

WILLIAM T. ALEXANDER
(ON REMAND)
(Supp. I)

IBLA 74-277 December 22, 1976, Decided

Remand by the United States District Court for the District of New Mexico of the Board's decision in William T. Alexander, 21 IBLA 56 (1975), which affirmed the decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM-20947.

Decision in William T. Alexander, 21 IBLA 53 (1975), set aside; case referred to Hearings Division for a hearing.

1. Administrative Practice: Hearings—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Known Geological Structure

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

APPEARANCES: Don M. Fedric, Esq., Hunker-Fedric, P.C., Roswell, New Mexico, for appellant; Gayle E. Manges, Field Solicitor, Santa Fe, New Mexico, for the Government.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This case comes to the Board on remand from the United States District Court for the District of New Mexico in Alexander v. Frizzel, Civil No. 75-538 (D.N.M., filed September 12, 1975). That action was brought by William T. Alexander for judicial review of

this Board's decision in William T. Alexander, 21 IBLA 56 (1975). In its motion, the Government requested the remand so that this Board could consider its earlier decision in light of the decision in Skelly Oil Co. v. Morton, Civil No. 74-411 (D.N.M. August 7, 1975). Also, the Government suggested to the court that the Board should examine additional factors not considered in the earlier decision.

The case arose from a decision dated March 29, 1974, of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's oil and gas lease offer NM-20947 because the land applied for was within a known geologic structure of a producing oil or gas field (KGS). Appellant's lease offer for parcel 52 was drawn first in the February 12, 1974, simultaneous oil and gas lease drawing conducted by the New Mexico State Office. On March 12, 1974, Raul Martinez, Chief of the Minerals Section, signed the lease form. Rubber-stamped on the lease was the statement that the lease is subject to the determination by the United States Geological Survey (Survey) that the land was not within a KGS "as of the date of signing hereof [the lease] by the authorized officer."

BLM sent a copy of the lease form and requested Survey to make a KGS determination. At that time, the land in the lease offer adjoined the Catclaw Draw Field undefined KGS. Based on the results of a drill stem test of a well some 2 miles outside the KGS, Survey extended the KGS boundary. This placed the lands covered by appellant's lease offer within the KGS. Survey stated that the effective date of the KGS extension was February 27, 1974, the date the test indicating the presence of a producing reservoir was conducted.

Upon receiving the report from Survey, BLM ruled that the lease offer must be rejected because the land was within a KGS. This Board then affirmed the BLM decision in William T. Alexander, supra, and appellant subsequently commenced the court action.

The regulations involved here stem from 30 U.S.C. § 226(b) and (c) (1970). In these provisions of the mineral leasing laws, Congress requires that oil and gas leases for lands within the known geologic structure of a producing oil or gas field shall be issued by competitive bidding but leases for non-KGS lands are issued to the first qualified offeror without competitive bidding. The regulations require that if land embraced by a noncompetitive oil and gas lease offer becomes within a KGS before the lease is issued, the offer will be rejected. 43 CFR 3110.1-8.

The authority to determine the boundaries of a KGS is delegated to Survey. 43 CFR 3100.7-1. Regulation 43 CFR 3100.7-3 establishes the date determinative of an offeror's rights when the applied-for lands are placed within a KGS:

*** 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 rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field.

In Skelly Oil Co. v. Morton, *supra*, the United States District Court for the District of New Mexico issued a memorandum opinion reversing the decision of this Board in Skelly Oil Co., 16 IBLA 264 (1974). In that opinion, the Court examined the question of what constitutes the "date of the ascertainment" of the producing character of an oil or gas structure. The Court stated:

*** The stress should be placed on the phrase "if the producing character of a structure is actually known," which limits the phrase "date of ascertainment of the fact" to the actual knowledge of the producing character of a structure. The fact not being the date of completion of a well or wells as IBLA pictures it, but the fact of the date the producing character of the structure was known. The producing character of this structure was not known until the USGS had accumulated all of the information pertaining to the area, had correlated the same and made its determination, although all of the information was available a year or more before USGS studied the area. The fact to be dealt with is the actual knowledge of the producing character of the structure and not the determination of the date on which a well completion was made. It is probable that in many cases information will have been accumulated and studies made of it that would require that the knowledge of the completion of one well to be determinative of a KGS so that at that time it would become known. ***

Upon receiving the remand in the present case, on August 13, 1976, the Board, as required by 43 CFR 4.29, allowed the parties to submit reports recommending procedures for the Board to follow to comply with the order of remand. Both parties replied to this by filing arguments in support of their respective positions.

Appellant argues that the decision in Skelly Oil Co. v. Morton, *supra*, requires a finding by the Board that the date of the ascertainment of the KGS by Survey was March 26, 1974, and that therefore a valid noncompetitive lease was issued when Martinez signed it on March 12, 1976. The Government suggests that the Skelly

decision can be distinguished on the facts and that the date of the ascertainment of the KGS occurred prior to the signing of the lease on March 12.

The other ground for remand concerned additional factors not previously considered. The Government points out that Secretarial Order 2948, issued October 6, 1972, requires BLM to obtain a KGS report from Survey before signing an oil and gas lease offer. The Government argues that therefore Martinez was without authority to sign appellant's lease on March 12, and that the Government is not bound by his unauthorized actions. The Government also suggests that the authorized officer whose signature constitutes issuance of the lease is the employee of Survey who determines whether the land is within a KGS, and not an employee of BLM such as Martinez. Appellant disputes these arguments of the Government by arguing that the procedures followed by BLM and Survey with regard to his lease are entirely consistent with their past practice in issuing oil and gas leases and that to retroactively change the procedure would be improper, unjust and cast a cloud on all oil and gas leases issued under those procedures.

[1] In the recent decision of Nola Grace Ptasynski, 28 IBLA 256 (1976), the Board determined that the "authorized officer" whose signature constitutes issuance of the lease is the appropriate BLM officer, that under Secretarial Order No. 2948 the BLM officer is without authority to sign a noncompetitive oil and gas lease until Survey has made its determination whether the land is within a KGS; and that such an unauthorized signing renders a lease voidable. That decision disposes of some of the legal issues raised here.

However, unlike the Ptasynski case where a factual record had been established in the court proceedings, the record here contains three major factual questions: (1) did Martinez, the BLM officer who signed the lease, have information from Survey concerning the status of the land prior to signing the lease form; (2) when, and under what circumstances, did Survey make the determination that the lands are within a KGS; and (3) did Survey have sufficient information to make the KGS determination. ^{1/} While the record contains some information on each of these points, we believe a hearing would be the best means of establishing all the facts, and opposing interpretations, for the record.

^{1/} In our previous William T. Alexander decision, we ruled that appellant failed to make a clear and definite showing that the KGS determination was incorrect. However, the Government in its recommendations on remand has suggested that a hearing on this issue would be appropriate. Appellant has alleged sufficient facts to warrant inclusion of this issue in the hearing.

We therefore refer this case to the Hearings Division, Office of Hearings and Appeals, for a hearing before an administrative law judge as authorized by 43 CFR 4.415. After the hearing, the judge should provide each party with a copy of his recommended decision and each party will have 30 days from receipt of the decision to file comments with the Board.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in William T. Alexander, supra, is set aside and the case is referred to the Hearings Division for a hearing.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

