

STEPHEN M. NASLUND

IBLA 84-51

Decided March 5, 1984

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM 56782 OK.

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 geological 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 prior to issuance of a lease, 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 certain lands are within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error. Absent any argument of fact or evidence suggesting such error, the determination will be upheld.

APPEARANCES: Mark K. Adams, Esq., Albuquerque, New Mexico, for appellant; John H. Harrington, Esq., Santa Fe, New Mexico, Department Counsel, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Stephen M. Naslund was selected with first priority for parcel NM-267 of the March 1983 listing of lands available for the filing of simultaneous oil and gas lease applications. The New Mexico State Office, Bureau of Land Management (BLM), received his signed lease forms and advance rental for noncompetitive oil and gas lease offer NM 56782 OK on August 15, 1983. In a decision dated September 15, 1983, BLM rejected his offer in part for the

following lands: Lots 1 through 4, sec. 1; lots 1 and 2, sec. 2, T. 1 S., R. 23 E., Cimarron Meridian, Beaver County, Oklahoma, containing 20.38 acres. Its given reason for the rejection is that these lands "are now within an undefined Known Geological Structure [(KGS)] of the South Elmwood Field [and] may be leased only through competitive bidding pursuant to Title 43 CFR 3120." Lease NM 56782 OK was issued for the remainder of the lands in the noncompetitive offer, effective October 1, 1983.

Naslund appeals the decision because he contends that lands within a noncompetitive lease offer cannot be rejected on the basis of a KGS determination supported in the record only by conclusory statements regarding the determination. Appellant also contends that a series of Board decisions which deal with the rejection of high bids in competitive oil and gas lease sales, further support his contention that BLM must furnish appellant and the Board with a reasoned explanation of its rejection so that a determination can be made as to the rational basis for the BLM decision.

The Regional Solicitor's Office submitted materials prepared by BLM which the Solicitor contends fully justify BLM's decision to reject a portion of NM 56782 (OK) as falling within an undefined KGS.

[1] Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (Supp. V 1981), provides that all public domain lands which are within "any known geological structure of a producing oil or gas field" may be leased only by competitive bidding to the highest responsible qualified bidder. See 43 CFR 3101.1-1(a); 43 CFR Part 3120 (competitive leases). It is well established that a noncompetitive lease offer for lands designated within a KGS must be rejected as to those lands prior to issuance of the lease, even if the KGS determination was made following the lease offer. Frederick W. Lowey, 76 IBLA 195 (1983); Hepburn T. Armstrong, 72 IBLA 329 (1983). This Department has no discretion under the law to issue a lease pursuant to a noncompetitive lease offer for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Rather, it is required to reject the affected portion of the offer. Frederick W. Lowey, supra; Bob G. Howell, 71 IBLA 253 (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 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. When that expert makes such a determination, the Secretary is entitled to rely upon its reasoned opinion. Bruce Anderson, 63 IBLA 111 at 113 (1982); Clear Creek Inn Corp., 7 IBLA 200, 213-14, 79 I.D. 571, 578 (1972). However, 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 at 155 (1982). Naslund defines the issue on appeal as whether the subject lands "should have been determined by [BLM] to be within the undefined [KGS] of the South Elmwood field." 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.

R. C. Altrogge, 78 IBLA 24 (1983); Hepburn T. Armstrong, *supra*.

Naslund argues, in effect, that KGS determinations cannot preclude noncompetitive lease offers unless accompanied by "detailed analysis of geologic data." Indeed, where an appellant provided technical data supporting his contention of an erroneous KGS determination and the record contained no evidence to contrary, the Board has remanded the case for consideration of the appellant's contention. Hepburn T. Armstrong, 60 IBLA 140 (1981). Similarly, where appellant presents evidence that raises substantial issues of fact and the record contains only a memorandum in support of the KGS determination couched in conclusory terms, the Board has referred the matter for hearing. Celeste C. Grynberg, 74 IBLA 180 (1983). Here, however, the appellant has offered no evidence even minimally suggesting error in BLM's determination. Without such a presentation, the Board cannot seriously consider appellant's challenge to a KGS determination, and the KGS determination will be upheld. R. C. Altrogge, *supra*; Harry S. Hills, 71 IBLA 302 (1983). Mere disagreement with the classification will not suffice. Additionally, we would note that the information provided by the Solicitor's office contains sufficient support for the KGS determination for us to conclude that BLM had a rational basis for the determination. The Board will not substitute its judgment for that of BLM.

Appellant does not support his contention that the KGS determination is in error. Because these lands have been presumptively determined to be within a KGS and thus are available for leasing only after competitive bidding pursuant to 43 CFR Part 3120, the affected portion of his noncompetitive oil and gas lease offer 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:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge

