

LEONARD LUNING

IBLA 84-716

Decided December 3, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, increasing annual rental rate for noncompetitive oil and gas lease M 58431 (ND).

Affirmed.

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

A holder of a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of establishing that the determination is in error. The determination will not be disturbed in the absence of a showing of error by a preponderance of the evidence received.

2. 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 pursuant to 43 CFR 3103.2-2(d), if BLM determines during the lease term that any part of the land included in the lease is within a known geologic structure.

APPEARANCES: Leonard Luning, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Leonard Luning has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 24, 1984, increasing the annual rental rate on noncompetitive oil and gas lease M 58431 (ND) from \$ 1 to \$ 2 per acre.

Effective September 1, 1983, BLM issued a noncompetitive oil and gas lease to appellant for 51.10 acres of land situated in Bowman County, North Dakota, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By memorandum dated November 29, 1983, the District

Manager, Miles City District, Montana, notified the State Director, Montana, the lands included in appellant's lease, described as lots 1 through 4 and the E 1/2 E 1/2 sec. 34, T. 129 N., R. 107 W., fifth principal meridian, Bowman County, North Dakota, had been found to be situated within an undefined addition to the Gas Light Draw undefined known geologic structure (KGS), effective November 18, 1983. In its May 1984 decision, BLM notified appellant of the KGS determination stating "[b]eginning with the next lease year, September 1, 1984, the rental rate is increased to \$ 2 per acre, or fraction thereof, for the entire lease, consisting of 51.10 acres."

[1] In his statement of reasons for appeal, appellant challenges the determination placing his lease within a KGS, alleging there are no producing wells nearby, little interest was shown in the lease by other potential bidders, and no purchase offers for this lease have been received by him from oil companies. Thus, he seeks relief from the decision increasing his rental to \$ 2 per acre because the KGS determination is in error. The record on appeal establishes, however, that, while there are no nearby producing wells in North Dakota, there are wells nearby in Montana to appellant's lease. The apparent lack both of competitive and commercial interest complained of by Luning, while not irrelevant to a determination of whether his lease was properly included in a KGS (see Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347 (8th Cir. 1984), cert. denied, 105 S. Ct. 905 (1985)), is not determinative of whether the leased lands are properly made part of a KGS. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985). The oil and gas lessee who challenges a KGS determination must show the determination to be in error by a preponderance of evidence received. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984). Appellant has failed to do so in this case, having done no more than object to the KGS determination.

[2] When BLM has determined any part of land described in a noncompetitive oil and gas lease to be within an addition to a KGS, the lessee is properly required by BLM to pay an increased annual rental of \$ 2 per acre for the leasehold pursuant to 43 CFR 3103.2-2(d). James D. Creighton, 87 IBLA 79 (1985); Eagle Exploration Co., 83 IBLA 354 (1984); Ambra Oil & Gas Co., 58 IBLA 67 (1981). Therefore, BLM properly increased the annual rental rate for appellant's noncompetitive oil and gas lease.

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.

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Franklin D. Arness  
Administrative Judge

We concur:

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Wm. Philip Horton  
Chief Administrative Judge

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R. W. Mullen  
Administrative Judge

