

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease offer. U-53566.

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 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 clear and definite showing of error.

APPEARANCES: Evelyn D. Ruckstuhl, pro se; David K. Grayson, Esq., and W. P. Elliott, Jr., Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Evelyn D. Ruckstuhl has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 22, 1984, rejecting her oil and gas lease offer U-53566 which was drawn with first priority in the July 1983 simultaneous drawing for parcel UT 214.

BLM rejected her offer for the reason:

[T]hat based on oil and gas development in Carbon and Emery Counties, Utah, all the lands offered in Parcel UT 214 of the July 1983 simultaneous oil and gas offers are within the Greater Ferron known geological structure, effective December 9, 1983. Therefore, lease offer U-53566 is rejected in its entirety, 43 CFR 3112.5-2(b).

(Decision dated March 22, 1984).

In her statement of reasons, appellant takes issue with the expansion of the Greater Ferron known geologic structure (KGS) designation to the applied for lands "just because there have been gas wells in the north and some others in the south of this 30 mile long area, and also fails to give proper attention and weight to all the dry holes in the intermediate area." Appellant further asserts that "the BLM, Utah State Office, has over-reacted to recent adverse publicity by the news media about problem areas in Wyoming and Arkansas far out of proportion to this decision." Appellant in supplemental submissions reiterates that the KGS designation does not adequately take into account various dry holes as shown on maps of the area.

[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 * * *." And see 43 CFR 3100.3-1; 43 CFR 3120 (competitive leases).

43 CFR 3112.5-2(b) 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 KGS must be rejected, where lands embraced in the offer are designated as within a KGS prior to issuance of the lease. Leonard Luning, 83 IBLA 376 (1984); Joseph A. Talladira, 83 IBLA 256 (1984); Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984); Thomas Connell, 82 IBLA 132 (1984); Stephen M. Naslund, 79 IBLA 252 (1984). The Department has no discretion 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).

[2] This Board has repeatedly stated 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 and gas field has the burden of showing that the determination is in error. Reed International, 80 IBLA 145 (1984); 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. 1152 (D.D.C. 1984). "Known geological structure" is

defined in 43 CFR 3100.0-5(1) 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 his reasoned opinion. Bruce Anderson, 63 IBLA 111 (1982); and cf. Clear Creek Inn Corp., 7 IBLA 200, 79 I.D. 571 (1972). The boundaries of a KGS are defined for administrative purposes and cannot be taken as showing the absolute accuracy of the extent, in each instance, of the geologic structure producing oil or gas. Robert G. Lynn, 61 IBLA 153 (1982).

Were 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 appellant's contentions. Thomas Connell, *supra*; Hepburn T. Armstrong, 60 IBLA 140 (1981).

However, in this case the record contains sufficient technical data fully explaining and supporting the BLM determination. BLM's decision was based on a memorandum from the Deputy State Director, Mineral Resources dated December 20, 1983, which included a "Geologic Justification for Expansion of Ferron KGS" containing the following statistical and geological analysis:

The Ferron KGS was established in 1963 based on gas production from two closed domal structures. The KGS was expanded in 1982 to include several new wells that were also producing gas from the Ferron Sandstone Member of the Mancos Shale but were not related to any obvious structures. Continuing exploration by several operators has further extended the area of stratigraphically controlled production to the north. The recommended expansion includes [7] wells producing from the Ferron [whose] [p]roductive depths range from 1,949 to 3,418 feet. Initial rates of production vary from 44 to 1,175 MCFGPD. One well (SESE 6, T. 18 S., R. 8 E.,) had an initial production rate of 9 BOPD.

Exploration in the Miller Creek area has also demonstrated the presence of gas in the Ferron Sandstone and underlying Tununk Shale. [Three] wells tested 184 to 455 MCFGPD from depths of 390 to 880 feet * * * [a]nother well (NESW 22-15S-10-E) tested 168 MCFGPD from the Dakota Formation (1,198 to 1,204 feet).

A small unnamed KGS in T. 18 S., R. 7 E. based on production from the Moenkopi Formation is included in the recommended expansion. Also, a well in SENW 15-17S-8E had oil shows in Moenkopi. Another well in SESW 27-15S-9E produced a small amount of gas from the Manning Canyon Formation and some other wells in the area had gas shows in the Ferron Sandstone.

The Ferron Sandstone is composed of lenticular and discontinuous sands generally interpreted as marine bars and stream channels developed along a north-south trending shoreline. At any one location several sand lenses generally are present. These lenses are separated by shale and may have separate gas-water contacts. There are no pronounced structures north of the Ferron

Structure; the Ferron strikes northeast-southwest and dips to the northwest. Some minor structural noses are present but appear to have little or no influence on gas occurrence. South of Miller Creek the gas is largely restricted to the uppermost sand lenses and entrapment results from complex stratigraphic changes within these sands.

(December 20, 1983, Memorandum 4). BLM also submitted a plat showing nearby producing wells and explained the significance of those wells:

The enclosed plat shows that the F-L Energy No. 1-34 Well (NE/4NE/4 Section 15S., R. 9E., completed 03-15-83 with IP=425 MCFGPD) is located less than one mile from the area being appealed, closer than any dry holes. Producing wells in T. 15S., R. 9E., and T. 17S., R. 8E. define a productive trend along strike of the Ferron Sandstone through lease U-53566 and this area is presumptively productive.

(Memorandum of June 22, 1984, at 2).

In response to appellant's argument concerning the existence of dry holes near the tract, BLM answers with an analysis which demonstrates that there are many reasons why a well may not be completed as a producer in such an area and concludes that "when these factors are considered it is obvious that dry holes do not necessarily condemn an area." We find that evidence of producing wells in the area here in question is more indicative of the character of the area than the existence of dry holes, under the circumstances shown to exist.

Appellant also contends the rejection of her lease offer was in error because notification of her drawing priority and a rent request issued October 5, 1983, and the lease rental was paid October 26, 1983. She argues that the lease would have been issued before the effective date of the KGS designation by the Utah Office December 20, 1983, letter if there had not been a moratorium on issuance of leases. Suspension of lease issuance by the Secretary's suspension order pending a KGS study of the public lands at 48 FR 49703 (Oct. 27, 1983) did not impair appellant's right as the first qualified applicant. 1/ A drawing does not vest in a lease applicant a right,

1/ The notice of suspension provides:

"The Bureau of Land Management periodically issues oil and gas leases in areas outside of known geological 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 were 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." 48 FR 49703, 49704 (emphasis added.)

contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing. R. K. O'Connell, 85 IBLA 29 (1985); Joseph A. Talladira, *supra*. McDade v. Morton, *supra* at 1010.

On the basis of this and other evidence of record, we conclude that there is adequate justification for including the subject land within the KGS, and that appellant has failed to present significant probative evidence to overturn the BLM conclusion that the land embraced in lease offer U-53566 is presumptively productive of oil and gas.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

