

SID

IBLA 80-778

Decided September 30, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, increasing the rent on oil and gas lease M 41772, parts of which have been determined to be within a known geologic structure.

Affirmed.

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

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 proven barren.

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).

2. Oil and Gas Leases: Bonds

Regulation 43 CFR 3104.2 requires a general lease and drilling bond in an amount not less than \$10,000, conditioned upon compliance with all the terms and conditions of the lease, to be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee.

3. Oil and Gas Leases: Rentals

The Secretary may waive rental requirements on a leasehold in order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein. 43 CFR 3103.3-7.

APPEARANCES: Robert D. Childers, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

SID appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 24, 1980, increasing the rental rate on lands in oil and gas lease M 41772, part of which is situated within a known geologic structure.

The lands affected by BLM's decision total 160.06 acres in sec. 3, T. 34 N., R. 3 W., Principal meridian, Toole County, Montana. Of this acreage, only the S 1/2 SE 1/4 sec. 3 has been determined to be situated within a known geologic structure (KGS). The remainder of the lease, consisting of lots 2 and 3 in that same section, is subject to the rental increase in accordance with 43 CFR 3103.3-2. That regulation states in part:

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after February 1, 1977, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of \$1 per acre or fraction thereof for each lease year.

* * * * *

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

Lease M 41772 was issued on October 19, 1978, for a term of 10 years.

Without stating the basis for its determination that the S 1/2 SE 1/4 sec. 3 was within a known geologic structure, BLM informed SID by decision of June 24, 1980, that its rental rate for the 160.06 acres within lease M 41772 was increased to \$2 per acre, or fraction thereof, for the entire lease beginning November 1, 1980. This action followed a memorandum of April 28, 1980, from the Director, Geological Survey, to the Montana State Director, BLM, informing the State Director that "based on oil and gas development" the S 1/2 sec. 3 was within an undefined addition to the Kevin-Sunburst field defined geologic structure effective April 24, 1980.

Robert D. Childers, a partner in SID, appeals BLM's decision of June 24, 1980, and challenges this KGS classification. He argues that the classification is not appropriate because "this area was not in a known geologic structure and to my knowledge there has not been proven production in the immediate area * * *."

By letter of August 12, 1980, the Director, Geological Survey (Survey), responded to Childer's arguments on appeal. The Director commented as follows:

The S 1/2 SE 1/4 sec. 3, T. 34 N., R. 3 W., Toole County, Montana, of the subject lease was placed within an undefined addition to the Kevin-Sunburst defined known geologic structure effective April 24, 1980. This acreage was part of an addition comprising approximately 8,953 acres.

The portion added in section 3 was based on a well drilled on patented land in the SW 1/4 NE 1/4 SW 1/4 section 3. According to available records (Individual Well Record enclosed), this well was completed June 10, 1957, for 400 thousand cubic feet of gas per day from the Sunburst sand interval 1,324-1,332 feet. The well had previously been overlooked because it was not on Federal lands. This well offsets the subject lease and those lands surrounding such a gas well are considered to be part of a known producing gas field. This office telephoned the Montana Department of Natural Resources and Conservation on April 24, 1980, and was advised that there was no record that the well was plugged. As of July 28, 1980, the State of Montana still has no record showing the well has been plugged.

On the basis of the information available, this office has established that the S 1/2 SE 1/4 sec. 3, T. 34 N.,

R. 3 W., is within an undefined addition to the Kevin-Sunburst known geologic structure.

[1] Appellant does not dispute the existence of the well referred to by Survey in the SW 1/4 NE 1/4 SW 1/4 sec 3. While his statement of reasons on appeal suggests that the immediate area about his leasehold does not reveal any proven production, a cessation of production would not require a different result. In McClure Oil Co., 4 IBLA 255 (1972), 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.

Accord, Vernon Benson, 48 IBLA 64 (1980). It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proven barren. K. S. Albert, 60 I.D. 62 (1947). While Survey's knowledge of the subject well, on which the KGS determination was based, was long delayed, it has taken the proper course of action consistent with 43 CFR 3103.3-2(b)(1) upon learning of the well completed in sec. 3.

[2] Appellant's statement of reasons on appeal alludes to his concern that BLM's decision in this matter would necessitate the filing of a bond by SID. Appellant's concern is not well founded given the recent change in bonding requirements. See 41 FR 54585 (Nov. 25, 1975). The applicable regulation, 43 CFR 3104.2, requires a general lease and drilling bond in an amount not less than \$10,000, conditioned upon compliance with all the terms and conditions of the lease, to be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee. An operator's bond may be substituted in lieu thereof. No bond is required of appellant until such actions are contemplated. See also 43 CFR 3104.9 and 41 FR 45566 (Oct. 15, 1976).

[3] Lastly, appellant asks that the Secretary waive SID's rental requirements on lease M 41772. Appellant is apparently referring to 43 CFR 3103.3-7, a regulation authorizing the Secretary to waive the rental due on any lease "[i]n order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation * * * whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein." Not only has SID failed to allege any of the prerequisites set forth, supra, to invoke the Secretary's authority, but it has failed to comply with the procedural requirements for obtaining such a waiver, as set forth at 43 CFR 3103.3-7(b). Appellant's request for waiver is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

