

MINETTA A. MILLER

IBLA 74-304

Decided September 23, 1974

Appeal from decision of New Mexico State Office, Bureau of Land Management, dated April 19, 1974, rejecting oil and gas offer NM 20348.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Known Geological Structure--Oil and Gas Leases: Noncompetitive Leases

Where an oil and gas offer is filed for land, which land prior to the issuance of a lease is determined to be on a known geological structure of a producing oil and gas field, the Department has no discretion to issue a lease noncompetitively but is mandated by the law to reject the oil and gas offer.

2. Oil and Gas Leases: Known Geological Structures--Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease offer must be rejected where, after its filing but prior to the issuance of the lease, the land is determined to be within the known geological structure of a producing oil or gas field.

APPEARANCES: Thomas W. Whittington, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Minetta A. Miller has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 19, 1974, which rejected her oil and gas offer NM 20348.

The decision recited in part as follows:

The SE 1/4 SW 1/4 sec. 4, T. 21 S., R. 26 E., NMPM, has been within the known geologic structure of an undefined addition to the Catclaw Draw Field of Eddy County, New Mexico since January 7, 1974. Therefore, this may be leased only by competitive bidding as provided by 43 CFR 3120.

BLM posted a notice in December 1973, that the lands in issue, inter alia, were subject to the simultaneous filings of oil and gas lease offers. On December 23, 1974, appellant filed her offer. On January 15, 1974, a drawing was held and appellant's card was drawn No. 1 for the parcel in issue.

However, by memorandum dated January 7, 1974, received by BLM on January 8, 1974, the Geological Survey notified BLM that all of sec. 4, T. 21 S., R. 26 E., N.M.P.M., New Mexico (including the parcel in issue) was determined to be "within an undefined addition to the Catclaw Draw Field undefined known geologic structure and consolidation of six unnamed, undefined known geologic structures, effective January 7, 1974 \* \* \*." 1/

Within a week after the drawing, appellant received five offers from persons interested in purchasing her potential leasehold interest. She sent in her advance rental and received her rental receipt on February 4, 1974. On February 1, 1974, BLM cashed her rental check. On February 15, 1974, one month after the drawing, appellant, assertedly in reliance upon her rental receipt and assurances from BLM personnel, contracted to assign her lease to a third party upon its issuance. She was not notified until April 22, 1974, when she received the decision of April 19, 1974, that her oil and gas offer had been rejected.

[1] Appellant argues that sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), mandates the issuance of a lease to her.

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1/ Shown to be 1973 on original memorandum. Corrected by memo of January 10, 1974, of the Geological Survey, to read "1974."

That section reads as follows:

(a) All lands subject to disposition under [the Act] which are known or believed to contain oil or gas deposits may be leased by the Secretary.

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 640 acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the secretary and of such royalty as may be fixed in the lease, which shall be not less than 12 1/2 per centum in amount of value of the production removed or sold from the lease.

(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such land without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease. (Emphasis supplied.)

Appellant's conclusion rests upon the language "shall be entitled to a lease." Appellant asserts that 43 CFR 3110.1-8 2/ is violative of the statute and the regulation must give way to the statute, as construed by appellant.

She also argues that the drawing should not have been conducted in the light of the January 7, 1974 memo from the Geological Survey, and that she "and the other 277 applicants relied to their detriment on the misrepresentation of the BLM State Office. Although this

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2/ That section reads as follows:

"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."

office (BLM) probably lacks the willful intention to defraud its detrimentally negligent acts were nevertheless constructively fraudulent." 3/

[2] With respect to appellant's assertion that 43 CFR 3110.1-8 is violative of the statute, Solicitor's Opinion, 4/ 74 I.D. 285 (1967), is dispositive of that issue. The Solicitor held and we agree, that not only is the refusal to issue an oil and gas lease on land found to be on a known geologic structure of a producing oil or gas field permissible, but such refusal is required by the statute.

