

**Editor's note: Reconsideration denied by Order dated Oct. 23, 1987**

KATHLEEN M. BLAKE, ET AL.

IBLA 85-786, et al.

Decided February 27, 1987

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications W-85911, et al.

Affirmed in part, reversed in part.

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

BLM is required to reject a simultaneous noncompetitive oil and gas lease application drawn with priority if the land is found to be within a known geologic structure of a producing oil or gas field, even if the determination is made after the drawing and during a lengthy delay in the processing of the application occasioned by Departmental review of noncompetitive leasing in the Wyoming overthrust belt area.

2. Oil and Gas Leases: Known Geologic Structure

A simultaneous oil and gas lease applicant will not be deemed to have overcome a determination by BLM that land described in the application is within a known geologic structure of a producing oil or gas field by a preponderance of the evidence if the appellant does not challenge BLM's placement of the estimated structural limits of the productive formation or if the evidence submitted merely demonstrates that there is a divergence of expert opinion regarding whether that formation extends under the land at a producible depth.

3. Oil and Gas Leases: Known Geologic Structure

When defining the exterior boundary of a known geologic structure of a producing oil or gas field BLM may not include the entire section any part of which is crossed by the stratigraphic contour used in the determination of the extent of the geologic structure.

4. Accounts: Fees and Commissions -- Accounts: Refunds-Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Simultaneous

A simultaneous oil and gas lease applicant is not entitled to a refund of his filing fee unless it is established that BLM knew or should have known that the land was situated within a known geologic structure of a producing oil or gas field at the time it posted the land as available for simultaneous leasing.

APPEARANCES: Kathleen M. Blake, pro se; John Paul Cuccia, pro se; Carolyn Jane McCutchin, pro se; James E. Nesland, Esq., Denver, Colorado, for Albert E. DiPaola; C. M. Peterson, Esq., Denver, Colorado, for R. E. Puckett, Charlene Dwyer, LaVada S. Jackson, Macon Oil Company, Julian S. Carr, Virginia L. Allison, Bulldog Oil Company, Welpet Energy, L.P., Stan F. Waliszek, Cheryl Anne Christensen; R. K. O'Connell, pro se; Maxine B. Hannifin, pro se; John F. Shepherd, Esq., Denver, Colorado, and John L. Gallinger, Esq., Billings, Montana, for Susan Dawson; Fred N. Diem, Esq., and John L. House, Esq., Dallas, Texas, for Mona C. Munson; Ralph V. Barskey, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

Kathleen M. Blake and others have appealed from various decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous noncompetitive oil and gas lease applications drawn with priority in simultaneous oil and gas lease drawings held between September 1982 and July 1983 because the lands sought had been determined to be within the Big Piney-LaBarge known geologic structure (KGS), pursuant to the delineation of that structure made effective May 25 and December 20, 1984. <sup>1/</sup>

BLM had posted the various parcels as available for noncompetitive oil and gas leasing pursuant to the simultaneous oil and gas leasing system, which is governed by the regulations set forth at 43 CFR Subpart 3112. Appellants submitted lease applications and paid the required filing fees. Between September 1983 and October 1984, BLM issued decisions requiring appellants, with the exception of Ralph V. Barskey, to submit executed

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<sup>1/</sup> A listing of the appellants, the serial numbers assigned to their lease applications, the parcels applied for, the dates of the respective lease drawings and the dates of the BLM decisions is found at Appendix A. In all cases except for Stan F. Waliszek (IBLA 85-871), the appellants are first priority applicants. Waliszek is the second priority applicant. By orders dated Sept. 10, 1985, and Oct. 22, 1986, the Board consolidated the various cases in the interest of judicial economy. As we noted in a Jan. 8, 1986, order, the appeal of Exxon Corporation (IBLA 85-856), originally consolidated, was dismissed by order dated Nov. 14, 1985, "at the request of appellant."

copies of lease offers for the parcels, stipulations, and the first year's advance rental payments, "within 30 days from the date of your receipt of this decision." <sup>2/</sup> With the exception noted above, each appellant submitted a timely executed lease offer, stipulations, and first year's advance rental payments. BLM subsequently rejected appellants' lease applications after receipt of memoranda from the Rock Springs District Manager, dated October 29 and December 27, 1984, finding the land embraced in the applications to be "entirely within the Big Piney-LaBarge [KGS]." Appellants have appealed the rejection of their lease applications.

