

GLADYS WALTA

IBLA 85-30

Decided April 23, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM 58824.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Offers to Lease

The drawing of an oil and gas lease applicant's name as a first-priority applicant in a simultaneous oil and gas lease drawing does not create any property or contract right, but merely establishes the priority for filing a lease offer. The offer is not accepted until the lease form is signed by the Bureau of Land Management.

2. Oil and Gas Leases: Offers to Lease

A noncompetitive lease offer must be rejected by the Bureau of Land Management whenever it is determined the land for which the offer is made is within a known geological structure.

3. Oil and Gas Leases: Known Geologic Structure

One who challenges a determination by the Bureau of Land Management that land is within the known geological structure of a producing oil or gas field has the burden of showing the determination is in error.

APPEARANCES: Gladys Walta, Enid, Oklahoma, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Gladys Walta has appealed from decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 16, 1984, rejecting her noncompetitive oil and gas lease offer NM 58824, because the lands are within an undefined known geological structure (KGS).

Appellant originally applied for parcel 263 listed in the September 1983 listing of parcels available through the simultaneous oil and gas lease drawing. The parcel consists of the SE 1/4, sec. 29, T. 26 S., R. 33 E., New Mexico Principal Meridian. Subsequently, the simultaneous oil and gas leasing program was suspended. 48 FR 49703 (Oct. 27, 1983). The drawing for parcel 263 was not held until May 10, 1984. By letter dated July 10, 1984, appellant was informed her application had been selected with first priority. The lease offer forms accompanying this letter were executed by appellant and timely returned to BLM. Appellant had previously submitted her first year's rental. On August 16, 1984, the BLM State Office issued its decision rejecting appellant's offer. This decision was apparently based on a memorandum from the Roswell District Manager to the State Director, informing him that effective July 17, 1984, the lands had been placed in a KGS.

On appeal, appellant notes that more than 10 months elapsed between her application and BLM's decision rejecting her offer, and appears to argue that a lease should have been issued prior to BLM's KGS determination. For the reasons set forth below, this argument must be rejected.

[1] The posting of a list of parcels available for leasing under the simultaneous leasing procedures notifies the public of the lands for which BLM will accept lease applications. 43 CFR 3112.1-2. A drawing of applications is subsequently held, and the first-priority applicant whose name is selected is notified and sent lease forms. 43 CFR 3112.4-1 and 3112.6-1. The drawing of such an application does not create any property or contract right, but merely establishes the priority for filing a lease offer. Norma Richardson, 86 IBLA 168 (1985); see Solicitor's Opinion, 74 I.D. 285 (1967). Timely return of the lease forms, signed by the first-priority applicant, and payment of the first year's rental constitutes an offer to lease. An offer to lease is not accepted until the lease form is signed by the authorized BLM officer. 43 CFR 3111.1-1(e).

[2] Prior to accepting an offer, the authorized officer is required to determine that all matters pertaining to the lease, including the status of the lands to be leased, are proper. The Mineral Leasing Act requires that lands within a "known geological structure of a producing oil or gas field * * * shall be leased to the highest responsible qualified bidder by competitive bidding * * *." 30 U.S.C. § 226(b) (1982); see 43 CFR 3100.3-1. The language of the statute is mandatory and applies "whenever it becomes apparent that the applied for leases involve lands within a known geologic structure." McDade v. Morton, 353 F. Supp. 1006, 1013 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974) (emphasis in original). Thus, if the authorized officer determines that lands for which an offer originating in the simultaneous leasing system is pending are within a KGS, he must reject the offer. McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985). There is no time limit within which a decision to reject a lease offer or issue a lease must be made. Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1156-57 (D.D.C. 1984). Consequently, appellant had no right to the issuance of a lease prior to BLM's KGS determination, regardless of the delay in making the determination. Joseph A. Talladira, 83 IBLA 256 (1984).

Appellant also challenges the validity of the KGS determination, arguing the determination is contrary to BLM's rules and procedures under which a KGS is established for only a radius of 2,000 feet or the eight 40-acre parcels surrounding a producing well. Because this argument raised an issue as to the facts supporting the KGS determination and the case file did not contain documentation of the underlying facts, we issued a memorandum requesting the BLM State Director to disclose the basis for BLM's determination. On June 26, 1985, BLM filed a memorandum prepared by the District Manager, Roswell, which sets forth the basis of BLM's determination, a copy of which was sent to appellant.

The "step out" method of determining whether lands are within a KGS, described by appellant, was not part of Departmental regulations at the time appellant applied for her lease. In Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347 (1984), the Eighth Circuit Court of Appeals found the use of such a method in making a KGS determination (in that case a one-mile step out) was arbitrary and contrary to the Mineral Leasing Act. After review of the BLM memorandum, we are satisfied the KGS determination involved herein was based on geological data and not the step out method. The BLM memorandum described the KGS determination as follows:

In this case, the determination was based on a detailed study of the upper Delaware (Ramsey) Sand. Extensive evaluations of all available data were conducted in preparation of the isopach and structure maps which were used to make the decision. The enclosed log (Exhibit A) from the N. El Mar Unit No. 18 (formerly Payne No. 8) shows the interval and parameters mapped.

Examination of the structure contours of the upper Delaware showed a lack of structural closure which indicates that the entrapping mechanism is stratigraphic in nature. Therefore, the 10 foot contour of the Net Isopach of Ramsey Sands With Greater Than 20% Porosity was used to define the limit of the KGS (Exhibit B). This criteria reflects two important characteristics of the area. The KGS additions are adjacent to the Salado Draw and the El Mar Delaware fields both of which produce from stratigraphic traps in the upper Delaware (Ramsey). Reservoir and core analysis of these fields indicate porosities of approximately 20% porosity. Examination of production and test records indicated that all wells (including the dry holes) within the 10 foot isopach had production and/or shows of oil or gas from the interval studied. All 40 acre subdivisions 50% or more cut by the 10 foot isopach were included in the addition. These additions terminated at the existing KGS boundaries.

[3] This Board has repeatedly stated that an applicant for an oil and gas lease who challenges a determination that lands are situated within the KGS of a producing oil and gas field has the burden of showing the determination is in error. Reed International, 80 IBLA 145, 148 (1984);

Stephen M. Naslund, 79 IBLA 252, 253 (1984); R. C. Altrogge, 78 IBLA 24, 25 (1983); Angelina Holly Corp., 70 IBLA 294 (1983), aff'd, Angelina Holly Corp. v. Clark, 587 F. Supp. 1152 (D.D.C. 1984). Appellant has not disputed either the correctness of the description submitted by BLM or the propriety of its substantive content. We therefore find no basis upon which to overturn BLM's KGS determination.

Contrary to the common impression, the "prize" in an oil and gas simultaneous drawing is not an oil and gas lease, but, as previously stated, the right to make a first offer to lease, which offer may or may not be accepted by the Department. Nor, even if an offer is accepted, does "winning" necessarily lead to wealth. Annual rentals must be paid for the lease, and while oil and gas companies may view some parcels as desirable prospects on which to drill, they may have no interest in others. Even if a well is drilled, little or no oil or gas may be found. Thus, the simultaneous noncompetitive oil and gas leasing system is not designed to ensure that a "winner" is rewarded, but to encourage the development of oil and gas resources in leasable Federal lands in a manner that allows individuals, as well as large corporations, to participate. There is no guarantee of a return on the investment or that the expenses will be recovered. While this Board understands the adverse circumstances in which individuals may find themselves, our task is to decide whether there has been a proper, fair, and orderly administration of the program under the governing laws.

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.

John H. Kelly
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