The Solicitor stated at 74 I.D. 286-287 as follows:

As we have pointed out, the statutory language of section 17(b) is unequivocal. "If the lands to be leased are within any known geological structure \* \* \* they shall be leased \* \* \* by competitive bidding \* \* \*." The ordinary reading of this provision would be that once lands are known to be within the geological structure of a producing oil or gas field they are no longer subject to leasing except by competitive bidding. The only possible exception to this rule would seem to be where the applicant for a lease has a vested right to such a lease. However, the courts and the Department have always held that the filing of an offer for a noncompetitive oil and gas lease does not grant the offeror any vested right. In Haley v. Seaton, 281 F.2d 620, 624 (D.C. Cir. 1960), the court said that "mere application for leases granted no vested rights in Haley." Other cases in which the courts have held that an offer creates no vested right in the offeror include United States ex rel. Roughton v. Ickes, 101 F.2d. 248 (D.C. Cir. 1938), and Dunn v. Ickes, 115 F.2d. 36 (D.C. Cir. 1940), cert. den., 311 U.S. 698 (1940). Except for giving this very favorable treatment to offerors with respect to lands found to be on the known geologic structure of a producing field after the filing of an offer, the Department has consistently held to this view that the filing of an offer grants no vested right. An offeror is merely assured of a preferential right to a noncompetitive lease if such a lease should be issued.

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3/ The lands in issue were included in the notice of available lands posted in December 1973, in conformity with the simultaneous drawing procedures. At that time the lands were not known to be within a KGS. Thus BLM was not "detrimentally negligent".

4/ That opinion is captioned "Issuance of Noncompetitive Oil And Gas Leases On Lands Within The Geologic Structure Of Producing Oil Or Gas Fields."

Pending offers have always been held to be subject to any statutory amendments enacted between the filing of the offer and the issuance of the lease. The Department took this position in Harold Ladd Pierce, 69 I.D. 14 (1962), with respect to the Mineral Leasing Act Revision of September 2, 1960 (74 Stat. 781). Even though section 8 of the Mineral Leasing Act Revision provided that "No amendment made by this Act shall affect any valid right in existence on the effective date of the Mineral Leasing Act Revision of 1960," the Department held that a lease issued after September 2, 1960, on an offer filed on June 9, 1959, was subject to all the provisions of the Mineral Leasing Act Revision. A similar position was taken by the Department with respect to amendments made by the Act of July 29, 1954 (68 Stat. 83), in United Manufacturing Company et al., 65 I.D. 106 (1958). On page 110 of that case the Department stated:

\* \* \* the Department has consistently held that an applicant for a noncompetitive lease acquires no vested right to a lease by the filing of an application but only an inchoate right to receive a lease over a later applicant, if the Secretary in his discretion decides to lease the land \* \* \*.

The Department does not hesitate to withdraw lands embraced in a pending offer, and in such a case the offeror receives no lease and no compensation for his unsuccessful offer. In the case of H. T. Birr, III, A-28678 (November 2, 1961), the Department held that an oil and gas offer may properly be rejected where the land embraced in the offer was selected by the State of Alaska after the filing of the offer and no compensation was given to the offeror. Since a lease offer, being merely an inchoate right is subject to every other change in the status of the land sought, it \* \* \* [would be] anomalous that it is not subject to subsequent determinations that the land is on a known geologic structure.

This Board has concurred in that position. Skelly Oil Co., 16 IBLA 264 (1974); T. D. Skelton, 9 IBLA 322 (1973); Robert B. Ferguson, 9 IBLA 275 (1973).

The assertion that the simultaneous offering was fraudulent is baseless. There was no "detrimental effect upon public interest

and public and private confidence" by the offering. The governing regulation, 43 CFR 3110.1-8, is notice to the world and actions taken pursuant thereto in accordance with its mandate are proper. Although appellant asserts that she relied on the drawing to her detriment, she has only demonstrated the loss of an expectancy which she will not now realize. The failure to receive and benefit from an expectancy is at most damnum absque injuria. No right of appellant has been violated.

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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Frederick Fishman  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

