

Editor's note: Reconsideration granted; decision affirmed in part, reversed in part -- See James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

JAMES MUSLOW, SR.

IBLA 80-378

Decided October 28, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-44213 in its entirety.

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 or 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: 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.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Lands Subject to

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

4. Accounts: Payments -- Oil and Gas Leases: Rentals

The payment of advance rental in connection with an oil and gas lease offer and the acceptance of such payment by the Bureau of Land Management do not create a binding obligation on the Bureau to issue an oil and gas lease.

APPEARANCES: John F. Welborn, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James Muslow, Sr., appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated January 4, 1980, rejecting in its entirety oil and gas lease offer U-44213. BLM's decision was based upon information received from Geological Survey (GS) that the lands in lease U-44213 are situated within the Bitter Creek-Red Wash known geologic structure (KGS), effective October 1, 1979.

The lands sought by appellant in the instant offer are the following:

T. 9 S., R. 24 E., Salt Lake meridian, Uintah County, Utah
S 1/2 SW 1/4 sec. 3
SE 1/4 SE 1/4 sec. 4
All sec. 11 N 1/2 NW 1/4 sec. 14

The above described lands were designated parcel UT 63 in the September 1979 drawing of simultaneous offers to lease public lands for oil and gas. Appellant Muslow's drawing entry card (DEC) was drawn with first priority in that drawing. Prior to lease issuance, however, GS notified BLM by memorandum of November 20, 1979, that "based on gas and oil development" the lands in parcel UT 63 were within the Bitter Creek-Red Wash KGS. The memorandum stated that the Bitter Creek-Red Wash KGS totaled approximately 385,943 acres, including 230,175 acres of new undefined additions and 155,768 acres of previously defined and undefined KGS.

In rejecting appellant's DEC, BLM relied upon the regulation at 43 CFR 3101.1-1 which states in part:

All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding * * *.

The Act referred to in this regulation is the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976). ^{1/}

On appeal, counsel for appellant calls for reversal of BLM's decision of January 4, 1980, and sets forth three arguments in his statement of reasons in support thereof:

1. Parcel UT 63 is not within a KGS as defined in 43 CFR 3100.0-5, and any determination by GS to the contrary is without basis and improper.
2. Appellant's right to issuance of a lease vested before any KGS determination.
3. BLM is estopped to deny issuance of a lease, having previously notified appellant of his success in the lottery and having accepted payment of first-year rental.

[1] Regulation 43 CFR 3100.0-5 defines a known geologic structure as "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 presumptively productive." By memorandum of August 19, 1980 (copy to appellant), the Acting Deputy Division Chief, Onshore Minerals Regulation, amplified on GS's KGS finding:

The Bitter Creek-Red Wash known geologic structure was established effective October 1, 1979. Geologically, this

^{1/} The passage from 43 CFR 3101.1-1, quoted above, is substantially similar to the statute at 30 U.S.C. § 226 (1976).

KGS is a combination of two separate but contiguous areas. The Red Wash and Coyote Basin oil fields which lie on the northern border of the KGS and the Bitter Creek, Island, Rock House, Oil Springs, Southman Canyon, Chapita Wells, Coyote Wash, Uteland Butte, Bonanza and four smaller unnamed KGS's which are located within an area of extensive tight gas sands. Production is from both the Tertiary Wasatch Formation and the underlying Cretaceous Mesaverde Formation. Both formations are similar, with production mostly from streambed sands, the petroleum source rock being the enclosing mudstones.

Specifically, in the area of lease offer U-44213 * * * a well was drilled by Pacific Transmission Supply Company (PTS No. 41-9) in the NE 1/4 NE 1/4, sec. 9., T. 9 S., R. 24 E., at a distance of only 479 feet. It was completed September 5, 1978, from 4,265 to 5,062 feet in the Wasatch Formation for 10 BOPD and 1,291 MCFGPD and from 5,530 to 5,610 feet in the Mesaverde Formation for 1 BOPD and 48 MCFGPD. This led to the drilling of a well in the SW 1/4 SW 1/4, sec. 10, (PTS No. 14-10) which was plugged June 19, 1980, after perforating and testing. A well was posted on the Parcel (PTS No. 21-14) in the NE 1/4 NW 1/4, sec. 14, but the location was abandoned when the lease expired. A well in the NW 1/4 NW 1/4, sec. 34, T. 8 S., R. 24 E., (Belco No. 1), was completed September 29, 1960. It had an initial production of 297 MCFGPD from 4,892 to 4,928 feet in the Wasatch Formation. A well in NW 1/4 NE 1/4, sec. 18, T. 9 S., R. 24 E. (PTS No. 1-18) was completed on June 1, 1973, for 1,282 MCFGPD from 5,947 to 5,968 feet in the Wasatch Formation. A well in the NW 1/4 SE 1/4, sec. 27 (PTS No. 3) was completed on October 15, 1963, for 831 MCFGPD from 4,919 to 4,922 feet in the Wasatch Formation. Lastly, a well in the NW 1/4 NW 1/4, sec. 24 (Mid-America Minerals No. 1) was drilled in 1959, worked over in 1961, and plugged and abandoned in 1963. It had numerous shows of gas in both the Wasatch and Mesaverde Formations but proved to be noncommercial with the technology and low price of gas then available.

