

Appeal from decision by New Mexico State Office, Bureau of Land Management, rejecting that portion of land included in noncompetitive lease offer NM 32860 classified as within the known geologic structure of a producing oil or gas field.

Affirmed.

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

Where portion of noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

2. Estoppel -- Public Records

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

3. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

APPEARANCES: Peter J. Stone, Esq., Milwaukee, Wisconsin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

In January 1978 the New Mexico State Office, Bureau of Land Management (BLM), listed a parcel of land containing 1,164.54 acres to be available for simultaneous filing of noncompetitive oil and gas lease offers pursuant to 43 CFR 3112. The offer of appellant Frederick W. Lowey was drawn with first priority at the February 1978 drawing. Lowey's offer was rejected by BLM, however, upon a finding that the filing service employed by Lowey to act as his agent for filing purposes possessed an undisclosed interest in his offer. BLM held the offer made by appellant violated both 43 CFR 3102.7, requiring prior disclosure of other interested parties, and 43 CFR 3112.5-2, prohibiting filing multiple offers for the same parcel. Offers of other clients of the filing service were also rejected by BLM for the same reasons.

Lowey and the other rejected offerors appealed to this Board, which affirmed the BLM decision finding the offers invalid. Frederick W. Lowey, 40 IBLA 371 (1979). The Board's decision was affirmed on appeal to the United States District Court in Lowey v. Watt, 517 F. Supp. 137 (D.D.C. 1981). The district court decision and consequently the decision of this Board, were reversed on appeal to the United States Court of Appeals for the District of Columbia Circuit in Lowey v. Watt, 684 F.2d 957 (D.C. Cir. 1982), and the matter remanded to the Department "for further proceedings in strict accordance with the opinion of the Court of Appeals for the District of Columbia" (Order filed Jan. 5, 1983, D.D.C. Civil Action Nos. 79-3314, 79-3315, 79-3316, 79-3317, 79-3318, 79-3319).

In the course of readjudication of the Lowey offer, and prior to issuance of lease, BLM discovered a portion of the total acreage involved in the offer had been classified to be within the known geologic structure (KGS) of a producing oil and gas field. 1/ On May 12, 1983, BLM issued an oil and gas lease to Lowey for 880 acres of his offer which were not within the designated KGS, but rejected his offer as to 284.54 acres included within the newly designated KGS, for the reason that Departmental regulations at 43 CFR Subpart 3120 require KGS lands to be leased for oil and gas exploitation exclusively by competitive bidding. 2/

1/ KGS is defined at 43 CFR 3100.0-5(a) (1982): "A known geologic structure is 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."

2/ 43 CFR Subpart 3120 was amended effective Aug. 22, 1983. 48 FR 33648, 33680 (July 22, 1983). The amended regulation provides, in part: "§ 3120.1. General. Lands which shall be leased by competitive bidding under this subpart include: (a) Lands within any known geological structure of a producing oil or gas field, as determined by the Bureau." In the supplementary information supplied with the final rulemaking, at 48 FR 33657, appears this comment:

"The final rulemaking makes a change that clarifies §§ 3112.6 through 3112.6-3 of the proposed rulemaking, which have been renumbered §§ 3112.5 through 3112.5-3. The sections have been expanded to include language which specifically requires the rejection of all or part of an offer under Subpart 3112 for any lands that are determined to be within a known geological structure

On appeal Lowey contends the Federal Court's order of remand requires strict compliance with the decision of the Court of Appeals, which, under the circumstances of this case, mandates issuance of a lease for the entire acreage contained in Lowey's offer, to include the portion now classified within a KGS. Lowey argues also that, despite the requirements of 43 CFR Subpart 3120, BLM is "equitably estopped" to deny him a lease to land classified within a KGS "because that land was declared a KGS only as a result of the five year delay caused by" BLM (Statement of Reasons at 3).

[1] The requirement that lands within a KGS be leased only after competitive bidding is imposed by the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 226(b) (1976). The regulations codified at 43 CFR Subpart 3120 implement the statutory requirement. Pursuant to the Mineral Leasing Act, Departmental decisions applying the regulations have consistently required rejection of noncompetitive offers for lands designated to be within a KGS, even though the KGS designation was made following the lease offer. See Harry S. Hills, 71 IBLA 302 (1983); 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). Generally, where only a portion of a noncompetitive offer is included in a KGS, the affected portion of the offer must be rejected. Bob G. Howell, 71 IBLA 253 (1983). Here, however, the determination concerning the effect of the KGS determination is further complicated by the Federal court's order on remand.

