

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer CA-13648.

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) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands 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 that the 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: R. C. Altrogge, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

R. C. Altrogge was selected with first priority for parcel CA 124 of the January 1983 simultaneous oil and gas lease application drawing. The California State Office, Bureau of Land Management (BLM), received his signed lease forms and advance rental for oil and gas lease offer CA-13648 on April 18, 1983. BLM rejected his application and offer to lease on August 17, 1983, because the lands in the offer are within the boundaries of an undefined known geologic structure (KGS) which had become effective on January 17, 1982.

In his statement of reasons, Altrogge assails this KGS as contrary to the intent that public lands be leased noncompetitively. He argues that its boundaries could have been more logically defined.

[1] The Mineral Leasing Act of 1920 was enacted to provide for development of oil and gas deposits situated on public lands. Two different procedures are set forth by the Act for leasing parcels of public lands. The leasing procedure selected for each parcel depends upon the character of the lands to be covered by the lease. Section 17(b) of the Act provides that all public domain lands which are within the KGS of a producing oil or gas field may be leased only by competitive bidding to the highest responsible qualified bidder. 30 U.S.C. § 226(b) (Supp. V 1981). Such leases are termed "competitive leases." See 43 CFR 3101.1-1(a); 43 CFR Part 3120. All other public domain lands are subject to lease under section 17(c) of the Act to the first qualified offeror if otherwise available for leasing. 30 U.S.C. § 226(c) (Supp. V 1981). These leases are called "noncompetitive leases." See 43 CFR 3101.1-1(a); 43 CFR Part 3110.

Thus, if lands embraced in a noncompetitive offer are designated as within a KGS before issuance of the lease, the noncompetitive lease offer must be rejected as to those lands. Hepburn T. Armstrong, 72 IBLA 329 (1983); Harry S. Hills, 71 IBLA 302 (1983). 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 to reject such an offer.

[2] An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are situated within the KGS of a producing oil or gas field has the burden of showing that the determination is in error. Hepburn T. Armstrong, *supra*; Harry S. Hills, *supra*. "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 Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. ^{1/} When that expert makes such a determination, the Secretary is entitled to rely upon its reasoned opinion. Bruce Anderson, 63 IBLA 111 (1982); Clear Creek Inn Corp., 7 IBLA 200, 213-14, 79 I.D. 571, 578 (1972). The boundaries of a KGS are defined for administrative purposes and cannot be taken as showing with absolute accuracy the extent, in each instance, of the geologic structure producing oil or gas. Robert G. Lynn, 61 IBLA 153 (1982).

Where an applicant can demonstrate by a clear and definite showing that the presumption of productivity does not include the lands in question, the determination will be reversed. *E.g.*, James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (1982). Where probative evidence is submitted which contravenes the rationale given for the determination, a hearing will be ordered so that a complete record may be developed. *E.g.*, Celeste C. Grynberg, 74 IBLA 180 (1983). Where the appellant provides technical data supporting his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may remand for consideration of the appellant's contentions. *E.g.*, Hepburn T. Armstrong, 60 IBLA 140 (1981). Altrogge offers no

^{1/} In January 1982 the Secretary had delegated this duty to the Director of the Geologic Survey. See 43 CFR 3100.7-1 (1981); 47 FR 4751 (Feb. 2, 1982).

such data or evidence that would raise this appeal to such level of inquiry. He merely submitted a map depicting oil and gas wells, producing and nonproducing, in the vicinity of the subject parcel and stated the distance of the closest producing and the closest nonproducing wells. No explanation is provided regarding the relevance or significance of the information he presents or the manner in which he perceives the KGS determination to be erroneous. He argues, in effect, that by designating such large areas as this as KGS, the Geological Survey manifested a change of policy which is calculated to subvert the noncompetitive leasing provisions of the law by diminishing the available acreage. We find no basis for this contention.

In view of the January 1982 determination that the subject lands are within a KGS, the inclusion of the parcel in the January 1983 drawing was unfortunate. However, an applicant selected with first priority under the simultaneous filing system acquires no vested rights to a lease, but merely the opportunity to submit a noncompetitive offer. See Harry S. Hills, supra. Because these lands are within a KGS and available for leasing only after competitive bidding pursuant to 43 CFR 3120, Altrogge's noncompetitive offer for them was properly rejected.

Therefore, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