Based upon the above activity, it was determined that the area covering lease offer U-44213 was presumptively productive. We believe that this determination is reasonable especially in view of the recent advances in drilling and production technology (e.g., massive hydraulic fracturing) and the increases in oil and gas prices which have enlarged the areas of tight gas sands which can be considered commercially productive.

* * * * *

The effective date of the KGS, October 1, 1979, was the date by which the majority of the evidence used to determine the KGS was reviewed. However, the subject land could have been placed within a KGS effective September 5, 1978, the date that Pacific Transmission Supply's well No. 41-9 was completed in the NE 1/4 NE 1/4, sec. 9, T. 9 S., R. 24 E.

We agree with GS that its finding of a KGS on parcel UT 63 was reasonable. A determination by GS that certain lands are on a KGS 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, which we find to be adequate, 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. Vernon Benson, 48 IBLA 64 (1980); Columbia Carbon Co., A-28706 (Oct. 10, 1962).

The boundaries of the geologic structure of a producing oil and gas field cannot 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. Benson, *supra* at 68; Columbus C. Mabry, 55 I.D. 530 (1963).

In McClure Oil Co., 4 IBLA 255 (1972), appellant challenged a determination by GS that lands leased by McClure were on a KGS 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, March 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, George C. Vournas, 56 I.D. 390, 394 (1938); John F. Richardson, 56 I.D. 354, 358 (1938); Kermit D. Lacy, 54 I.D. 192, 193-4 (1933). 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 (October 28, 1947).

The Secretary of the Interior has delegated the duty to determine the KGS of producing oil and gas fields to the Director of the Geological Survey, D.M. 220.4.1G; 43 CFR 3100.7-1, and when GS makes this determination, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Curtis Wheeler, 31 IBLA 221 (1977). See Clear Creek Inn Corporation, 7 IBLA 200, 213-214, 79 I.D. 571, 578 (1972).

[2] An applicant for an oil and gas lease who challenges a determination by GS that lands are situated within a KGS has the burden of showing that the determination is in error, and the determination will not be disturbed in the absence of a clear and definite showing of error. Wheeler, supra; Guy W. Franson, 30 IBLA 123 (1977); James A. Wallender, 26 IBLA 317 (1976). Appellant has failed to offer evidence which would persuade us that the KGS determination made by GS is not correct.

In his second argument on appeal, Muslow contends that his right to lease U-44213 vested prior to a KGS determination. Appellant states that he was notified on November 15, 1979, that his DEC had been drawn with first priority. By November 26, 1979, BLM had received his payment of \$ 840 as rent for the subject lands. He was not notified of the KGS determination, however, until he received BLM's decision of January 4, 1980. Appellant maintains that his payment of rental was the only condition precedent to the issuance of lease U-44213.

[3] The case law on this subject is well developed. A noncompetitive offer to lease certain lands for oil and gas must be rejected where either before or after the filing of the offer and prior to the issuance of the lease the land is determined to be within the KGS of a producing oil or gas field. Franson, supra; Wallender, supra; William T. Alexander, 21 IBLA 56 (1975); Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974); James W. McDade, 3 IBLA 226 (1971), aff'd, McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd per curiam, 494 F.2d 1156 (D.C. Cir. 1974). Except for establishing priority of filing, the drawing of an offer for a noncompetitive lease creates no vested rights in the offeror. The signing of a lease offer by the authorized officer of BLM is the act which constitutes acceptance of the lease offer, creates a binding contract, and causes issuance of a lease. Franson, supra at 125; Barbara C. Lisco, 26 IBLA 340 (1976). The Department has no discretion to issue a noncompetitive lease on KGS lands, but rather is required by law to reject such offer.

[4] Our discussion above disposes of appellant's third and final argument on appeal, namely, that acceptance of advance rental by BLM and notice to appellant of his success in the lottery estopped BLM from denying lease issuance. The Secretary has broad discretion in the issuance of oil and gas leases, the only limitation upon his discretion (as to land which is not within any known geologic structure of a producing oil or gas field) being that, if the land is leased, it must be leased to the first person making an application therefor who

is qualified under the statute and applicable regulations. The Secretary may determine at any time prior to the acceptance of a lease offer not to lease particular land. McDade v. Morton, supra at 1010. Acceptance of advance rental is not acceptance of appellant's offer. Beveridge, supra at 355; Lisco, supra at 344.

Therefore, 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 Utah State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

