

CO<sub>2</sub>-IN-ACTION, INC.

IBLA 79-317

Decided September 15, 1980

Appeal from decision of New Mexico State Office, Bureau of Land Management, increasing the rental for noncompetitive oil and gas leases NM 31535 and NM 31538.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Known Geological Structure

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

2. Oil and Gas Leases: Rentals--Oil and Gas Leases: Known Geological Structure

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

APPEARANCES: David D. Cooper, Vice President, CO<sub>2</sub>-In-Action, Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

CO<sub>2</sub>-In-Action, Inc., appeals from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated March 13, 1979, increasing the rental because some of the lands described in leases NM 31535 and NM 31538 had been determined by the Geological Survey to be within the known geologic structure (KGS) of the Bueyeros field.

The leases were issued noncompetitively effective January 1, 1978, for 269.92 acres and 560 acres respectively at annual rentals of \$270 and \$560. These leases were assigned to appellant effective November 1, 1978. On February 5, 1979, Geological Survey notified the New Mexico State Director that part of the land in the leases NM 31535 and NM 31538 were in the Bueyeros undefined KGS effective February 5, 1979.

On March 13, 1979, the State Director issued his decision increasing the rental based on regulation 43 CFR 3103.3-2 which provides as follows:

Rentals shall be payable in advance at the following rates:

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(b) On leases wholly or partly within the known geologic structure of a producing oil [or] gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of \$2 per acre or fraction thereof.

In its statement of reasons, appellant contends:

AMOCO Production Company has formally proposed the forming of the Bravo Dome Carbon Dioxide Gas Unit in northeastern New Mexico as supported by the enclosed extracts from AMOCO's Geological and Engineering Report (undated) and provided as Attachment 1. Acreage of both leases does fall within the proposed boundary of the unit; however, some 280 acres (T20N-R28E) NM 31538 falls outside the proposed unit with all remaining acreage located on the periphery just inside the unit.

NM 31538, located on the western portion, is in a porosity/permeability pinch out area. The closest well to this lease is AMOCO's State FN some 3 miles southeast -- a copy of AMOCO's completion report for both the state FN and state FC is provided as attachments 2 and 3.

NM 31535, located in the most northeastern portion of the proposed unit, is in an area where the gas-water contact

line is very questionable and the potential productive zone of NM 31535 most probably contains water which would prevent commercial production (Attachment 4).

CONCLUSION: There are wells within the general area of both leases which have been drilled and considered commercially productive of carbon dioxide gas. These wells (AMOCO State FN, FC, FH and FT), however, have been shut-in since their 1974 completion and have not been proven through production. CO<sub>2</sub>-IN-ACTION, INC. feels, that at the present time, there is insufficient information available to place NM 31538 and NM 31535 within a "known geological structure". Most certainly NM 31538 should not be included, as portions (T20N-R28E) of this lease are in an area known to lack the permeability and porosity to commercially produce gas. Additionally NM 31535 is within 1 1/2 miles of a dry hole.

The fact that appellant may be part of AMOCO's proposed unit plan is to no avail. In order to be exempt from the rental increase, appellant must in fact be part of a cooperative or unit plan.

In declaring land within an oil and gas lease to be within a KGS, the Bureau of Land Management relies on the reports of the Geological Survey. The Director, Geological Survey, is the person to whom the Secretary of the Interior has delegated the task of determining the extent of the KGS of producing oil or gas fields. 220 DM 4.1(G). Duncan Miller, 19 IBLA 86, 88 (1975).

A "KGS" 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. 43 CFR 3100.0-5(a).

Appellant's assertion that wells in the area have been shut-in since their 1974 completion and have not been proven through production is without merit. These facts are not sufficient of themselves to warrant a redefinition of the KGS 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. Duncan Miller, supra; McClure Oil Company, 4 IBLA 255 (1972). The determination of the boundary lines of the KGS of a producing oil or gas field or of an undefined addition to such field does not guarantee the productiveness of the area so designated. Duncan Miller, supra; McClure Oil Company, supra.

[1] A determination by the Geological Survey that lands are within an undefined KGS will not be disturbed in the absence of a clear showing that the determination was improperly made. Duncan Miller, supra; Robert D. Snyder, 13 IBLA 327 (1973). Appellant's

unsupported statement that the wells in the vicinity of its lease have been shut-in is not sufficient to warrant disturbing the determination of the Geological Survey that an undefined KGS includes some of the land within the leases of appellant.

[2] Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined KGS, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1). H. B. Cahoon Investment Company, 27 IBLA 210 (1976); Duncan Miller, *supra*; Robert D. Snyder, *supra*. Therefore, BLM properly informed appellant that its annual rental would be increased to \$2 per acre.

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

