

THOMAS BOHR, JR., WILLIAM COLLISTER

IBLA 84-887

Decided November 22, 1985

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications. W-78253.

Affirmed.

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

Land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding. Where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

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

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field is required to show the determination is in error by a preponderance of the evidence considered.

3. Estoppel

Estoppel will not lie against the United States where there is no evidence of affirmative misrepresentation or concealment of material fact by the Government.

APPEARANCES: Charles L. Kaiser, Esq., Denver, Colorado, for Thomas Bohr, Jr.; William B. Collister, Esq., pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Thomas Bohr, Jr. and William B. Collister have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 9, 1984, rejecting their simultaneous oil and gas lease applications for parcel

WY 6155. Appellant Bohr received first priority for this parcel in the November 1981 drawing and appellant Collister received second priority. The BLM decision found the lands in parcel WY 6155 to be entirely within the Washakie Basin known geologic structure (KGS), effective June 29, 1984. Therefore, BLM rejected the applications, pursuant to 43 CFR 3112.5-2(b). Parcel 6155 includes all of secs. 13-15, 21-24, 26, 28 and N 1/2 sec. 27, a total of 6080 acres derived from a group of 10 prior leases which expired on September 26, 1980. <sup>1/</sup>

Another entrant in the drawing, Ellis R. Ferguson, appealed from a BLM decision rejecting his application for the reason his payment was not in acceptable form. Ferguson first appealed to this Board and subsequently to the U.S. District Court for the District of Wyoming, without success. See Ellis R. Ferguson, 69 IBLA 352 (1982), aff'd, Ferguson v. Lieurance, Civ. No. 83-264-K (D. Wyo. filed May 1, 1984). While Ferguson was exhausting his legal remedies, BLM refused to lease WY 6155. On July 6, 1984, following the Ferguson litigation, but before a lease was issued for WY 6155, the lands in WY 6155 were included in a 219,977.23-acre addition to the Washakie Basin KGS. On August 9, 1984, BLM rejected appellants' applications.

Appellants both argue this KGS determination is factually and scientifically incorrect. Bohr also contends drilling results should be accorded conclusive weight, and that the existence of an unproductive well in the center of WY 6155 argues against inclusion of the land in a KGS so persuasively that its existence cannot be explained away by the analysis of projected production trends derived from other exploration.

Both appellants argue BLM is estopped from denying the application. Bohr argues that because the United States did not raise the KGS issue in the Ferguson appeal and subsequent litigation, it cannot do so now. Collister contends that, but for the delay caused by the Ferguson litigation, a lease to WY 6155 would have issued before the KGS determination. Collister claims BLM's designation of so large an area as comprises the Washakie KGS was affirmative misconduct which is alone sufficient to establish a basis for an equitable estoppel of the United States, citing MGPC, Inc. v. Duncan, 581 F. Supp. 1047 (D. Wyo. 1984).

BLM has responded to appellants' arguments with a reasoned analysis of geologic data gathered for the area comprising the Washakie KGS, and has related this analysis to the parcel here under review, WY 6155. BLM has produced evidence from other wells in the KGS, and an explanation of the data from the unproductive well on WY 6155 tending to show how that well does not, alone, dispose of the question of the potential productivity of parcel WY 6155 (BLM Answer at 2-4). The KGS narrative report of Washakie Basin KGS Data Analysis comprises the only body of factual and scientific data presented on appeal.

[1] Public lands within the KGS of a producing oil or gas field may be leased only by competitive bidding to the highest responsible qualified

---

<sup>1/</sup> The Aug. 9, 1984 decision also described several sections apparently not included in parcel WY 6155: secs. 16-20 and sec. 25.

bidder. 30 U.S.C. § 226(b)(1) (1982); 43 CFR 3120.1(a). Noncompetitive leases may issue for other public domain lands to the first qualified offeror. 30 U.S.C. § 226(c) (1982); 43 U.S.C. 3100.3-1. If lands included in a noncompetitive lease offer are designated as within a KGS at any time before lease issuance, the noncompetitive lease offer must be rejected as to those lands. McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Harry S. Hills, 71 IBLA 302 (1983); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 812243 (D.D.C. Mar. 25, 1982); 43 CFR 3110.3(a); 43 CFR 3112.5-2(b).

[2] The term "known geologic structure" is defined as: "[T]echnically 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).

Inclusion of land in a KGS does not always mean the land is currently producing or conclusively proven to be productive of oil or gas. It does not predict future productivity. Land may be included in a KGS on the basis of geologic evidence indicating a producing deposit extends under the land so that the land is considered to be "presumptively productive." An oil and gas lease applicant who challenges a KGS determination has the burden of showing by a preponderance of the evidence presented that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984). In this case the BLM geological data and supporting information on appeal, to which appellants have had the opportunity to respond, substantiate the KGS determination. Neither appellant has offered evidence to support his assertion that the KGS determination is incorrect. Both have based their appeals entirely upon attempts to show error in the BLM analysis of the agency-developed data.

Appellant Bohr emphasizes that the only well drilled on WY 6155 did not produce and was abandoned. However, BLM has submitted evidence to show that productive formations extend under this tract. BLM's data and analysis also establish the well drilled on WY 6155 showed the presence of hydrocarbons in two target formations, the Almond and the Lewis. Because of the test results in these two formations, and based upon a review of the data produced by BLM, including analysis of other nearby producing wells, it is concluded appellants have not overcome the agency evidence tending to show the land is "presumptively productive" of oil or gas within the meaning of 43 CFR 3100.0-5(1). 2/

[3] Appellants claim the government is estopped from placing this parcel in a KGS. However, their arguments clearly are predicated upon the notion that BLM obligates itself to issue a lease by soliciting applications in the simultaneous system. This assumption is erroneous. As this Board stated in Evelyn D. Ruckstuhl, 85 IBLA 72-73 (1985): "A drawing does

---

2/ Other KGS determinations in which productive formations consisted of numerous discrete lenticular sandstone bodies, as appears to be the case here, have previously been approved. See Mary Lee Picou, 88 IBLA 356 (1985), and R. K. O'Connell, 85 IBLA 29 (1985) a case also involving the Washakie Basin KGS.

not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing." Further, absent a showing of affirmative misrepresentation or concealment of material fact by the Government, there can be no claim of estoppel against the United States. United States v. Ruby Co., 588 F.2d 697, 703-704 (9th Cir. 1978); Frederick W. Lowey, 76 IBLA 195 (1983). There is here no indication of any concealment by BLM of the possibility this land might become part of a KGS, nor does it appear there was any misrepresentation implicit in or otherwise made during the period preceding KGS determination. Although there was clearly a delay while the Ferguson appeals were decided, the authority of the United States to enforce a public interest such as those here created by the Mineral Leasing Act is not lost by official delays in the performance of duty. Bob F. Abernathy, 71 IBLA 149 (1983). Delay pending resolution of litigation cannot excuse later compliance with provision of the Mineral Leasing Act respecting land found to be within a KGS despite appellants' contrary expectations which arose when their applications were drawn for WY 6155. McDonald v. Clark, *supra*; Frederick W. Lowey, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

---

Franklin D. Arness  
Administrative Judge

We concur:

---

James L. Burski  
Administrative Judge

---

C. Randall Grant, Jr.  
Administrative Judge

