

GUY W. FRANSON

IBLA 77-89

Decided May 12, 1977

Appeal from a decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offer, ES 14940.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings! ! Oil and Gas Leases: Known Geological Structure! ! Oil and Gas Leases: Noncompetitive Leases

Except for establishing priority of filing, the drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror. If subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease the land described therein is determined to be in a known geological structure of a producing oil or gas field, the noncompetitive lease offer must be rejected.

2. Administrative Procedure: Adjudication! ! Applications and Entries: Generally! ! Federal Employees and Officers: Generally! ! Oil and Gas Leases: Applications: Generally

A delay in the adjudication of an application by officers or employees of the Department cannot create rights in federal property contrary to law.

APPEARANCES: Guy W. Franson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Guy W. Franson brings this appeal from a November 29, 1976, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer (ES 14940) which received first priority for parcel number 82 in the February 11, 1975, drawing of simultaneously filed oil and gas lease offers. The BLM decision was based on a finding that the land embraced in the lease offer was determined by the United States Geological Survey (Survey) to be within a known geological structure of a producing oil or gas field (KGS) effective November 9, 1976. Once land is placed within a KGS prior to actual issuance of a lease, the land may be leased only by competitive bidding and, therefore, appellant's noncompetitive lease offer was rejected.

Appellant essentially contends in his statement of reasons for appeal that he was the victim of irregular procedures utilized by the BLM in processing his lease offer. Appellant asserts that the delay between the date of the drawing and the date of the KGS determination (at which point the lease admittedly had not issued) was unusually and unreasonably long. Appellant further alleges that the KGS determination was preceded and prompted by a letter to the BLM and to Survey from a company engaged in drilling a well on other land in a unit which included the tract embraced in appellant's offer. This letter requested that the land be put up for competitive bidding.

Appellant further states that he believes the well on which the determination was apparently made was not actually completed until December of 1976. Finally, appellant contends the BLM had a commitment to issue him a lease as a result of the drawing of February 11, 1975.

The issue presented by this appeal is whether a party making a noncompetitive oil and gas lease offer which receives first priority in a drawing of simultaneously filed oil and gas lease offers acquires thereby any vested right to a lease prior to acceptance of the lease offer signified by the signing (issuance) of the lease by the authorized officer of the BLM.

The issuance of oil and gas leases on the public domain is governed by statute. If the lands to be leased are within any KGS, "they shall be leased to the highest responsible qualified bidder by competitive bidding." 30 U.S.C. § 226(b) (1970). Issuance of a noncompetitive lease for land not embraced in any KGS is within the discretion of the Secretary of the Interior. However, if a noncompetitive lease is to be issued, it must be issued to the first qualified applicant for a lease on the land. 30 U.S.C.

§ 226(c) (1970); Udall v. Tallman, 380 U.S. 1, 4 (1964). Appellant's offer received first priority in a drawing of simultaneously filed noncompetitive oil and gas lease offers. Therefore, if a noncompetitive oil and gas lease is to be issued for the subject tract, it should be issued to the appellant, assuming that he is qualified and that all else is regular.

[1] However, except for establishing priority of filing, the drawing of an offer for a noncompetitive lease creates no vested rights in the offeror. Thus, if lands embraced in the offer are designated as within a KGS before the issuance of a lease, the offer must be rejected as to those lands. Donald Reese, 15 IBLA 101 (1974); Silver Monument Minerals, Inc., 14 IBLA 137 (1974); see 43 CFR 3110.1-8; McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Lands within a KGS may only be leased by competitive bidding. The Department has no discretion to issue a noncompetitive lease for such lands, but is required by law to reject the offer. James A. Wallender, 26 IBLA 317 (1976); Minetta A. Miller, 17 IBLA 245 (1974).

The signing of an oil and gas lease offer by the authorized officer of the BLM is the act that constitutes acceptance of the lease offer, which creates a binding contract, and issuance of the lease. 43 CFR 3111.1-1(c); Barbara C. Lisco, 26 IBLA 340 (1976). The date of signing (lease issuance) is the determinative date with respect to the rights of the offeror. If, subsequent to the filing of a noncompetitive oil and gas lease offer and prior to issuance of a lease, the land described in the offer is determined to be within a KGS, then the offer will be rejected. 43 CFR 3110.1-8; McDade v. Morton, supra; Barbara C. Lisco, supra.

Although appellant has asserted a belief that the well which was drilled was not completed until December of 1976, he has presented no evidence that the KGS determination by Survey is in error. One who attacks a KGS determination by Survey has the burden of showing the determination is in error and the finding will not be disturbed in the absence of a clear and definite showing of error. James A. Wallender, supra.

[2] Appellant complains of the fact that there was an unusual delay between the time of the drawing and the KGS determination by the Survey, and he suggests that this is circumstantial evidence of impropriety by BLM and/or the Survey. However, the record shows that the initial delay in the issuance of the lease was occasioned by a conflicting claim of title to the land by one A. F. Holcomb, who filed application ES 16182 pursuant to the Color of Title Act. A subsequent delay ensued when the Survey anticipated the need to classify

the land as KGS. These concerns were legitimate reasons for the BLM to refrain from issuing a lease to appellant post haste. A delay in the adjudication of an application by officers or employees of the Department cannot create rights in federal property contrary to law. Montana Copper King Mining Co., 20 IBLA 30 (1975); see Roberts v. Morton, 549 F.2d 158 (10th Cir. 1977).

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

