

LEONARD LUNING

IBLA 84-848

Decided May 31, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application W 86972.

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), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a simultaneous oil and gas lease application for such lands must be rejected. The applicant has no vested right to issuance of a lease.

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

An applicant for a simultaneous oil and gas lease who challenges a determination by BLM that land is within the known geologic structure of a producing oil or gas field has the burden of showing the determination is in error.

APPEARANCES: Leonard Luning, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Rocky Mountain Region, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Leonard Luning has appealed from the June 21, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application W 86972. The BLM decision is based on a postdrawing determination that the lands covered by offer W 86972 are entirely within the South Baxter Basin Known Geological Structure (KGS) effective May 2, 1984. The stated reason for rejection is that regulation 43 CFR 3112.5-2(b) provides a noncompetitive oil and gas lease offer made for lands classified within a KGS shall be rejected.

Appellant was the first-drawn applicant for parcel WY 503 in the July 1983 simultaneous oil and gas drawing. Parcel WY 503 is comprised of sec. 10, E 1/2 SE 1/4, T. 18 N., R. 102 W., sixth principal meridian, Sweetwater County, Wyoming. By notice dated November 8, 1983, BLM transmitted to appellant a lease agreement and request for the first year's rental. The signed lease agreement and first year's rental were filed with BLM, by appellant, on November 17, 1983.

Prior to lease issuance, the Secretary of the Interior issued an order temporarily suspending the issuance of pending applications for noncompetitive oil and gas leases until it could be determined which, if any, of the affected public lands were within a KGS. See 48 FR 49703 (Oct. 27, 1983). At the conclusion of the determination process, the Rock Springs District Office notified BLM the lands subject to appellant's offer were within the South Baxter Basin KGS.

On appeal appellant contends parcel WY 503 is not situated in a favorable structural position and is separated from nearby production by dry holes and therefore should not be designated as KGS. Appellant has submitted a geologic summary prepared by a geologist which states that: (1) The well nearest the parcel, the Mesa Verde well (sec. 1 SE 1/4 SW 1/4) was shut-in after testing and abandoned in 1974 and the nearest producing field, the Camel Rock Field, is approximately 2-1/2 miles from the parcel; (2) all prospective zones were tested by a dry hole drilled to a depth of 6,420 feet in the SE 1/4 SE 1/4 of sec. 10 in 1960; and (3) dry holes have been drilled on both the upthrown and downthrown sides of a fault which, appellant's geologist states, indicates the lack of an effective trapping mechanism on parcel WY 503.

In answer, BLM points out the KGS determination is based on a reasoned geologic analysis of the Frontier, Dakota, Morrison, and Phosphoria formations. BLM states that available log data and drill-stem test results indicate the Mesa Verde well had penetrated a presumptive reservoir within the Dakota formation. BLM relies upon well logs of the South Baxter Basin KGS which tend to show that, contrary to the conclusion by appellant's expert, there is geologic evidence of an entrapping structure under parcel WY 503. The BLM analysis indicates the uppermost sand stratum of the Dakota formation, which is productive in the Camel Rock field, extends northward under the subject parcel; this sand was penetrated by a drill-stem test well. BLM's analysis of the log data for this well indicates the sand interval is similar to producing wells in the area and is probably gas-bearing, although the drill-stem test had no oil or gas recovery (Figure 2, BLM Answer at 3). (Figure 2, a well log summary, recites the unproductive drill-stem test was improperly run). BLM argues that, "[a]s a result of the correlation with a proven productive-sand interval, and the favorable analysis of the logs from [the drill-stem test well] the lands in question are considered presumptively productive for oil and gas in the Dakota formation" (BLM Answer at 3). In addition, BLM contends faulting has only a minor influence in controlling gas accumulation in the area; BLM concludes available data indicate that stratigraphic trapping is potentially more important than faulting in evaluating potential for gas accumulation (BLM Answer at 4). Appellant has not responded to the BLM answer or to BLM's geologic data provided on appeal.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3100.3-1. Where lands embraced in a noncompetitive oil and gas lease offer are designated as within a KGS prior to issuance of the lease, the lease offer must be rejected. R. C. Altrogge, 78 IBLA 24 (1983); 43 CFR 3112.5-2(b). The Department lacks discretion to issue a noncompetitive oil and gas 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); Frederick W. Lowey, 76 IBLA 195 (1983).

[2] Appellant has challenged the correctness of the determination that parcel WY 503 is situated within a KGS. The burden of proving the KGS determination is in error is on appellant. Champlin Petroleum Co., 86 IBLA 37 (1985). KGS is defined 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." 43 CFR 3100.0-5(1). A KGS designation recognizes the existence of a continuous entrapping structure on some part of which there is production. It does not indicate what is known of the productivity of the lands in a structure, nor does it predict future productivity. Champlin Petroleum Co., supra.

While the conclusions drawn from geological data are subject to different interpretations, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Champlin Petroleum Co., supra; Bruce Anderson, 63 IBLA 111 (1982). Although appellant has presented some data in support of his appeal, he has failed to respond to BLM's geologic reports and the agency analyses which indicate the existence of an entrapping structure under parcel WY 503. Appellant has failed to preponderate upon the issues presented and has consequently failed to prove to this Board that BLM's KGS determination is in error. Cf., Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984).

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:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge

