

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease application W 78171.

Affirmed.

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

Under 30 U.S.C. § 226(b) (1976), a land within the known geologic structure of a producing oil and gas field may only be leased by competitive biddings, and where land is determined to be within such a structure while a noncompetitive lease application is pending, the application must be rejected.

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

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

APPEARANCES: Roger K. Stewart, Esq., Fresno, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bob G. Howell appeals the Wyoming State Office, Bureau of Land Management (BLM), decision of June 7, 1982, which rejected, in part, his simultaneous oil and gas lease application W 78171, drawn with first priority for parcel WY 4012 in the November 1981 "Notice of Lands Available for

Oil and Gas Filings." The parcel consisted on lots 1, 2, S 1/2 NE 1/4 sec. 1, T. 24 N., R. 87 W., sixth principal meridian, Wyoming. The lands rejected were lot 2 and SW 1/4 NE 1/4 sec. 1, because of being determined to be within an undefined known geologic structure (KGS) prior to issuance of the lease. ^{1/}

Appellant states his application was filed in November 1981, and that the gas well in sec. 1 was completed in December 1981. He also asserts a dry hole was drilled to a depth of 6,000 feet in the SW 1/4 NE 1/4 sec. 1, several years ago.

The Minerals Management Service (MMS) has responded to the appeal stating that a gas well was completed in lot 3, sec. 1, T. 24 N., R. 87 W., on September 2, 1981, with initial production of 2,188 MCFPD, from the Dakota formation between depths of 4,345 and 4,350 feet. On the basis of this production, the subdivision containing the well and the adjoining and cornering 40-acre subdivisions and lots were determined to be KGS. MMS stated that the dry hole adverted to by appellant never had been subjected to a drill stem test in the producing horizon of the well in lot 3, so that it cannot be used as justification to prevent the SW 1/4 NE 1/4 sec. 1, T. 24 N., R. 87 W., from being placed in the KGS.

[1] Under 30 U.S.C. § 226(b) (1976), land within the KGS of a producing oil or gas field may only be leased by competitive bidding. When land is determined to be within a KGS either before a noncompetitive offer or application was filed or while such offer or application is pending, the noncompetitive offer or application must be rejected. Robert L. Lyon, 66 IBLA 141 (1982); Richard J. DiMarco, 53 IBLA 130 (1981).

[2] An applicant for an oil and gas lease who challenges a determination by MMS that the lands are situated within the KGS of a producing oil or gas field has the burden of showing that the determination is in error. Robert L. Lyon, *supra*.

A determination by MMS that certain lands are in the KGS of a producing oil or gas field does not guarantee the productive quality of the lands included in the KGS. Such a determination does no more than to announce that on the basis of geological evidence, MMS has concluded that there is a reasonable probability that the land in question is underlain by a reservoir of a producing oil or gas field. 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 KGS. Vernon Benson, 48 IBLA 64 (1980).

^{1/} The BLM decision stated the lease issued effectively July 1, 1982, included only lot 1, and SW 1/4 NE 1/4 sec. 1, T. 24 N., R. 87 W., sixth principal meridian, 79.61 acres, but the lease in the case file shows the lands included in the lease to be lots 1, 2, S 1/2 NE 1/4 sec. 1, T. 24 N., R. 87 W., sixth principal meridian, 158.74 acres. BLM should by administrative action correct the lease to agree with the decision of June 7, 1982.

Further, any delay before declaration of the KGS determination does not aid appellant since an applicant for a noncompetitive lease acquires no vested right to a lease by the mere filing of an application, but only an inchoate right to receive a lease over a later applicant. Donnie R. Clouse, 51 IBLA 221 (1980); Minnetta A. Miller, 17 IBLA 245 (1974). BLM was required by statute to reject appellant's application following the MMS determination that a KGS exists on the land. Minnetta A. Miller, *supra* at 248.

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 affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

