

**Editor's note: Appealed -- remanded for readjudication, sub nom. Lisco v. Hathaway, Civ. No. 75-281 (D.N.M. March 3, 1976); vacated in part -- See Barbara Lisco (On Court Remand), 26 IBLA 340; also remanded sub nom. Ptasynski v. Hathway, Civ. No. 75-282 (April 6, 1976) -- See Nola Grace Ptasynski, 28 IBLA 256; Appealed -- aff'd, Civ. No. 75-282 (D.N.M. May 5, 1977).**

NOLA GRACE PTASYNSKI,  
BARBARA C. LISCO

IBLA 74-174, 74-175

Decided March 5, 1975

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 19617 in part, and canceling oil and gas lease NM 19618 in part.

Affirmed.

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

The effective date of a determination that lands are within a known geologic structure of a producing oil and gas field, within the meaning of 30 U.S.C. § 226(b) (1970) and 43 CFR 3100.7-3, is the date of the ascertainment of the facts supporting the determination. After that date the Bureau of Land Management has no authority to issue an oil and gas lease pursuant to the non-competitive lease provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1970).

2. Oil and Gas Leases: Known Geologic Structure

The assertion that the Geological Survey has followed a different practice in classifying lands as within a known geologic structure on other lands is relevant insofar as it may show that the lands at issue were erroneously classified as presumptively productive, but a showing of the difference in practice would not by itself prove error.

3. Oil and Gas Leases: Known Geologic Structure-- Rules of Practice: Appeals: Burden of Proof

A party challenging a determination that lands are within a known geologic structure has the burden of making a clear and definite showing of error in the determination; material indicating that the geologic formation at issue is irregular in quality and productivity does not constitute a showing that the lands are not presumptively productive, *i.e.*, that the lands are not within the known or inferred limits of the multiple and overlapping producing intervals involved.

4. Hearings--Oil and Gas Leases: Known Geologic Structure--Rules of Practice: Appeals: Hearings

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

APPEARANCES: Houston G. Williams, Esq., of Wehrli & Williams, Casper, Wyoming, and S. B. Christy, IV, Esq., of Jennings, Christy & Cople, Roswell, New Mexico, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

In the October 1973 New Mexico State Office, Bureau of Land Management (BLM), drawing of simultaneously-filed oil and gas lease offers, held pursuant to the noncompetitive leasing provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(c) (1970), and the implementing regulations, 43 CFR Subpart 3112, appellant Nola G. Ptasynski's offer NM 19617 drew number one for Parcel 71. In the same drawing, offer NM 19618, filed by appellant Barbara C. Lisco, drew number one for Parcel 72. By decision dated November 26, 1973, the BLM rejected offer NM 19617 in part, for the lands described in sections 8, 10, 17, and 33 of T. 23 S., R. 31 E., N.M.P.M. The United States Geological Survey had notified the State Office that these lands were in an undefined addition to the James Ranch Field known geologic structure (KGS) and consolidation of four unnamed KGS's effective September 9, 1973. Lease NM 19618 issued to appellant Lisco, but by decision dated November 27, 1973, the BLM canceled the lease

for the land described in section 10 of T. 23 S., R. 31 E., N.M.P.M., for the same reason.

Applicant Ptasynski and lessee Lisco, represented by the same counsel, filed appeals from these decisions which, because of the identity of issues, are treated together. Appellants assert the following: (1) it was error for the Geological Survey to make the KGS determination retroactive to September 9, 1973; (2) the KGS determination here was "a radical departure" from the regular practice of the Survey to allow noncompetitive leases to be issued in close proximity to existing wells; and (3) that the KGS determination is not supportable on a geological basis. At the Board's request, the Geological Survey submitted a Memorandum from the Area Geologist supporting its original determination and responding to appellants' arguments. Appellants then filed a Response to the Geological Survey's report.

[1] Appellants first argue that the KGS determination cannot be made retroactive to September 9, 1973. This Board has held that the determination that lands are within a known geologic structure dates from the ascertainment of the facts on which the determination is based, not the date of the determination itself. 1/ 43 CFR 3100.7-3. Skelly Oil Co., 16 IBLA 264, 269 (1974), appeal pending, Skelly Oil Co. v. Morton, Civ. No. 74-411 (D. N.M., filed Aug. 26, 1974); Robert B. Ferguson, 9 IBLA 275 (1973). See Wann v. Ickes, 92 F.2d 215, 217 (D.C. Cir. 1937).

The facts upon which the determination was based were ascertained on and before September 9, 1973, when the Belco No. 4 well in section 6, T. 23 S., R. 31 E., was completed. September 9 was thus the date on which the BLM was no longer authorized to issue a non-competitive oil and gas lease for the lands, regardless of when the Geological Survey made the determination based on these facts or when it informed the BLM of the determination. Insofar as the facts supporting the KGS determination were ascertained on or before September 9, when the Belco No. 4 well was completed, 2/ appellants' argument is rejected.

