

BRUCE ANDERSON

IBLA 81-149, IBLA 81-151,
IBLA 81-181

Decided April 2, 1982

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting in whole or in part noncompetitive oil and gas lease offers NM-A 37362 (TX), NM-A 37368 (TX), and NM-A 37369 (TX).

Affirmed in part, set aside and remanded in part.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

2. Oil and Gas Leases: Known Geologic Structure

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure (KGS) of a producing oil or gas field 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. Where appellant provides technical data to support his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may call for further substantiation of the basis for the KGS finding in light of appellant's data.

APPEARANCES: Bruce Anderson, pro se; John H. Harrington, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Department.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bruce Anderson appeals from three decisions 1/ of the New Mexico State Office, Bureau of Land Management (BLM), dated October 3 and 15, 1980, rejecting noncompetitive oil and gas lease offer NM-A 37362 (TX) in its entirety and offers NM-A 37368 (TX) and NM-A 37369 (TX) in part.

Lease offer NM-A 37362 (TX) was rejected in its entirety because the lands described therein were within the known geologic structure (KGS) of a producing oil or gas field and thus subject only to competitive leasing under the procedures at 43 CFR Part 3120. Appellant's lease offer NM-A 37369 (TX) was rejected in part as to Tract No. I-C-114 because the land was within a KGS. Lease offer NM-A 37368 (TX) was rejected in part as to Tract Nos. I-C-96, I-C-97, I-C-98, I-C-115, and I-C-212 because the lands were within a KGS. 2/ These decisions were based on memoranda from the United States Geological Survey (Survey) to BLM indicating that the identified tracts were considered to be on the undefined KGS of the East Edna, West Ganado, Texana, and North Texana fields.

In his statements of reasons on appeal, appellant objects to the rejection of oil and gas lease NM-A 37362 (TX) because the subject lands have "[s]ignificant dry holes located on them and between the wells which previously produced in this area and the subject lands." With regard to lease offer NM-A 37368 (TX) appellant appeals the rejection of Tract Nos. I-C-96, I-C-97, I-C-98, I-C-115, and I-C-212, all determined to be within the undefined KGS of the East Edna and West Ganado Fields, because "[t]here are eight dry holes between these lands and the East Edna Field, and there are five dry holes located on the subject lands in question. All thirteen of these dry holes were deep enough to test all zones now or previously producing in the East Edna Field." Appellant also challenges the geographic extent of the West Ganado Field. In his appeal of the rejection of Tract No. I-C-114 in lease offer NM-A 37369 (TX) appellant asserts:

The one well located on the subject lands which produced was the Tobin et al 1-B Gayle (Dwight's reports this as the H. H. Howell 1-B Gayle). Note that the total depth

1/ Because of the similarity of the factual context and the issue in these cases, we have consolidated them for review on appeal.

2/ This lease offer was also rejected for Tract No. I-C-113 because the United States holds no mineral interest in the land. In addition, execution of stipulations was required as a condition of lease issuance for the balance of the lands described in offers NM-A 37368 (TX) and NM-A 37369 (TX). These holdings of the decisions were not appealed and the decisions therefore are affirmed as to these particular holdings.

of this well at 6385' has cut every producing or previously producing zone in the entire field. It produced 324 MMCF from 5475-5478' from June, 1962, until May, 1964, and it produced 179 MMCF from 6159 thru 6161' from June, 1962, until August, 1963. Both zones were plugged and the well was abandoned on August 14, 1964.

Appellant supported his statement of reasons for each appeal with maps of the lands involved in the lease offers identifying the location of wells upon which he based his challenge of the KGS determinations. Further technical data on the wells was also tendered by appellant.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive lease offer for such land is properly rejected where, before the lease is actually issued, BLM determines that the land is within the KGS of a producing oil or gas field. 30 U.S.C. § 226(b) (1976); Donnie R. Clouse, 51 IBLA 221 (1980); Ervin Wheeler, 51 IBLA 66 (1980); Pauline C. Lebsack, 50 IBLA 361 (1980).

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, 43 CFR 3100.7-1, and when Survey makes this determination, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Ervin Wheeler, *supra* at 69; Curtis Wheeler, 31 IBLA 221 (1977); James A. Wallender, 26 IBLA 317, 318 (1976); *see also* Clear Creek Inn Corporation, 7 IBLA 200, 213-14, 79 I.D. 571, 578 (1972).

[2] An applicant for an oil and gas lease who challenges a determination by Survey 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. Ervin Wheeler, *supra* at 69; United States v. William T. Alexander, 41 IBLA 1 (1979). However, where on appeal from rejection of a noncompetitive oil and gas lease offer, appellant submits evidence tending to contradict a determination that land embraced in the lease offer is within a KGS and there is nothing in the record to support the decision except the conclusory statement that the land is in a KGS, the decision may appropriately be set aside and the case remanded to obtain substantiation by Survey of the basis for the KGS determination in light of the data tendered by appellant. Hepburn T. Armstrong, 60 IBLA 140 (1981); *see* Robert L. Haynie, 51 IBLA 1 (1980); *cf.* Frances J. Richmond, 24 IBLA 303 (1976). (Decision rejecting high bid at competitive oil and gas lease sale as inadequate set aside and remanded for compilation of a proper record where no basis for the conclusion that the bid was inadequate appears in the record.)

In view of the technical data provided by appellant and the absence from the record of data substantiating the conclusory statement that the lands were within a KGS, copies of appellant's data were provided by the Board to Survey and to counsel for BLM with a request for

elaboration of the basis for the Survey determination and a response to appellant's contentions. In response, Survey stated that the memoranda relied upon by BLM in reaching the decisions appealed from "were never intended to be used as official known geologic structure (KGS) determinations." Survey further advised that it has now completed an official KGS determination with respect to the lands at issue, and it has provided copies of memoranda describing the lands considered to be within a KGS. Although much of the land previously shown as on a KGS retains that status, it appears that some of the lands for which appellant's lease offers were rejected are now outside any KGS. Therefore, the decisions appealed from are set aside to the extent that they rejected appellant's lease offers because the lands were within a KGS, and the cases are remanded to allow BLM to reject the offers only for those lands within a KGS in accordance with the latest Survey determination. Counsel from the Field Solicitor's office requested leave to file an additional brief at the time the supplemental information from Survey was received, but no brief has been filed to date. In view of the already significant delay in processing of this case resulting from the need to obtain additional documentation, there is no apparent reason to delay further for briefing at this stage.

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 in part and set aside and remanded in part.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

