

MARY NAN SPEAR

IBLA 84-565

Decided March 15, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer W 85798.

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) (1982) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer 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 by the Geological Survey that land is within the known geologic structure of a producing oil or gas field is required to show by a preponderance of the evidence considered that the determination is in error.

APPEARANCES: Mary Nan Spear, pro se.; Lowell L. Madsen, Esq., Office of the Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mary Nan Spear appeals from an April 12, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting in part her noncompetitive oil and gas lease offer W 85798. The decision states:

You were the successful drawee for Parcel WY 488 on the May 1983 Notice of Lands Available for Oil and Gas Filings. The land, as posted, was for 1040.00 acres in Township 50 North, Range 100 West, 6th Prin. Mer., Wyoming.

All oil and gas lease offers are subject to determination by our BLM District Offices as to whether any of the lands to be issued are on a Known Geological Structure of a producing oil or gas field as of the date of the last report. This report is required by Regulation 43 CFR 3112.5-2(b).

The District Manager reports the following lands are within South East Oregon Basin undefined Known Geological Structure effective 3-1-1984:

Sixth Principal Meridian, Wyoming
T. 50 N., R. 100 W.
Sec. 12: SE 1/4, N 1/2 SW 1/4
23: SW 1/4 NW 1/4
27: SW 1/4 NW 1/4

containing 320.00 acres

The above lands are available for lease only in accordance with Regulation 43 CFR 3120. Therefore, oil and gas lease offer W 85798 is hereby rejected as to the above-described lands.

The lease then issued for the remaining 720 acres in appellant's lease offer.

On appeal to this Board, appellant argues that "no geological evidence would indicate that the excluded lands are on a known geologic structure." She asserts that by designating a known geologic structure (KGS) in an area of a pending lease application, BLM controverted the policy of the Secretary of the Interior "that the rules under which pending leases were to be issued would not be changed in the middle of the game."

BLM responded initially that, because appellant had not offered specific reasons why she considered the KGS determination to be in error, the BLM decision should be sustained. BLM asserts that instead of changing the rules it correctly followed the law and well-established precedent.

On December 3, 1984, this Board issued an order calling for substantiation of the basis for the KGS determination. BLM submitted a copy of the original KGS determination, and a structural contour map of the Southeast Oregon Basin field KGS addition, along with the following narrative, to which data appellant did not respond.

The Southeast Oregon Basin Defined KGS has been extended based on the recent completion of a gas well in the Muddy Sandstone Member of the Thermopolis Shale and two oil and gas wells in the Frontier Formation. The Anschutz Corporation #12-30A Duncan well in section 30, T. 50 N., R. 99 W., was completed on October 20, 1981, with initial production (IPF) of 1,799 MCFGPD from a depth of 6,590 to 6,617 feet in the Muddy Sandstone Member of the Thermopolis Shale. The Hunt Oil #1-6 Hoc-Fee well in section 6, T. 49 N., R. 99 W., was completed on May 18, 1983, with

initial production (IPF) of 2,030 MCFGPD and 17 BCPD from a depth of 6,304 to 6,530 feet in the Frontier Formation. In section 24, T. 50 N., R. 100 W., the Anschutz Corporation #16-24 USA well was completed in the Frontier Formation on September 16, 1981, with initial production (IPF) of 4,906 MCFGPD and 37 BCPD from a depth of 5,172 to 5,439 feet. The KGS addition includes the Badger Creek Unit which was submitted by the Anschutz Corporation and approved by the U.S. Geological Survey Conservation Division on August 28, 1981. The unit geologic report cites potential for stratigraphic oil and gas accumulations in marine bar sandstones in the Frontier Formation and Muddy Sandstone Member of the Thermopolis Shale, on the plunging (southeastern) nose of the Oregon Basin Anticline. The attached structural contour map shows that these stratigraphic traps are further limited by fault bordered anticlinal structures.

The Southeast Oregon Basin KGS addition includes all lay-- down 320s and legal subdivisions that are included in or intersected by a fault bordered nose structure and truncated anticline (see attached map). On the "nose" structure in the northern part of the addition, the +800 foot contour is taken as the lowest closing contour for the structure and the productive limit. On the truncated anticline to the south, the -1000 foot contour is used as the lowest productive limit, to enclose production in the Frontier Formation at -800 feet in section 6, T. 49 N., R. 99 W. Examination of well logs did not indicate the location of an actual oil-water contact in either structure.

[1] Section 17(b) of the Mineral Leasing Act of 1920 specifies that public lands within a 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)(1) (1982); 43 CFR 3120.1(a). Noncompetitive leases may issue for other public domain lands to the first-qualified offeror. 30 U.S.C. § 226(c) (1982). 43 CFR 3100.3-1. If lands included in a noncompetitive lease offer are designated as within a KGS at any time before lease issuance, the noncompetitive lease offer must be rejected as to those lands. 43 CFR 3110.3(a); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Harry S. Hills, 71 IBLA 302 (1983); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982). Rather than changing the rules, BLM, as the Secretary's delegate, acted here in the only permissible manner.

[2] It has been recently established that an oil and gas lease applicant who challenges a KGS determination at an administrative evidentiary hearing has the burden of showing by a preponderance of the evidence presented that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. Cir. 1984). In this case, however, BLM submitted geological data and information to substantiate its KGS determination, whereas appellant has offered no evidence to support her bare assertion that the KGS determination is incorrect. Thus, the uncontested evidence offered by BLM is dispositive of this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