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1/ That appellant Lisco held a lease at the time the BLM learned of the KGS determination does not afford her any greater protection from application of this rule than appellant Ptasynski, whose lease had not yet issued. The BLM is deprived of authority to issue leases on the date of ascertainment of the facts leading to the KGS determination, and a lease issued for such lands prior to the BLM receiving notification is of no effect and subject to cancellation. Skelly Oil Co., 16 IBLA 264, 269 (1974); Robert B. Ferguson, 9 IBLA 275 (1973). See Boesche v. Udall, 373 U.S. 472, 476 (1963).

2/ Appellants' challenge of the significance of any information ascertained by completion of the Belco No. 4 well is treated in note 4, infra.

[2] Appellants' second argument is that the Geological Survey regularly issues noncompetitive oil and gas leases for land in closer proximity to producing wells than the Belco No. 4 well and the lands at issue here, and this radical departure from normal procedure is erroneous and an abuse of discretion. In support of this contention appellants cite four examples of noncompetitive leases issued in the "James Ranch area" for lands within a mile of a producing well.

Appellants' submissions of fact, taken as true, do not demonstrate an abuse of discretion in this KGS determination. The examples given, some from up to three townships distant, are not supported by any data indicating that the geological structure of these other areas is so similar to the James Ranch Field addition KGS area that it requires identical treatment. In the absence of any such geological data, the apparent inconsistency appellants rely on in and of itself is not probative of any error in the KGS determination at issue here. <sup>3/</sup> However, the evidence of the Geological Survey's practice of designating small KGS's in this area must be considered with appellants' argument that the KGS extension here was erroneous.

[3] Appellants' third argument is that the determination that these lands are within the extension of the James Ranch Field and four other unnamed KGS's is not supportable on a geological basis. Regulation 43 CFR 3100.0-5(a) defines a "known geologic structure" 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.

This Department has long held that the Geological Survey's determinations of the existence and size of a KGS will not be disturbed in the absence of a clear and definite showing of error. Robert D. Snyder, 13 IBLA 327 (1973); Charles J. Babington, 4 IBLA 43 (1971); Duncan Miller, 66 I.D. 388, 390 (1959), aff'd sub nom. Cuccia v. Udall, Civ. No. 562-60 (D. D.C., June 27, 1961); Lillie Mae Yates, A-26271 (February 8, 1952).

The practice of classifying only a small area around a productive well as a KGS was apparently followed in the township involved here prior to September 9, 1973. Producing wells in sections 14, 26, and 29 of T. 23 S., R. 31 E., and section 4, T. 24 S., R. 31 E., were each at the center of a KGS extending less than a mile in each direction (Fig. 1 of geologist's report accompanying appellants')

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<sup>3/</sup> As the Geological Survey points out in its Memorandum to this Board dated December 3, 1974, each KGS determination is dependent on what is known about each area.

Statement of Reasons for Appeal). From this, appellants argue that the mapping of the four unnamed KGS's in relation to the James Ranch Field KGS accurately included all the land in the area "presumptively productive," as required by 43 CFR 3100.0-5(a).

Appellants support this argument with the report of consulting geologist Harry Ptasynski, which states: most of the wells in the area produce from different zones (or horizons) in the Pennsylvanian formations; well pressures indicate that only the well in section 29, T. 23 S., R. 31 E., and the well in section 4, T. 24 S., R. 31 E., might be pumping from the same pool in the same zone; the existence of porous structures in the area is highly irregular; and some porous structures bear salt water even in zones that are productive elsewhere. The conclusion, according to appellants, is that any pools are local and unpredictable on the various levels, and that the areas between producing wells cannot be presumed productive.

However persuasive the Ptasynski report is in showing the risks and uncertainties of drilling in the area, it does not amount to a clear and definite showing that the land is not presumptively productive. <sup>4/</sup> First, the showing that the porous formations are unpredictable in extent on any given zone does not negate the presumption that the lands determined to be in a KGS will be productive at some zone. An examination of Figure 1 attached to appellants' report indicates that more than one zone is productive in most of the producing wells in the present KGS. The four unnamed KGS's involved here encompass producing wells drilled in 1969, 1970, 1972, and February 1973. This pattern of productive development was supported by the completion of the Belco No. 4 well September 9, 1973. Although it is near the original James Ranch Field well, it also came into

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<sup>4/</sup> The report and appellants' request for a hearing, treated infra, both rely heavily on the allegation that the drilling of the Belco No. 4 well on September 9, 1973, could not have given the Geological Survey new information on the stratigraphy or productivity of these formations because it was too near existing wells and too clearly in the James Ranch Field trap, which they allege the lands at issue are not in. Thus, they argue, the Belco No. 4 well could not support an extension and consolidation of the KGS's involved here.

