

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease offer M 58837.

Affirmed.

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

Pursuant to 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous oil and gas 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 geologic structure of a producing oil or gas field has the burden of establishing that the determination is in error. The determination will not be disturbed in the absence of a showing of error by a preponderance of evidence.

APPEARANCES: Irma R. Spear, pro se; Richard K. Aldrich, Esq., Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irma R. Spear has appealed a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 17, 1984, rejecting her oil and gas lease offer M 58837, which was drawn with first priority in the May 1983 simultaneous drawing for parcel MT 220.

On September 28, 1983, BLM notified Spear that her application received first priority in the simultaneous oil and gas lease drawing. On October 6, 1983, Spear submitted an offer to lease along with the advance rental payment.

BLM rejected Spear's offer "in its entirety in accordance with 43 CFR 3112.6-2(b) \* \* \* because it has been determined by our District Office that all of the lands are in the Gas Ridge defined geologic structure effective November 10, 1983."

[1] Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1982), provides that "[i]f the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding \* \* \*." See 43 CFR 3100.3-1; 43 CFR 3120 (competitive leases).

43 CFR 3112.6-2(b) 1/ provides:

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.

It is firmly established that a noncompetitive lease offer for lands designated within a known geological structure (KGS) 2/ must be rejected, where lands embraced in the offer are designated as within a KGS prior to issuance of the lease. E.g., Joseph A. Talladira, 83 IBLA 256, 258 (1984); Lloyd Chemical Sales, Inc., 82 IBLA 182, 184 (1984); Thomas Connell, 82 IBLA 132, 133 (1984); Stephen M. Naslund, 79 IBLA 252, 253 (1984). The Department has no discretion to issue a noncompetitive lease for such lands. E.g., McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Lloyd Chemical Sales, Inc., supra at 185. In the instant case, the KGS determination became effective on November 10, 1983, which was prior to the issuance of the lease, because the lease was never issued. A noncompetitive oil and gas lease offer filed before the lands were determined to be within a KGS, but not accepted by the United States on the date of determination, must be rejected. Thus, if the lands were properly designated as within a KGS, appellant's oil and gas lease offer was properly rejected.

[2] The central issue on appeal is whether or not BLM properly designated the lands as KGS. It is firmly established that an applicant for an 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. Reed International, supra; Stephen M. Naslund, supra at 253; R. C. Altrogge, 78 IBLA 24, 25 (1983); Angelina Holly Corp., 70 IBLA 294 (1983), aff'd, Angelina Holly Corp. v. Clark, 587 F. Supp.

1/ BLM cited the 1982 regulation, which has been renumbered 43 CFR 3112.5-2(b).

2/ A KGS is a trap, either structural or stratigraphic in nature, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, and which includes all acreage that is presumptively productive. 43 CFR 3100.0-5(1); Reed International, 80 IBLA 145, 148 (1984); Stephen M. Naslund, 79 IBLA 252, 253 (1984).

1152 (D.D.C. 1984). The determination [of a KGS] will not be disturbed in the absence of a showing of error by a preponderance of countervailing evidence. See Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984).

In the instant case, the appellant has submitted no evidence or proof, except bald conclusions, that the designation of the lands as KGS is incorrect. Appellant asserts that "the declaration of this area as known geologic structure, is without regard to the facts." Appellant then cites two concerns, namely, dry holes near the subject tract and "that there is no structure there at all, but rather the tract is in a syncline." The Secretary of the Interior has traditionally delegated the duty for determination of the existence of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon his reasoned opinion. E.g., Stephen M. Naslund, *supra* at 253; Bruce Anderson, 63 IBLA 111, 113 (1982). In Bob G. Howell, 71 IBLA 253, 254 (1983), this board stated:

A determination by MMS that certain lands are in the KGS of a producing oil or gas field 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 or gas field. There is no prediction as to future productivity or statement as an existing fact that anything is known about the productivity of all the land included in a KGS. Vernon Benson, 48 IBLA 64 (1980).

Appellant having failed to carry her burden of proof that the KGS determination is incorrect, we may not reverse BLM's finding that the subject lands are within a KGS. We therefore conclude that the lands embraced in the oil and gas lease offer were properly designated as within a KGS prior to issuance of the lease, and thus appellant's offer was correctly rejected.

Appellant also contends that the rejection of pending applications on the grounds that the subject lands are now within a KGS is in contravention to the policy stated by the Secretary that the rules would not be changed as to the applications pending in October 1983. Due to appellant's failure to identify the asserted "policy," we are unable to fully understand her argument. <sup>3/</sup> However, to our knowledge, no pertinent rules have been changed

<sup>3/</sup> 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 49703-4 (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

which could conceivably affect appellant's application. Simultaneous lease offerings receive a final clearlisting prior to lease issuance to determine if lands have been added to a KGS or were pending inclusion after the lease offering was initially posted. This has been standard practice for many years. See, e.g., F. William Johnson, Jr., 3 IBLA 232 (1971).

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:

---

R. W. Mullen  
Administrative Judge

---

Will A. Irwin  
Administrative Judge

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 Spear's lease offer which had not been processed and completed prior to Oct. 12, 1983, was therefore suspended pending the KGS study and reclassification.