Significantly, however, in McDade v. Morton, 353 F. Supp. 1006, 1010, 1011 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974), the same court that ordered remand in this case also determined, where a KGS determination is made affecting lands involved in a noncompetitive lease offer, the Secretary has no discretion to issue a lease, despite the possible existence of equitable arguments in favor of the disappointed offeror. Thus, the McDade court held the statutory and regulatory framework allowed the Secretary no discretion to lease in the situation described, even though the KGS classification was made subsequent to the lease offer. After considering the history of the Mineral Leasing Act and the administration of the Act by the Department, the court concluded, at 353 F. Supp. 1013:

The unambiguous language of the Mineral Leasing Act states that leases for land within a known geologic structure of an oil or gas field shall be leased by competitive bidding. The logical and sensible regulatory result under such wording is to preclude any type of leasing other than by means of competitive bidding

of a producing oil or gas field prior to issuance of the lease to be rejected and removed from the offer." The rule to be codified at 43 CFR 3112.5-2(b) provides (48 FR 33670, 33679):

"(b) If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field."

whenever it becomes apparent that the applied for leases involve lands within a known geologic structure. To hold otherwise would fly in the face of the "plain meaning" of the statute's words. [Emphasis in original.]

Departmental decisions are uniformly in accord. See Hepburn T. Armstrong, 72 IBLA 329 (1983); Silver Monument Minerals, Inc., 14 IBLA 137 (1974). As the Board stated in Silver Monument Minerals, Inc., supra at 140:

The Mineral Leasing Act provides that land within a known geological structure may only be leased by competitive bidding. 30 U.S.C. § 226(b) (1970). The fact that the designation of the tracts was reported to the Bureau of Land Management after the drawing does not help appellant; the date of ascertainment of the known geological structure, not the date of pronouncement, controls. 43 CFR 3100.7-3. The filing of any offer for a noncompetitive lease creates no vested rights in the offeror, and the offer must be rejected if the lands are found to be within a known geological structure at any time prior to the issuance of the noncompetitive lease. 43 CFR 3110.1-8; T. D. Skelton, 9 IBLA 322 (1973); Solicitor's Opinion, 74 I.D. 285 (1967).

Appellant's argument that the delay attendant to litigation of successive appeals should create a special circumstance permitting the Secretary to find an equitable basis for issuance of a lease to lands included within a KGS is, therefore, contrary to law. Once a KGS classification of a tract has been made, competitive leasing is required.

[2] Appellant's argument that the Department should be estopped to deny issuance of a lease to the full acreage demanded is also incorrect. In the absence of a showing of affirmative misrepresentation or concealment of material fact by the Government, there can be no estoppel against the United States. United States v. Ruby Co., 588 F.2d 697, 703, 704 (9th Cir. 1978). There is no indication in the record on appeal that the KGS determination was not regularly arrived at in this case, nor does appellant claim the determination is erroneous. In any event, the KGS determination is wholly a matter of public record; there was no concealment of the process used by BLM. Under the circumstances, therefore, the determination was properly recognized by BLM to bar issuance of a lease to the affected portion of appellant's offer. See Harry S. Hills, supra at 305.

[3] Finally, despite appellant's expectation of issuance to him of a lease for the entire parcel following the Court of Appeals' decision, the drawing of his offer for a noncompetitive oil and gas lease merely established the priority of his filing; it vested no rights in him as the offeror. Kenneth L. Hanlin, 70 IBLA 115 (1983); Guy W. Franson, supra. Moreover, the authority of the United States to enforce a public interest such as that created by the Mineral Leasing Act is not lost by official delay in the performance of that duty. Bob F. Abernathy, 71 IBLA 149 (1983). Assuming for the purpose of discussion only that litigation of the successive appeals by appellant may have amounted to a "delay," it is nonetheless true that, within the mandate of the Mineral Leasing Act, neither appellant's expectation of a lease nor the intervening classification of a portion of his pending offer

within a KGS will support a determination that BLM erred when it refused to issue a lease to the entire tract sought. The land contained within lease offer NM 32860 which is classified within a KGS is required to be offered first for competitive leasing under provision of 30 U.S.C. § 226(b) (1976).

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.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