Appellants have raised some doubt about what new information was ascertained by the completion of the Belco No. 4 well, but their burden is to show that the land itself is not presumptively productive, not just that the Belco No. 4 well added little to knowledge of the area. For instance, the Geological Survey could have had information supporting a KGS determination prior to the drilling of the Belco No. 4, and it was conservatively waiting for the corroboration provided by this well before issuing the determination. The Survey's Memorandum states, "the determination \* \* \* was not based only on the newly completed well \* \* \*, but also on data from the 8 other completed wells inside the new outline."

production in yet another zone of the Pennsylvanian sands in this area. The pattern of development indicates that the area is presumptively productive on some zone even if it is not uniformly productive from the same consistent reservoirs. As the Geological Survey writes, "The U.S.G.S. does not contend the Morrow formation reservoir is one continuous reservoir under the entire known geologic structure, rather, our study shows there are multiple [and overlapping] Morrow producing intervals \* \* \*." Appellants have not submitted material that disputes or negates the existence of multiple and overlapping producing reservoirs in this area.

Secondly, even though the quality of the zone varies across the reservoir, Figure 1 discloses at least two situations where the same zone is productive in more than one well. Variations in the quality of the reservoir throughout the formation do not prove that the reservoir is not present. <sup>5/</sup> Appellants' Figure 1 shows only producing intervals. The area around these does not have to be proven productive before it can be added to a KGS. See Sheridan L. McGarry, A-29518 (July 29, 1963).

If the many wells in this area show the same reservoir, even if some are not producing or of a lower quality, the area between them is, in the absence of contrary evidence, within the "known or inferred limits of the trap," which is the structure of a producing oil or gas field. Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974); Karl Bruesselbach, A-28061 (October 26, 1959). Evidence that the quality of the reservoir varies does not demonstrate that the untapped portions of the reservoir are not presumptively productive. The Secretary is entitled to rely on the expertise of the Geological Survey, his delegate in such matters under 43 CFR 3100.7-1, in the absence of a clear and definite showing of error. T. D. Skelton, *supra*; Charles J. Babington, *supra*.

For both of the reasons discussed above, but primarily because appellants have not successfully disputed the overlapping nature of the producing intervals in the area, appellants have not met this burden of proving error.

[4] Appellants have jointly requested that the Board set this case for hearing in order to resolve the factual issues: (1) that the KGS determination was based on information learned after the

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<sup>5/</sup> Appellants have challenged the Geological Survey's use of the term "reservoir," in the singular, to characterize the irregular and spotty productive capacity of the Morrow formation under the area classified as a KGS. However, appellants' evidence does not demonstrate that the multiple and overlapping producing intervals are separated by any structural break or discontinuity, so that the intervals could not be said to be within the same "reservoir."

date to which the decision was made retroactive; (2) that the KGS determination in the case constituted a radical departure from the regular Geological Survey procedure; and (3) that the determination was not based on geologic fact. As we held above, the effective date of the KGS determination is, as a matter of law, the date of the ascertainment of the facts on which it was based, not the actual date of determination. Skelly Oil Co., supra. Second, as we held above, the fact the KGS determination seems to have been made in a different fashion than those previously made in this same area is not significant in and of itself; appellants must show the determination to be in error, not just that the method of determination is different. These two arguments thus present no issue of fact requiring a hearing.

Third, appellants have failed on the face of their appeal to make a clear and definite showing that the KGS determination was erroneous. In the absence of such a showing, 6/ the Board is entitled to rely on the expertise of the Geological Survey, the Secretary's delegate in such matters. 43 CFR 3100.7-1. Clear Creek Inn Corp., 7 IBLA 200, 213, 79 I.D. 571, 577-78 (1972). Appellants' facts, taken as true, demonstrate only that the quality of the reservoir varies in the wells that have tested it. The evidence does not demonstrate, however, that the land classified as the KGS by the Geological Survey is not presumptively productive, *i.e.*, within the known or inferred limits of the overlapping intervals. Geral Beveridge, supra. When an appellant fails to assert facts which on their face would sustain the appeal, no hearing to determine the facts is required in order to decide the case. 43 CFR 4.415; *see* Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973); Martha J. Jillson, 6 IBLA 150 (1972); Lance H. Minnis, 6 IBLA 94 (1972). The request for hearing is accordingly denied.

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6/ An analogous practice of the Food and Drug Administration, requiring a special showing in order to be entitled to an administrative hearing, has been upheld on attack on statutory and Constitutional due process grounds. American Cyanamid Co. v. Richardson, 456 F.2d 509, 513-14 (1st Cir. 1971); Upjohn Co. v. Finch, 422 F.2d 944, 954-55 (6th Cir. 1970) (FDA not required to hold hearing before decertifying certain drugs when appellant failed to tender adequate, well-controlled scientific investigations raising a genuine and substantial issue of fact).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

