

VERNON AND RITA BENSON

IBLA 80-24

Decided May 29, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM-A 37618 (OK).

Affirmed.

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

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

2. Oil and Gas Leases: Discovery -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Discovery -- Oil and Gas Leases: Known Geologic Structure

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

APPEARANCES: Donald A. Clowe, Esq., Carabin, Monnig, and Clowe, San Antonio, Texas, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Vernon and Rita Benson appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated September 6, 1979, rejecting their offer to lease noncompetitively certain acquired lands in Oklahoma for oil and gas. 1/

Appellants' drawing entry card (DEC) was drawn with first priority for parcel NM 846 in the simultaneous oil and gas lease drawing conducted by the New Mexico State Office on June 13, 1979. Prior to lease issuance, BLM inquired of the Area Geologist, Branch of Mineral Evaluation, Geological Survey (Survey), whether the lands in parcel NM 846 were "on a known geologic structure." The Director, Survey,

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1/ The lands sought by appellants as described in the May 21, 1979, notice of land available for oil and gas filings are as follows:

T. 13 N., R. 22 W., Indian meridian, sec. 6, lot 6.

T. 13 N., R. 23 W., Indian meridian, N 1/2 SE 1/4 sec. 1.

responded that "[a]ll of the lands described in lease offer NM-A 37618 (OK) are on the undefined known geologic structure of the East Cheyenne field [and] [a]ll of Sec. 6, T. 13 N., R. 22 W., and Sec. 1, T. 13 N., R. 23 W., Indian Meridian, have been within the boundary of this undefined structure since March 21, 1979, the effective date of the structure."

Upon receiving this report from Survey, BLM rejected appellants' offer to lease for the reasons stated by Survey. The Bensons have appealed this decision. In their statement of reasons to this Board, appellants call to our attention the requirements of 43 CFR 3112.1-1. This regulation implements the policies set forth in 30 U.S.C. § 226 (1976) which provides in part: "(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 \* \* \*."

Appellants argue that BLM's rejection notice did not state whether the East Cheyenne field is a producing oil or gas field, nor has any evidence been tendered to support this requirement. Upon receiving appellants' statement of reasons, this Board asked Survey to comment on these arguments. By memorandum of December 10, 1979, the Acting Chief, Conservation Division, provided this Board with a copy of a report by Area Geologist E. L. Johnson which states in part:

Based on an oil and gas discovery in the N 1/2 N 1/2 S 1/2 NE 1/4 sec. 12, T. 13 N., R. 23 W., the following described lands are within the undefined known geologic structure of the East Cheyenne field effective March 21, 1979:

T. 13 N., R. 22 W., Indian Meridian, Oklahoma  
Secs. 6 and 7, all

T. 13 N., R. 23 W.  
Sec. 1, all  
Sec. 12, all

In his memorandum, the Acting Chief set forth the definition of a known geologic structure as found in 43 CFR 3100.0-5. This definition provides: "A known geologic structure is 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." The memorandum continued:

The term "known geologic structure," as defined in the governing regulations, incorporates the requirement of a discovery capable of production. Although the August 28, 1979, memorandum from the Area Geologist does

not use the phrase "producing oil and gas field," by designating the area as a "known geologic structure," the Area Geologist has, in fact, designated the area as capable of production.

The arguments of appellants and the correspondence from Survey pose the question whether a discovery of oil and gas in a nearby section and a finding that the lands sought by appellants are on the undefined known geologic structure of the East Cheyenne field support a rejection of appellants' offer. Rejection is required by 30 U.S.C. § 226(b) if the subject lands are within a known geologic structure of a producing oil or gas field.

Further inquiry to the Geological Survey elicited a memorandum dated March 12, 1980, with the information that the Thompson 1-12 well had been completed March 21, 1979, by the Apache Corporation in N 1/2 N 1/2 S 1/2 NE 1/4 sec. 12, T. 13 N., R. 23 W., Indian meridian, with initial rates of production at 20 BOPD and 400 MCFGPD. The well was characterized as "flowing," rather than "pumping." No production of either oil or gas has occurred since completion of the well, as it has been shut in, awaiting pipeline facilities. The well, however, is considered capable of producing oil and gas in paying quantities.

The memorandum continued in this fashion:

The definition of this undefined KGS was accomplished pursuant to the standard practices followed by the Geological Survey in our Mid-Continent Area. All gas wells in Arkansas, Louisiana, and Oklahoma normally are drilled on a 640-acre spacing pattern. Thus, if any part of a section is proven productive of gas, all mineral interests in that section will share in the production from the well. Therefore, where the Survey believes that any part of a section has been proven productive, we must, through standard and logical practice, include the entire section as well as the adjacent spacing units in a KGS. It should be noted, however, that there are no other Federal lands within these four sections.

