

PAUL CHACHULA

IBLA 85-172

Decided September 10, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas offer W-86731.

Affirmed.

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

Land within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR Subpart 3120. A noncompetitive oil and gas lease offer filed before lands were determined to be within a known geologic structure but not accepted by the United States on the date of determination is properly rejected to the extent of inclusion of such lands.

APPEARANCES: Paul Chachula, Wauwatosa, Wisconsin, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Paul Chachula submitted a simultaneous oil and gas lease application for parcel WY 261 in the July 1983 simultaneous drawing. His application was selected with second priority. 1/ Parcel WY 261 embraced 320 acres in T. 44 N., R. 76 W., Sixth Principal Meridian, Campbell County, Wyoming.

Following submission by Chachula of the lease offer forms and first year's rental, on October 18, 1984, the Wyoming State Office, Bureau of Land Management (BLM), issued a decision rejecting his offer as to 200 acres within WY 261 and issuing the lease (effective November 1, 1984) for the remaining 120 acres. BLM explained that the 200 acres were excluded from the lease because "they are within an undefined addition to The Pumpkin Butte undefined Known Geological Structure [KGS] effective 4-12-1984." BLM properly noted that lands within a KGS may only be leased competitively in accordance with 43 CFR Subpart 3120.

1/ The first priority applicant was disqualified for failing to sign his application.

Chachula argues on appeal that he was "awarded" lease W-86731 and that later 200 acres were deleted from it. He questions how his acreage can now be considered KGS when it was part of acreage included in a former oil and gas lease, W-27727. Further, he contends that the method of determining "such a geological definition was changed after the lease was awarded to me."

[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." 2/ See 43 CFR 3100.3-1; 43 CFR Subpart 3120.

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.

Appellant apparently misunderstands the significance of the selection of his simultaneous oil and gas lease application. The drawing of such an application merely establishes the priority of filing an offer. It does not create any property or contract rights, nor does it amount to the "awarding" of a lease. Norma Richardson, 86 IBLA 168 (1985); Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984).

A listing of parcels available for leasing under the simultaneous procedures notifies the public of those lands for which BLM will accept applications. A drawing of such applications is subsequently held, and the first-priority applicant is forwarded lease forms in accordance with 43 CFR 3112.6-1. The lease agreement, signed by the successful applicant, and payment of the first year's rental within the time prescribed constitute the offer to lease. Prior to acceptance of the offer, the authorized officer is required to determine the status of the lands in the offer. Lands classified as KGS lands at any time prior to lease issuance must be leased competitively pursuant to 43 CFR Subpart 3120, and a noncompetitive lease offer for such lands must be rejected. McDade v. Morton, 353 F. Supp. 1006, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Joseph A. Talladira, 83 IBLA 256, 258 (1974).

The fact that lands may have been part of a prior noncompetitive lease does not mean that they must forever be leased noncompetitively. As set forth above, the Department is required to determine the status of land prior to acceptance of the offer.

2/ The regulations at 43 CFR 3100.0-5(1) define KGS 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."

Appellant's charge that the KGS definition has changed has no basis in fact. The definition was the same at the time he filed his simultaneous application in July 1983 as when BLM issued its decision in October 1984. Compare 43 CFR 3100.0-5(a) (1982) with 43 CFR 3100.0-5(1) (1984). 3/ Appellant has made no technical challenge to the KGS determination.

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:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge

3/ Appellant may have been confused because of the July 22, 1983, revision of the oil and gas regulations. 48 FR 33662. However, that revision did not affect the substantive KGS definition; it merely resulted in the renumbering of the applicable regulation.

