

Editor's note: Reconsideration granted; decision set aside -- See 62 IBLA 93, 89 I.D. 82 (Feb. 26, 1982)

DANIEL A. ENGELHARDT

IBLA 81-975

Decided December 31, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting application for a noncompetitive oil and gas lease. U 46710.

Decision set aside, hearing ordered.

1. Administrative Practice--Hearings--Oil and Gas Leases: Applications:
Generally--Known Geologic Structure

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Daniel A. Engelhardt has appealed the Utah State Office, Bureau of Land Management (BLM), decision of August 5, 1981, which rejected his simultaneous oil and gas lease application U 46710 drawn with first priority for parcel UT 128 in the July 1980 drawing, because the land sought has been determined to be within a known geologic structure (KGS) and is leasable only by competitive bidding.

Parcel UT 128 included the E 1/2, W 1/2 W 1/2, SE 1/4 NW 1/4, SE 1/4 SW 1/4 sec. 13, all sec. 14, N 1/2 sec. 15, S 1/2 sec. 22, N 1/2 sec. 23, N 1/2 NE 1/4, SW 1/4 NE 1/4, NW 1/4 sec. 24, N 1/2, SE 1/4 sec. 27, E 1/2 sec. 34, T. 15 S., R. 22 E., Salt Lake meridian. The lands in secs. 22, 27, and 34 were determined to be within an undefined addition to the Greater San Arroyo-Bar X KGS effective September 2, 1980. The remaining lands in the application were determined to be within a further undefined addition to the Greater San Arroyo-Bar X KGS effective December 2, 1980.

In rejecting appellant's application, BLM relied upon 43 CFR 3101.1-1, which states in part "(a) All public domain lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geologic structure of a producing oil or gas field [sic] shall be leased only by competitive bidding to the highest responsible qualified bidder." The Act referred to in the regulation is the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976). The regulatory language is substantially the same as that in the statute at 30 U.S.C. § 226 (1976).

Land which is determined to be within a KGS of a producing oil or gas field before the actual issuance of a lease, even though it was not considered to be within such a structure when the application to lease was filed, may not be leased noncompetitively. Solicitor's Opinion, M-36686, 74 I.D. 285 (1967).

Appellant has challenged the determination of the Geological Survey (Survey) that the land he seeks to lease is actually within a KGS, based upon facts and geological interpretations in a report from his geological expert.

The notification to BLM of the KGS determination, in memoranda of September 23, 1980, and March 9, 1981, state only that development drilling in Uintah County, Utah, has expanded the Greater San Arroyo-Bar X KGS to incorporate several previously undefined KGS's and other acreage effective September 2, 1980, and December 2, 1980. The new definitions added 14,203.82 acres and 55,895.91 acres, respectively, to the Greater San Arroyo-Bar X KGS.

Appellant states that BLM suspended action on his lease offer in accordance with an order by the then Under Secretary to halt issuance of noncompetitive oil and gas leases in designated tar sands areas (DTSA) in eastern Utah. On May 28, 1981, the Assistant Secretary of Land and Water Resources directed BLM to adjudicate the oil and gas lease offers in DTSA which had been submitted prior to August 26, 1980. In its adjudication of appellant's offer, BLM issued its decision rejecting the offer because of the KGS determinations.

Appellant presents three issues for resolution: (1) What standards is Survey supposed to apply in determining KGS boundaries; (2) what standards were applied in expanding the Greater San Arroyo-Bar X KGS; and (3) how are the geologic features of the area covered by this lease offer reflected under these two standards. Appellant also requests the matter be referred to an Administrative Law Judge for a hearing. With his appeal, appellant submitted an affidavit of Parley R. Peterson, an independent consulting geologist, in which are stated the reasons for his disagreement with the KGS determinations of September 2, and December 2, 1980.

Survey has not responded to the appeal.

[1] Factual disputes such as are here presented are properly resolved in a fact-finding hearing. Accordingly, pursuant to the authority conveyed by 43 CFR 4.415, we hereby order a hearing to resolve the factual issues posed by the appellant in contradistinction to the determinations by Survey. At the hearing, appellant shall have the burden of showing the KGS determination by Survey is in error, and that determination will not be disturbed in the absence of a clear and convincing showing of error. Curtis Wheeler, 31 IBLA 221 (1977); Guy W. Franson, 30 IBLA 123 (1977); James A. Wallender, 26 IBLA 317 (1976).

At the hearing, the issues raised by appellant should be developed fully for the record. Following the hearing, the Administrative Law Judge shall prepare a recommended decision and serve a copy on each party. Each party will have 30 days from receipt of the recommended decision to file comments with this Board.

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 set aside and the case is referred to the Hearings Division for the conduct of a hearing.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

