, including the SW 1/4 SE 1/4 sec. 18, T. 1 N., R. 45 E., in lease M 2227, were determined to be within an undefined, unnamed known geologic structure effective July 10, 1972. In a second memorandum dated December 29, 1972, the Director notified the Montana State Office that the E 1/2 NE 1/4 sec. 20, T. 1 N., R. 45 E., within lease M 2227, had been determined to be within an undefined, unnamed known geologic structure effective October 8, 1972, based on a gas discovery in the NW 1/4 NW 1/4 sec. 21, T. 1 N., R. 45 E.

The Bureau accordingly notified appellants of the increase in rental under 43 CFR 3103.3-2(b)(1), and the requirement that a surety bond be filed under 43 CFR 3104.1(b).

The regulation, 43 CFR 3103.3-2(b)(1), provides in pertinent part:

Rentals shall be payable in advance at the following rates:

* * * * *

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, [Act of February 25, 1920, as amended, 30 U.S.C. § 226 (1970)] and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for

allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of \$2 per acre or fraction thereof.

The regulation pertaining to bonds, 43 CFR 3104.1(b) provides:

(b) Known structure or competitive lease bond. The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the \$2 per acre annual rental but in no case less than \$1,000 nor more than \$10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued non! competitively is included within the limits of a known geologic structure of a producing oil or gas field.

Appellants do not challenge the validity of these regulations. They emphasize that the regulations only require an increase in rental and a surety bond on leases wholly or partly within the known geologic structure of a producing oil or gas field. Appellants argue that the areas designated as undefined known geologic structures by the Geological Survey have not "been made with any regard of the actual structures," and that the "areas are drawn without consideration of any known facts of tests or geologic reasons."

The Geological Survey's definition of an undefined 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. Charles J. Babington, 4 IBLA 43 (1971); see T. D. Skelton, 9 IBLA 322 (1973). In the absence of such a showing, a lease originally issued noncompetitively is properly made subject to increased rental under 43 CFR 3103.3-2(b)(1) and the filing of a surety bond under 43 CFR 3104.1(b). Jack C. Bradley, 11 IBLA 294 (1973).

In support of their argument, appellants have submitted a map which shows at least three shut! in wells within the areas delineated as undefined known geologic structures by the Geological Survey. The test data submitted by appellants show that one of the shut! in wells, located in sec. 15, T. 1 N., R. 45 E., P.M., was reported to have produced 1,017 MCFGD 1/ on a drill stem test. Another

1/ MCFGD is an abbreviation for "thousand cubic feet of gas per day."

shut! in well., located in sec. 19, T. 1 N., R. 45 E., P.M., showed an estimate of 300 MCFGD. The third shut! in well, located in sec. 21, T. 1 N., R. 45 E., P.M., was reported to have produced 925 MCFGD on a test. Appellants assert that gas is not presently being produced from these wells and that the above regulations, therefore, are inapplicable.

We disagree. "Producing oil gas field" under 43 CFR 3103.3-2(b)(1) means "capable of production". See George C. Vourmas, 56 I.D. 390, 393-94 (1938) and cases cited. A shut! in well, by definition, includes "[a] producing well that has been closed down temporarily for repairs, cleaning out, building up pressure, lack of market, etc." Manual of Oil and Gas Terms, William & Meyer (3rd ed. 1971). (Emphasis added.) The test data submitted by appellants demonstrate that the shut! in wells are producible. In our view, the evidence offered by appellants fails to show "clearly and definitely" that the Geological Survey's determination was improperly made. 2/ On the contrary, appellants' evidence supports the determination made by the Survey. See James W. Smith, 6 IBLA 318, 79 I.D. 439 (1972).

2/ In Sheridan L. McGarry, A-29518 (July 29, 1963), the Department held that a noncompetitive oil and gas lease offer, filed on July 17, 1961, was properly rejected on the basis of information that the land sought for leasing was within a known geologic structure of a producing gas field obtained on July 10, 1961, by a Geological Survey officer who witnessed the testing of a successful well on the same structure as the land described in the offer even though the well was not completed prior to July 17, 1961. The Department stated in McGarry at 2:

"* * * The fact that the well was not completed on July 10 or 11, or prior to July 17, 1961, is not a basis for the conclusion that there was no discovery on July 10, 1961, or that a determination of a known geologic structure could not be made. There is nothing in section 32 of the Mineral Leasing Act (30 U.S.C., 1958 ed., sec. 189) or the pertinent regulation (43 CFR 192.6) which restricts the basis upon which determinations of the boundaries of the known geologic structure of producing fields may be made. Certainly there is no limitation that such a determination cannot be made until a well is completed.

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.

Frederick Fishman
Member

We concur:

Douglas E. Henriques
Member

Joseph W. Goss
Member

