

VINCENT WORTMAN

IBLA 85-94

Decided May 22, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-85863.

Affirmed.

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

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

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 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 evidence.

APPEARANCES: Evan B. Jacobs, Esq., New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Vincent Wortman has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneously filed noncompetitive oil and gas lease offer (W-85863) because the lands described

in the offer 1/ had been determined to be within an undefined addition to the Big Piney-LaBarge Defined Known Geologic Structure (KGS) effective July 26, 1984, and were therefore only subject to leasing through competitive bidding under 30 U.S.C. § 226(b) (1982).

BLM's action including the lands described in the offer within an undefined addition for the Big Piney-LaBarge KGS is based on a determination by the Rock Springs District Office. The District Manager's Geologic Report states, in part, as follows:

A thorough subsurface geologic investigation of Big Piney-LaBarge was conducted to identify the extent of presumptively productive strata in the area and, thus, establish the limits of the KGS additions. A geologic structure map was prepared for the area to determine the extent of structural control on hydrocarbon accumulation. The geologic structure mapped on this horizon closely parallels other geologic structure maps by Barlow and Haun (1977) and the Wyoming Geological Association (1979). As a result of the structural mapping, it was evident that geologic structure is not the primary control of oil and gas accumulation along the Moxa Arch.

An isopach map of net effective reservoir thickness was prepared for the 2nd Frontier to outline the extent of hydrocarbon accumulation. Net effective reservoir is considered to include those known reservoir sands which contain producible hydrocarbons as identified from drill stem tests, production tests, geophysical well log interpretations, and/or other data. Where drillstem tests were conducted and data were available, any indication of free gas or oil, such as gas to surface or a recovered sample of free oil was considered primary evidence of producible hydrocarbon content. Where production tests of perforated intervals were available, any recovery of gas or oil was also considered as primary evidence of producible hydrocarbon content. In the tested or productive intervals net effective reservoir thicknesses were measured from geophysical well logs, if available. Compensated neutron-density logs were generally used for this purpose wherever they were available, however, any type of log available was used. Where no well logs were obtained, perforation thicknesses or producing zone thicknesses, if known, were used for net effective reservoir thicknesses. For untested intervals in productive formations, net effective reservoir thicknesses were calculated by comparison of well logs for tested intervals within the same formation. In the absence of data to indicate otherwise, untested wells without logs providing

1/ The lands included in the offers are described as follows:

W-85863: T. 23 N., R. 111 W., 6th Principal Meridian
 Sec. 34: NW 1/4
 Sweetwater County, Wyoming

a direct indication of hydrocarbon content were considered indicative of a lack of producible hydrocarbons. These locations were generally given zero net effective reservoir thickness. The maximum extent of producible hydrocarbon accumulation was considered to be the outer-most zero net effective reservoir isopach of the 2nd Frontier. The geologic structure map with a zero-line isopach plotted and the net effective reservoir isopach map are attached. A well summary table was prepared and is attached. (Data are from Township and Range files, Individual Well records, well files, lease files, PI cards and pertinent publications.[]]

The boundary of the addition to the Big Piney-LaBarge Field KGS is established along a composite zero net effective reservoir isopach, full sections (640 acres) intersected by the zero isopach in Townships 17 through 24 North are used to delineate the KGS boundaries. All state spacing orders for the 2nd Frontier in this area are 640 acres and areas not state spaced are on 640-acre development spacing. Vertical 320-acre spacing was used in Townships 25 through 28 North where all 2nd Frontier state spacing orders are 320 acres and dominantly vertical.

This addition to the Big Piney-LaBarge KGS will be contiguous to another addition to the above KGS determined on the Madison Formation (see structure map).

Appellant was the successful applicant for Parcel WY-553 on the May 1983 Notice of Lands Available for Oil and Gas Filings. In his statement of reasons he has presented no geologic evidence of his own. ^{2/} Instead, he contends that in rejecting his offer BLM breached a contract which was entered into at the time of the lottery, or shortly thereafter, when he tendered his annual rental payment.

[1] Section 17(b) of the Mineral Leasing Act as amended, provides that if the lands to be leased "are within any known geologic structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding." 30 U.S.C. § 226(b) (1982). If land in a noncompetitive lease offer is designated as within a KGS, at any time prior to issuance of the lease, the noncompetitive lease offer must be rejected as to the KGS lands. 43 CFR 3112.5-2(b). Prior to accepting the lease offer, the authorized officer is required to determine the status of the lands in the lease offer. The Department has no authority to issue a noncompetitive lease for such lands as are classified as within a KGS. McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Floyd L. Huenergarde, 88 IBLA 48 (1985); Evelyn D. Ruckstuhl, 85 IBLA 69 (1985); Joseph A. Talladira, 83 IBLA 256 (1984).

^{2/} Appellant does argue that had the lands sought been within a known geologic structure the prior lessee would have drilled a well on the lease. While such activities of prior lessees may be tangentially relevant to the extension of a KGS, they are clearly an insufficient basis, standing alone, upon which to overturn a BLM determination that such land is properly included within a KGS extension.

Appellant's theory of breach of contract cannot be sustained. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority for filing an offer to lease. See Satellite 8305141, 85 IBLA 307 (1985). Under 43 CFR 3112.6-1, a priority applicant's timely submission of the properly signed lease and required rental constitutes the offer to lease. The signing of this offer by the authorized BLM officer is the act that constitutes acceptance of the applicant's offer and creates a binding contract, 43 CFR 3112.6-2. The date of signing is the date of lease issuance and the determinative date with respect to the rights of the offeror. Frederick W. Lowey, 76 IBLA 195 (1983); Hepburn T. Armstrong, 72 IBLA 329 (1983). In the instant case the Department never accepted appellant's offer and, thus, no binding contract ever arose. The law is clear that, where a determination is made that land within a pending oil and gas lease offer is properly included in a KGS, the Department must reject the offer. See McDade v. Morton, supra at 1013. BLM's decision must be affirmed.

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.

James L Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.