Appellants argue that a shut-in well does not make a producing oil or gas field as required by 43 CFR 3112.1-1, and that there has been no production from the discovery well adjacent to the land at issue.

[1] The issue before us is whether the requirement that a producing oil and gas field be shown before determination of a KGS by Survey has been satisfied. We hold that it has. Our holding is guided by the fact that the phrase "producing oil and gas field" is a term of art. State of Utah, 71 I.D. 392, 399 (1964). A determination by Survey that certain lands are on a known geologic structure of a producing oil

and gas field does not guarantee the productive quality of the lands included in the structure. Such determination does no more than to announce that on the basis of geological evidence, the Department has found that a certain geological structure constitutes a trap in which oil or gas has accumulated. The thing known is the existence of a continuous entrapping structure on some part of which there is production. There is no prediction as to future productivity or statement as an existing fact that anything is known about the productivity of all the land included in a structure. Columbian Carbon Co., A-28706 (Oct. 10, 1962).

The boundaries of the geologic structure of a producing oil and gas field cannot always be determined to preclude the possibility of future change. The boundaries are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geological structure producing oil or gas. Columbus C. Mabry, 55 I.D. 530 (1936).

In McClure Oil Co., 4 IBLA 255 (1972), appellant challenged a determination by Survey that lands leased by McClure were on a known geologic structure of a producing oil or gas field. Therein at 259, this Board stated: "The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas."

Similar holdings occur in earlier decisions of this Department. For example, in Moss v. Schendel (A-6287, Mar. 24, 1924, unreported), the Department held: "The term 'producing oil or gas field' as used in section 13 of the leasing act must be construed to include areas in which there has been production and which are capable of producing more oil \* \* \*." Accord, Kermit D. Lacy, 54 I.D. 192, 193-4 (1933); John F. Richardson, 56 I.D. 354, 358 (1938); George C. Vournas, 56 I.D. 390, 394 (1938). It is not the policy of this Department to redefine a geologic structure until all sands or formations have been exhausted or proved barren. K. S. Albert, A-24514 (Oct. 28, 1947).

[2] Recognizing the difficulty of determining a known geologic structure, Survey published its Circular 419 2/ in 1959 explaining its determination procedures. Known geologic structures are of two kinds: undefined, as in the instant appeal, and defined. "The essential difference between defined and undefined known geologic structure definitions, and the reason therefor, is that the formality and detail in the defined procedure does not permit the necessary

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2/ E. A. Finley, The Definition of Known Geologic Structures of Producing Oil and Gas Fields (1959).

day-to-day determinations needed by the Bureau of Land Management in current administration of the leases and lease applications." Circular 419, supra at 5.

An informal procedure for classifying lands on the known geologic structure of a producing oil and gas field is necessary if Survey is to fulfill the terms of 30 U.S.C. § 226 (1976) requiring such lands to be leased on a competitive basis. This need is discussed in Circular 419, supra at 6:

Generally, the undefined structure procedure applies when there is a discovery on or near a Federal lease and an immediate determination is needed for guidance of the manager in administering the rental and extension provisions of the particular lease or leases in the vicinity of the discovery. It is also applied in areas where the scope and pace of development are rapid, and where the preparation and publication of a map would be misleading because, in a matter of a day or days after publication, or even on the date of publication, the boundaries are subject to change. [Emphasis supplied.]

The undefined structure procedure is also used with respect to a field or area where there are but one or two tracts of Federal lands, and a determination can be made as to such tracts without the necessity of outlining the entire structure.

[3] A determination by Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made. Geral Beveridge, 14 IBLA 351 (1974). There has not been such a showing in this case.

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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Douglas E. Henriques  
Administrative Judge

I concur:

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Joseph W. Goss  
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

In my dissenting opinion in David A. Provinse, 27 IBLA 376, 386-96 (1976), I inveighed against the majority's holding that two small structures which had produced no oil for many years were nevertheless still classified as "producing" within the context of the Mineral Leasing Act. Personally, I still retain my opinion. However, as I was unable to persuade the other administrative judges to my view, the majority opinion in Provinse became the law of the case, and the doctrine of stare decisis obliges me to recognize it.

However, in this case there is a newly-completed well in place which, although shut in, is capable of production at present. Here, then, we have an even stronger basis for affirming Survey's KGS classification than was encountered in the Provinse appeal. I therefore concur that BLM's decision must be affirmed.

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Edward W. Stuebing  
Administrative Judge