

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting a noncompetitive oil and gas lease offer to the extent that it included lands within a known geologic structure.

Affirmed.

1. Administrative Authority: Generally -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: Known Geologic
Structure -- Oil and Gas Leases: Noncompetitive Leases -- Secretary
of the Interior

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

APPEARANCES: Joseph A. Talladira, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Joseph A. Talladira, first-drawn applicant for parcel NM-201 in the August 1983 simultaneous oil and gas lease drawing, has appealed the March 20, 1984, decision of the New Mexico State Office, Bureau of Land Management

(BLM), rejecting his noncompetitive oil and gas lease offer NM 57511 to the extent it included lands within a known geologic structure (KGS).

Shortly after the August 1983 drawing the Secretary suspended further simultaneous oil and gas leasing pending a KGS study of the public lands. The notice of the suspension at 48 FR 49704 (Oct. 27, 1983), provided:

The Bureau of Land Management periodically issues oil and gas leases in areas outside of known geologic structures (KGS) on a noncompetitive basis through a drawing of applications filed on selected parcels. The use of this method of issuing leases known as simultaneous oil and gas leasing is temporarily suspended. The September drawing will not be held until it has been verified that the parcels are not included in a KGS. Nor will leases be issued from previous drawings that were not processed and completed prior to October 12, 1983, until it is determined that they are not located within a KGS. Additionally, the Notice of Lands Available for Oil and Gas Filings scheduled for November 1983 will not be posted nor the drawing held. Subsequent Notices of Lands Available will be posted when it can be determined that the parcels to be listed are not part of a KGS. [Emphasis added.]

Action on Talladira's lease offer which had not been processed and completed prior to October 12, 1983, was therefore suspended pending the KGS study and reclassification. Effective November 14, 1983, 240 of the 400 acres in his lease offer were determined to be KGS lands. A lease on the remaining 160 acres was issued to him effective April 11, 1984.

In his statement of reasons for appeal, Talladira contends that BLM should lease to him all 400 acres contained in his lease offer. He argues

When Secretary of the Interior William Clark ordered resumption of the Simultaneous Oil & Gas Lottery, his accompanying statement said that in fairness to participants, leases won in July, 1983, were to be issued on the basis of the rules and regulations in effect at that time.

* * * It would follow from the Secretary's statement that geologic structure information at that time would be the governing factor in determining application of 43 CFR Par. 3112.6-2 Part (b). [Emphasis added.]

Appellant also states that Secretary Clark has expressed his concern for the impracticability of developing "small leases." Thus, he contends, BLM should issue a noncompetitive lease on the excluded KGS lands in light of the "Secretary's expression of fairness and development potential." Appellant notes that all 400 acres would have been leased but for the delays in leasing due to the Secretary's decision to suspend the issuance of leases. Finally, he states, "The suspension of the Simultaneous Oil & Gas Lottery was a decision by the then Secretary of the Interior Mr. James Watt, and contractually should not have applied to drawings already conducted, but only to future drawings (September, 1983 and thereafter)."

[1] We accept the premise of Talladira's first argument; *i.e.*, that noncompetitive oil and gas leases should be issued on the basis of rules and regulations in effect at the time of the drawing. At the time of the August 1983 drawing, section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(h) (1982), which governs the leasing of oil and gas deposits on public lands and the applicable Departmental regulations provided, and continue to provide, that lands within a KGS could only be leased by competitive bidding pursuant to 43 CFR Subpart 3120. This statutory restriction on leasing KGS lands has been in effect since 1920 when it was enacted as part of the Mineral Leasing Act.

However, we are not in accord with Talladira's conclusion that only lands classified as KGS at the time of the drawing must be leased competitively. To the contrary, lands classified as KGS lands at any time prior to lease issuance, must be leased competitively, and a noncompetitive lease offer for such lands must be rejected. McDade v. Morton, 353 F. Supp. 1006, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Kenneth L. Hanlin, 70 IBLA 115 (1983); Lida R. Drumheller, 63 IBLA 290 (1982).

Furthermore, the primary purpose of the Secretary's suspension of the simultaneous oil and gas filing procedure in 1983 was to prevent the noncompetitive leasing of KGS lands in violation of the Act, which was accomplished in this instance. To acquiesce in appellant's request would not be only to thwart the Secretary's purpose in suspending the noncompetitive leasing, but to ignore the statute.

Regarding appellant's reference to public policy considerations, such as the impracticability of developing "small leases," we conclude that there are no public policy considerations which permit the Secretary to sidestep this statutory restriction on leasing KGS lands. The Secretary has no discretion in this area. See McDade v. Morton, supra.

Finally, we address appellant's statements concerning the Secretary's suspension of the program. The Secretary is the general manager of the public lands. Boesche v. Udall, 373 U.S. 472 (1963); United States v. Wilbur, 283 U.S. 414 (1931). He has the authority "to prescribe necessary and proper rules and regulations" to accomplish the purposes of the Mineral Leasing Act. 30 U.S.C. § 189 (1982); Sam P. Jones, 71 IBLA 42 (1983). It has long been recognized that the Secretary may, within the confines of the statute, create and operate a program designed to implement the noncompetitive leasing provisions of the Mineral Leasing Act. Furthermore, he acts entirely within the ambit of his administrative authority when he suspends the operation of such a system.

Suspension of lease issuance did not impair Talladira's rights as the first-qualified applicant because the drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of his filing.

The district court in McDade v. Morton, supra at 1010, succinctly summarized this point:

[T]he courts have consistently held that no right to receive an oil and gas lease is obtained by the filing of a lease offer,

even though the offeror be the "first qualified applicant," and that the Secretary may determine at any time prior to the acceptance of a lease offer not to lease particular land even if offers for such land were filed long before the determination not to lease or were filed in response to a direct invitation to file. [Citations omitted.]

In a similar recent case, where issuance of the plaintiff's noncompetitive lease was delayed for two years, the Court said:

[A]lthough plaintiff is disappointed that Interior did not act on its application sooner, Interior is under no duty to act within a certain time limit. the facts are that prior to acting on plaintiff's lease offer, Interior reasonably changed its decision concerning the areas designated to be within a KGS in Giddings Field. Because of the extension of the undefined KGS in Giddings Field, the tracts at issue could no longer be leased on a noncompetitive basis. Therefore, the Court finds that Interior did not abuse its discretion and finds that it consistently and fairly applied its own regulations as to leasing applications.

The Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1157 (D.D.C. 1984).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge