

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting in part appellant's oil and gas lease offer W 85629.

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), where a portion of a noncompetitive lease offer is determined to be within a known geological structure of a producing oil or gas field, that portion within the known geological structure may only be leased by competitive bidding. Where lands are determined to be within a known geological structure at any time prior to issuance of a lease, an oil and gas lease offer for such lands must be rejected. An applicant for an oil and gas lease has no vested rights to issuance of a lease. The drawing of a simultaneous oil and gas lease application merely establishes the priority of filing an offer; it does not create any property or contract rights.

APPEARANCES: Donna M. Brady, Esq., and George B. Phillips, Esq., Mineola, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Satellite 8305141 has appealed a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 31, 1984, rejecting in part oil and gas lease offer W 85629. Appellant filed a simultaneous oil and gas lease application and was the successful drawee for parcel WY 318 on the May 1983 Notice of Lands Available for Oil and Gas Filings. Parcel WY 318 embraced 120 acres in secs. 4 and 10, T. 22 N., R. 85 W., sixth principal meridian, Wyoming.

On October 27, 1983, in accordance with 43 CFR 3112.6-1(a), appellant submitted its offer to lease those lands. Prior to lease issuance BLM determined that 40 acres of the subject land were within an unnamed, undefined

known geological structure (KGS), effective December 5, 1983. On May 31, 1984, BLM issued lease W 85629, effective June 1, 1984, for the 80 acres not within the KGS and on the same date rejected appellant's lease offer for the 40 acres within the KGS. In its decision, BLM noted that the KGS determination was required by 43 CFR 3112.5-2(b).

Appellant contends that it is being unjustly deprived of part of the land that was listed as available for leasing. Appellant submits that the December 5, 1983, determination by BLM is being applied retroactively, and that the governing regulation is arbitrary, capricious, and unreasonable. Appellant argues that the procedures followed and actions taken by BLM constitute a taking of property in violation of the United States Constitution. Finally, appellant contends that

a contract for the lease of 120.00 acres existed between the government and the appellant at the time that the lease offer was signed by the appellant and the signature of a government representative constituting a technical "acceptance" of the offer is only a ministerial act. The contract cannot now be revised unilaterally.

[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 and gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding." See 43 CFR 3100.3-1; 43 CFR Subpart 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 1/ must be rejected, where lands embraced in the offer are determined to be within a KGS prior to issuance of the lease. E.g., Evelyn D. Ruckstuhl, 85 IBLA 69, 70 (1985); Joseph A. Talladira, 83 IBLA 256, 258 (1984); Lloyd Chemical Sales, Inc., 82 IBLA 182, 184 (1984). In Frederick W. Lowey, 76 IBLA 195, 197 (1983), we held that "where only a portion of a noncompetitive offer is included within a KGS, the affected portion of the

1/ 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).

offer must be rejected." Thus, the 40-acre portion which lies within the KGS in the instant case must similarly be rejected.

The Department has no discretion to issue a noncompetitive lease for lands within a KGS. E.g., McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); R. K. O'Connell, 85 IBLA 29, 31-32 (1985); Lloyd Chemical Sales, Inc., supra at 185. In McDade v. Morton, supra at 1010-11, the court recognized that where a KGS determination is made affecting lands involved in a noncompetitive lease offer, the Secretary has no discretion to issue a lease, despite the possible existence of equitable arguments in favor of the disappointed offeror. See Frederick W. Lowey, supra at 197. In McDade v. Morton, supra at 1013, the court noted that:

The unambiguous language of the Mineral Leasing Act states that leases for land within a known geologic structure of an oil or gas field shall be leased by competitive bidding. The logical and sensible regulatory result under such wording is to preclude any type of leasing other than by means of competitive bidding whenever it becomes apparent that the applied for leases involve lands within a known geologic structure. To hold otherwise would fly in the face of the "plain meaning" of the statute's words. [Emphasis in original.]

In this case the KGS determination became effective on December 5, 1983, which was prior to the issuance of any lease. 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. E.g., Irma R. Spear, 84 IBLA 92, 93 (1984).

Appellant's arguments that BLM'S conduct constitutes a taking of property, that the regulation is arbitrary and capricious, and that a "contract for the lease" existed, are palpably flawed. Appellant did not possess any property interest in the subject lease. The drawing of appellant's application for a noncompetitive oil and gas lease merely established the priority for filing an offer; it vested no rights to the land in appellant. Lloyd Chemical Sales, Inc., supra; Frederick W. Lowey, supra at 198; Kenneth L. Hanlin, 70 IBLA 115, 116 (1983). Because of the plain meaning of the statute, we find that the regulation mandating rejection of offers for land within a KGS, 43 CFR 3112.5-2(b), is not arbitrary, capricious, or unreasonable. Appellant did not possess any "contract for the lease." Appellant had merely offered to lease the subject land. See Joseph A. Talladira, supra at 258. The signature of the authorized officer on the lease is not a ministerial act constituting "technical" acceptance of the offer. The signature "constitutes the acceptance." 43 CFR 3112.6-2. BLM only accepted that part of appellant's offer which was not within the KGS. Since part of the land was determined to lie within a KGS, BLM could not possibly issue a lease for that part of the subject land. E.g., McDade v. Morton, supra, and analysis, supra. Until BLM accepts a lease, an offeror simply has no contract rights whatsoever. See Kenneth Hanlin, supra at 116. BLM properly rejected that part of appellant's lease offer which was within a KGS. Appellant has raised no challenge to the KGS determination itself.

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.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Edward W. Stuebing
Administrative Judge

