

ESTATE OF DUNCAN MILLER

IBLA 86-268

Decided October 21, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM-A 13286-OK.

Affirmed in part; set aside and remanded in part.

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), lands within the geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a noncompetitive oil and gas lease offer for such lands must be rejected.

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

Where BLM rejects a noncompetitive lease offer on the grounds the parcel sought to be leased lies within a known geologic structure, and the record does not reveal that the lands are included in the known geologic structure, the decision will be set aside as unsupported in fact and the case file remanded to BLM.

APPEARANCES: Kenneth A. Milliard, on behalf of the Estate of Duncan Miller; Margaret C. Miller, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Estate of Duncan Miller appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 11, 1985, rejecting noncompetitive oil and gas lease offer NM-A 13286-OK.

On February 10, 1971, Duncan Miller filed a noncompetitive oil and gas lease offer for 270 acres of acquired lands described as S 1/2 of lot 1,

S 1/2 of lot 2, lots 3 and 4, SE 1/4 NW 1/4, sec. 4; 5-acre tract in lot 2 (described by metes and bounds) sec. 7; lots 12 and 13, sec. 12, T. 19 N., R. 14 W., lot 3, NW 1/4 SW 1/4, S 1/2 SW 1/4 sec. 17, T. 19 N., R. 13 W., Indian Meridian, Blaine and Dewey Counties, Oklahoma. In its December 11, 1985, decision rejecting Miller's pending oil and gas lease offer, BLM states: "Oil and gas lease offer NM-A 13286-OK is rejected in its entirety for the following reason: All the land requested in your offer is within the West Longdale Field Known Geological Structure [KGS]. These lands may only be leased through competitive bidding (43 CFR 3120)."

The Estate of Duncan Miller asserts that an injustice has been committed because BLM held the lease offer for 14 years, during which time the lands surrounding those lands at issue were being developed for oil and gas. Appellant argues that the offeror has done nothing illegal or fraudulent, but is the victim of BLM's negligent in the matter. Appellant makes no technical challenge to BLM's KGS determination, and acknowledges there are producing wells near the lands described in the lease offer. In response counsel for BLM states the delay in adjudication of the offer resulted from BLM having misplaced it. Counsel argues, however, that although the delay is regrettable, BLM is bound by the statutory mandate to lease KGS lands only by competitive bidding.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that lands which are within the KGS of a producing oil or gas field "shall be leased \* \* \* by competitive bidding." See also 43 CFR 3100.3-1. This Department has no authority or discretion to issue a noncompetitive lease for lands within a KGS. 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). It is well established that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the lease offer must, by law, be rejected. Evelyn D. Ruckstuhl, 85 IBLA 69 (1985), and cases cited therein; 43 CFR 3112.5-2(b).

While we also find it unfortunate that the lease offer was lost and thus remained pending before the Department for such an extended period, we are unable to accept appellant's argument that, because the delay in the issuance of the lease was BLM's fault, the lease should now issue. In Victor E. Van Duzer, 85 IBLA 235, 236 (1985), we reviewed a similar argument of delay and observed:

The Federal district court stated in Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1156 (D.D.C. 1984): [I]t is plain that the Secretary is under no duty to issue or reject leases within a certain period of time and failure to act on those leases for several years is not unlawful.

Our review of memoranda sent by the Tulsa, Oklahoma, District Office, BLM, to the New Mexico State Office, BLM, and oil and gas plats for the

townships in question indicate the lands described in the lease offer as within secs. 4, 7, and 12 of T. 19 N., R. 14 W., Indian Meridian, are within the boundaries of a KGS. BLM's decision is affirmed as to those lands.

[2] There is no evidence in the record, however, to establish that the described lands in sec. 17, T. 19 N., R. 13 W., Indian Meridian, are within the West Longdale Field KGS, as stated by BLM. Although appellant does not challenge the KGS determination, the BLM case file gives no basis for a conclusion that the lands described in this latter parcel are included in a KGS. Thus, BLM's decision to reject appellant's offer to lease these lands is without sufficient factual basis in the record. When BLM's decision does not contain sufficient information to permit an informed decision by this Board, BLM's decision will be set aside and the case file remanded to BLM for further consideration. <sup>1/</sup> See Carolyn J. McCutchin, 86 IBLA 13 (1985); Carolyn J. McCutchin, 84 IBLA 368 (1985).

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 as to the lands in secs. 4, 7, and 12, T. 19 N., R. 14 W., and set aside and remanded as to the lands in sec. 17, T. 19 N., R. 13 W.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Kathryn A. Lynn  
Administrative Judge  
Alternate Member

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<sup>1/</sup> If, in fact, the parcel within sec. 17 is indeed within the West Longdale Field or any other KGS, the same rationale for rejecting the lease offer for sec. 17 lands would also apply.

