

MICHAEL R. DIEFENDERFER

IBLA 84-796

Decided November 20, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing the annual rental rate for noncompetitive oil and gas lease W-83626.

Affirmed.

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

BLM may properly require the holder of a noncompetitive oil and gas lease to pay an increased rental of \$2 per acre for the entire leasehold pursuant to 43 CFR 3103.2-2(d), where BLM determines during the lease term that any part of the lands included in the lease is within a known geologic structure.

APPEARANCES: Michael R. Diefenderfer, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Michael R. Diefenderfer has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 3, 1984, increasing the annual rental rate for appellant's noncompetitive oil and gas lease W-83626.

Effective April 1, 1983, BLM issued a noncompetitive oil and gas lease of 1,360 acres of public domain land situated in Natrona County, Wyoming, to appellant, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By memorandum dated June 8, 1984, the District Manager, Casper District Office, informed the State Director that a portion of the land in appellant's oil and gas lease was considered to be within an undefined addition to the Smoky Gap defined known geologic structure (KGS), effective May 18, 1984. 1/ In its July 3, 1984 decision, BLM notified appellant that, because the land had been determined to be within a KGS, "[b]eginning with the lease year which starts at least 30 days from your receipt of

1/ This land is described as the SE 1/4 NW 1/4 sec. 27, T. 40 N., R. 80 W., Sixth Principal Meridian, Natrona County, Wyoming.

this notice, and for each year thereafter through the fifth lease year" the annual rental rate was increased from \$1 to \$2 per acre. 2/

In his statement of reasons for appeal, appellant contends that the "lands contained in this lease should not be classified as part of the Smoky Gap [KGS]." Appellant argues that the "majority of the subject leasehold clearly lies outside the proven productive area * * * (All except the E 1/2 NW 1/4 Sec. 27)," i.e., north of an area of maximum faulting in the "Smoky Gap Field." Appellant notes that there is no "closed structure" within the field due to the faulting, but, rather, production is from "fractured Niobrara shales." Appellant concludes that "there appears to be no geologic justification for designating the entire leasehold as being within a [KGS]."

[1] It is well established that when BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within a KGS, the lessee is properly required by BLM to pay an increased annual rental of \$2 per acre for the entire leasehold, pursuant to 43 CFR 3103.2-2(d). 3/ Eagle Exploration Co., 83 IBLA 354 (1984); Ambra Oil & Gas Co., 58 IBLA 67 (1981), and cases cited therein.

Appellant's statement of reasons clearly indicates that he objects to inclusion of the "entire leasehold" in the Smoky Gap KGS, but recognizes that the portion of the leasehold within the "proven productive area" is properly included in the KGS. This is exactly what BLM did. Although only 40-acres of appellant's leasehold was determined to be within the KGS, the inclusion of that acreage in the KGS subjects the entire leasehold to the increased rental rate.

Accordingly, BLM properly increased the annual rental rate for appellant's noncompetitive oil and gas lease.

2/ BLM stated that "all or part of the lands" in appellant's lease had been determined to be within the Smoky Gap KGS.

3/ The predecessor of 43 CFR 3103.2-2(d) was 43 CFR 3103.3-2(b)(1) (1982), which provided that, with respect to noncompetitive leases, the annual rental rate would be \$2 per acre or fraction thereof "beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in [a KGS]." Under the former regulations, a lessee was properly required to pay the increased rental where all or part of the land was included in a KGS. Robert D. Snyder, 13 IBLA 327 (1973). 43 CFR 3103.2-2(d) is not as explicitly phrased. It states simply that rental shall be payable at the rate of \$2 per acre or fraction thereof "[o]n lands within a lease * * * which is later determined to be within a [KGS]." The regulation was promulgated without any comment in the preamble to the final rulemaking that it portended a change in policy and has been consistently interpreted by the Board to require an increase in the rental rate for the entire leasehold. See 48 FR 33648, 33652 (July 22, 1983). Moreover, we conclude that this interpretation is not inconsistent with the wording of the regulation, which requires an increase in rental if there is a determination that the "lease," whether all or part, is within a KGS.

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.

Gail M. Frazier
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

