

HARRY S. HILLS

IBLA 82-940

Decided March 22, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management rejecting in part simultaneous oil and gas lease offer NM-A 36984 (OK).

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- 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 after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

2. Estoppel -- Public Records

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

3. 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 Geological Survey 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: H. Paul Kondrick, Esq., San Diego, California, for appellant; John H. Harrington, Department Counsel, Office of the Field Solicitor, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This appeal is taken from a decision dated May 5, 1982, of the New Mexico State Office, Bureau of Land Management (BLM), partially rejecting simultaneous oil and gas lease offer NM-A 36984 (OK). The decision recites, in pertinent part:

In April 1979, we offered for simultaneous oil and gas leasing certain lands in T. 9 N., R. 19 E., I.M., (serial number NM-A 36984 (OK)). These lands, as shown below, are now within the East Hoyt Known Geologic Structure and may be leased only through competitive bidding pursuant to Regulations 43 CFR 3120.

The lands rejected from NM-A 36984 (OK) are:

T. 9 N., R. 19 E., I.M.
 Sec. 17: NW 1/4 SW 1/4
 Sec. 18: E 1/2 NE 1/4 SE 1/4, SE 1/4 SW 1/4,
 SW 1/4 SE 1/4, NW 1/4 SE 1/4 SE 1/4
 Containing: 150.00 acres

The following lands are issued under serial number NM-A 36984 (OK):

T. 9 N., R. 19 E., I.M.
 Sec. 19: NW 1/4 NE 1/4 NE 1/4, NE 1/4 NW 1/4 NE 1/4,
 N 1/2 NE 1/4 NW 1/4, SW 1/4 NE 1/4 NW 1/4
 Containing: 50.00 acres

The lease offer in question was previously before the Board in Harry S. Hills, 59 IBLA 241 (1981). The issue in that case was whether appellant was the "sole party in interest" under the filing regulation 43 CFR 3100.0-5(b). The Board found that no violations of the regulation had occurred and reversed BLM's determination to the contrary, issuing its decision on October 21, 1981.

On February 17, 1982, BLM requested that the Minerals Management Service (MMS) 1/ make a determination whether the lands embraced in the offer were in a known geologic structure (KGS). 2/ By memorandum dated May 3, 1982, MMS replied that secs. 17 and 18 were within the East Hoyt KGS which was established on May 28, 1980, and that 45 acres (more or less) of sec. 19 were not within a KGS and could be leased.

In the statement of reasons it is contended that:

(1) MMS acted arbitrarily and capriciously in failing to publish its KGS designation when that designation was made, and in failing to promptly advise the New Mexico State Office of that designation;

(2) BLM should have issued appellant's lease in November or December 1981, shortly after issuance of the Board's decision in Harry S. Hills, supra;

(3) Appellant has a vested right to all the lands applied for, BLM should be estopped to assert the KGS designation as a reason for rejecting a portion of the offer, and Harry S. Hills, supra, should be retroactively applied to compel issuance of the lease including all the lands sought;

(4) The KGS determination was erroneous because there has been no production from the well relied on by MMS for its KGS designation.

Appellant requests that the Board either reverse the BLM decision or remand the case for a factual hearing.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding pursuant to 43 CFR 3120. 30 U.S.C. § 226(b) (1976). Thus, if lands embraced in a noncompetitive offer are designated as being within a KGS before issuance of a lease, the noncompetitive lease offer must be rejected as to those lands. Lida R. Drumheller, 63 IBLA 290 (1982); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982); Guy W. Franson, 30 IBLA 123 (1977); 43 CFR 3110.1-8. This Department has no discretion under the law to issue a noncompetitive lease for such lands, McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974), but rather is required by law to reject such an offer. The delay in obtaining a structure report or in the processing of appellant's offer cannot prevail against the governing legal principles, or aid appellant in his quest for a noncompetitive lease where issuance of a noncompetitive lease is not authorized. The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by its officers' failure to act or delay in

1/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey. On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions of MMS, not relating to royalty management to BLM, 48 FR 8982 (Mar. 3, 1983).

2/ "Known geologic structure" is defined in 43 CFR 3100.0-5(a) 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 that is presumptively productive."

the performance of their duties. 43 CFR 1810.3(a); Kenneth L. Hanlin, 70 IBLA 115 (1983). See also Robert A. Lyon, 66 IBLA 141 (1982); George Reddy & Associates, 59 IBLA 359 (1981); Donnie R. Clouse, 51 IBLA 221 (1980).

Appellant's second and third arguments are on no firmer ground. The issuance of a lease is discretionary; the Secretary's delegate, BLM, must be satisfied that all prerequisites prescribed by statute and regulation are met before a lease may be issued. Thus, appellant's suggestion that the Board's decision in Harry S. Hills, supra, gave it a vested right to a lease including all the lands originally applied for, is in error. As indicated above, that decision determined that there had been no violation of the "sole party in interest regulation." It did not address the KGS issue.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes priority of filing. 43 CFR 3110.1-6(b) (1979). Guy W. Franson, supra. 3/ The signing of an offer by the authorized BLM officer is the act that constitutes acceptance of the lease offer and creates a binding contract. The date of execution, the date of lease issuance, is the determinative date with respect to the rights of the offeror.

[2] There can be no estoppel against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government. The party asserting the estoppel cannot claim ignorance of the true facts which are a matter of public record. Renewable Energy, Inc., 67 IBLA 304, 89 I.D. 497 (1982). No such affirmative misconduct is evident in the record. The determination of the KGS was noted on BLM's oil and gas plat on June 10, 1980.

[3] 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. The determination will not be disturbed in the absence of a clear and definite showing of error. Angelina Holly Corp., 70 IBLA 294 (1983); United States v. Alexander, 41 IBLA 1 (1979), aff'd, Alexander v. Andrus, No. 79-603-M (D.N.M. July 7, 1980). Appellant did not carry this burden. The file shows

^{3/} At the time of the simultaneous drawing in this case the drawing entry card constituted the offer to lease. 43 CFR 3112.2-1 (1979). 43 CFR 3112.4 (1979) provided: "By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing." Presently, under the simultaneous oil and gas lease system an application to lease (which replaced the drawing entry card) is not an offer to lease. The first-drawn applicant, who is qualified to hold a lease, merely gains the right to submit an offer for the lease. 43 CFR 3112.2-1. A priority applicant's timely submission of the properly signed lease and required rental constitutes an offer to lease. 43 CFR 3112.4-2; Kenneth L. Hanlin, supra at 116.

that the well referred to by appellant was completed on April 7, 1980, and demonstrated an initial potential flow of 800,000 cubic feet of gas per day.

A determination by MMS that certain lands are in a KGS 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 and gas field. There is no prediction of future productivity or statement that anything is known about the productivity of land included in a KGS. See Angelina Holly Corp., supra. Appellant has not submitted probative evidence opposing MMS' KGS determination. Therefore, a factual hearing is not warranted and none will be ordered.

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.

R. W. Mullen
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

