

FLOYD L. HUENERGARDE

IBLA 84-750

Decided July 15, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-86638.

Affirmed.

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

Pursuant to sec. 17(b) of the Mineral Leasing Act, as amended, 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 noncompetitive oil and gas lease offer for such lands must be rejected.

APPEARANCES: Ross B. Griggs, Esq., Wichita, Kansas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Floyd L. Huenergarde has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 20, 1984, as amended July 13, 1984, rejecting his noncompetitive oil and gas lease offer W-86638.

Appellant was the first-drawn applicant for parcel WY-166 in the July 1983 simultaneous oil and gas lease drawing. By decision dated September 27, 1983, BLM required appellant to submit executed copies of a noncompetitive oil and gas lease offer for parcel WY-166, along with the first year's rental payment, "within 30 days from the date of your receipt of this decision." On October 7, 1983, appellant filed executed copies of a lease offer for 469 acres of land situated in Campbell County, Wyoming, and paid the first year's rental. By memorandum dated March 30, 1984, the District Manager, Casper District, Wyoming, notified the State Director, Wyoming, that all of the land included in lease offer W-86638 is "within the Little Thunder Field undefined Known Geologic Structure [KGS] effective February 23, 1984." In its June 1984 decision, BLM rejected appellant's lease offer pursuant to 43 CFR 3112.5-2(b) because the land is situated within a KGS and, thus, is subject to leasing only by competitive bidding under 43 CFR Subpart 3120.

In his statement of reasons for appeal, appellant contends that designation of the lands included in his lease offer as within a KGS was arbitrary

and capricious and without a "rational basis." Appellant also argues that he is entitled to a lease because BLM failed to notify him promptly of the KGS determination, and he was assured on a number of occasions "between October 5, 1983 and mid-June 1984" by BLM employees that a lease would be issued, upon which assurances he relied "to his detriment."

[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 at any time prior to issuance of a lease, the lease offer must be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985), and cases cited therein; 43 CFR 3112.5-2(b). 1/ The Department has no 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); Fredrick W. Lowey, 76 IBLA 195 (1983).

Appellant claims, however, that he is entitled to a lease because BLM, having failed to notify him of the KGS determination promptly and having assured him a lease would be issued, caused him to rely on those assurances to his detriment. Appellant has failed to provide any evidence as to the nature of the assurances purportedly given by BLM employees or to establish how he has detrimentally relied on those assurances. 2/ The record does contain an affidavit of Bruce C. Martens to the effect that by agreement dated January 3, 1984, appellant agreed to assign oil and gas lease W-86638 to Martens, on behalf of Chorney Oil Company, the Natural Gas Corporation of California, and CNG Producing Company. At that time appellant had no vested right in an oil and gas lease. Evelyn D. Ruckstuhl, supra at 72-73, and cases cited therein; Harry S. Hills, 71 IBLA 302 (1983). Moreover, even assuming assurances were given and appellant detrimentally relied thereon, 43 CFR 1810.3(c) provides that "[r]eliance upon information or opinion of any officer, agent or employee * * * cannot operate to vest any right not authorized by law." Issuance of a noncompetitive oil and gas lease for lands determined to be within a KGS would be a clear violation of section 17(b) of the Mineral Leasing Act, and, hence, is "not authorized by law."

1/ 43 CFR 3112.5-2(b) provides that:

"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."

2/ Although we need not speculate on the nature of the assurances purportedly provided by BLM where appellant has provided no specifics, we point out that noncompetitive lease issuance is always subject to the condition that the land is not within a KGS at the time of lease issuance. The limits of a KGS are dynamic, rather than static, based on the latest available information. Thus, it is simply unreasonable to rely upon any representation or prediction of the KGS status of the land prior to the time of lease issuance.

Although appellant has also challenged the KGS determination as being arbitrary and capricious, he has provided no evidence to support his assertion. The burden to present evidence showing that the determination was in error is clearly on appellant. Evelyn D. Ruckstuhl, supra; R. C. Attrogge, 78 IBLA 24 (1983); see Ronald C. Agel, 87 IBLA 255, 259 (1985).

Therefore, we conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

