

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting appellant's oil and gas lease offer W-85112.

Affirmed.

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

Pursuant to 30 U.S.C. § 226(b) (1982), where the land in a noncompetitive lease offer is determined at any time prior to issuance of the lease to be within a known geologic structure of a producing oil or gas field, that land may only be leased by competitive bidding. A noncompetitive oil and gas lease offer for such land must be rejected. The drawing of a simultaneous oil and gas lease application merely establishes the priority of filing an offer; it does not create any property or contract rights.

APPEARANCES: Donna M. Brady, Esq., Mineola, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Satellite 8303147 appeals the August 10, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting appellant's application for noncompetitive oil and gas lease W-85112. Appellant was the first-drawn applicant in the March 1983 simultaneous oil and gas lease filing period for parcel WY 396. The lease application was rejected by BLM pursuant to 43 CFR 3112.5-2(b) because the land in the lease offer was classified as within the Washakie Basin unidentified known geologic structure (KGS). The KGS classification was made May 29, 1984, subsequent to the oil and gas lease drawing.

Satellite 8303147 argues that BLM improperly applied the May 29, 1984, determination retroactively and that the drawee was deprived of the lease offer land.

Appellant challenges the validity and constitutionality of 43 CFR 3112.5-2(b). It submits that the regulation is arbitrary, capricious, and unreasonable. It argues that BLM's decision constitutes an unconstitutional taking of its property. Satellite 8303147 contends that a contract was created at the time appellant signed the lease offer and that the United States may not unilaterally revise a contract to lease the land.

The issues raised by counsel in the instant case are identical to those counsel submitted in two cases decided by the Board, Satellite 8301106, 86 IBLA 172 (1985), and Satellite 8305141, 85 IBLA 307 (1985). Our analysis and holding in each of those cases is equally applicable to the instant case.

[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 and gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding." See 43 CFR 3100.3-1; 43 CFR Subpart 3120 (Competitive Leases). The Department has no discretion to issue a noncompetitive lease for KGS lands. McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006, aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Satellite 8305141, supra.

It is firmly established that where land in a noncompetitive lease offer is determined to be KGS at any time prior to issuance of the lease, the lease offer must be rejected as to that land. Victor E. Van Duzer, 85 IBLA 235 (1985); Joseph A. Talladira, 83 IBLA 256 (1984). Department regulations provide:

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. [Emphasis added.]

43 CFR 3112.5-2(b). Therefore, we reject appellant's argument that BLM improperly applied the KGS determination "retroactively".

Underlying appellant's constitutional challenge to 43 CFR 3112.5-2(b) is the assumption that appellant, as the first-drawn applicant for WY 396, acquired a property or contractual interest in the lease offer or land. To the contrary, the drawing of appellant's application merely established the priority for filing an offer. It did not create a vested right in the applicant. Satellite 8301106, supra; Norma Richardson, 86 IBLA 168 (1985); R. K. O'Connell, 85 IBLA 29 (1985). Satellite 8303147 has no property interest in the lease offer. See Satellite 8305141, supra. Furthermore, no contractual rights have been created because the United States has not accepted the offer by signature of the authorized officer on the lease. 43 CFR 3112.6-2;

Satellite 8305141, supra. Finally, 43 CFR 3112.5-2(b), which requires rejection of lease offers as to land within a KGS, is entirely consistent with 30 U.S.C. § 226(b) (1982), and is therefore not arbitrary, capricious, or unreasonable. Id.

Therefore, 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.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