In their statements of reasons for appeal, one of the principal arguments raised by a number of appellants is that it is "inherently unfair" for BLM to reject their lease applications on the basis of KGS determinations made after the lease drawings and, in most cases, after the submission of lease offers, especially when BLM "unreasonably" delayed processing and adjudication of the applications until after the KGS determinations. R. E. Puckett et al. specifically contend rejection of the lease applications is an abuse of the Secretary's discretionary authority, is "contrary to the Mineral Leasing Act," and BLM should thus be directed to issue leases "with an effective date prior to the date of the geologic structure determination" (Statement of Reasons (SOR), Puckett et al., at 29).

[1] We start with the well-established proposition that the Secretary of the Interior, and his delegated representatives, have no authority under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982), to issue a noncompetitive oil and gas lease for land which has been determined to be 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). Land within a KGS may only be leased by competitive bidding, in accordance with the regulations in 43 CFR Subpart 3120. Thus, the Department is obligated to ensure that no noncompetitive lease will be issued if the land sought is found to be within a KGS at any time prior to issuance of a lease. Carolyn J. McCutchin, 93 IBLA 134 (1986), and cases cited therein. This necessitates rejection of lease applications and offers even after their submission. <sup>3/</sup> Such rejection is not merely an exercise of the Secretary's discretionary authority. Rejection is dictated by the Mineral Leasing Act.

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<sup>2/</sup> By BLM decision dated Mar. 8, 1983, Barskey's lease application was initially placed in a "pending status" because the land sought was within a wilderness study area (WSA). BLM stated at that time that "[i]n the future, if we can issue leases within the wilderness study areas, we will ask you to execute a lease offer and submit the first year's rental." However, by memorandum dated Oct. 29, 1984 (apparently before any action had been taken with regard to the WSA) the Rock Springs District Manager notified the State Director that the land in Barskey's lease application had been determined to be within the Big Piney-LaBarge KGS. BLM rejected Barskey's application in a May 21, 1986, decision.

<sup>3/</sup> The Department has codified the principle that a lease offer must be rejected "[i]f, prior to the time a lease is issued, all or part of the lands

We are aware that some of appellants have characterized BLM's solicitation of lease applications and offers, collection of filing fees, 4/ subsequent delay in processing the applications and offers, and eventual rejection of the applications because of the intervening KGS determinations to be "akin to consumer fraud" (SOR, Puckett et al., at 30). This argument is premised on the notion that BLM deliberately or negligently failed to make an accurate KGS determination prior to the solicitation of lease applications and offers. However, regardless of whether BLM should properly have designated the land as within a KGS prior to offering the land for noncompetitive leasing, once a KGS determination was made, BLM was precluded by statute from issuing a noncompetitive lease. As we have stated on numerous occasions, BLM is not obligated to issue a noncompetitive lease merely because it has received an application or offer for a particular parcel of land. 5/ Mark A. Stephens, 93 IBLA 287 (1986); Evelyn D. Ruckstuhl, 85 IBLA 69 (1985).

We agree that, under ideal circumstances, BLM should not post lands as available for leasing pursuant to the simultaneous leasing system until it has conclusively determined the lands are not within a KGS. However, this principle ignores the reality that a decision that BLM may proceed with noncompetitive leasing may be altered by subsequent data which leads to a conclusion that the lands are situated within a KGS. Indeed, in order to meet the congressional limitation on lands available for noncompetitive leasing, the decision to lease must be responsive to such data up until the moment a lease issues. We agree that "there must be some end to the KGS review period" (SOR, Susan Dawson, at 7). However, Congress has mandated that the review period ends when the lease issues, not sooner.

Various appellants argue strenuously that BLM "unreasonably delayed" processing and adjudicating the applications until after the KGS determinations. There is no question that there was delay. 6/ We will deal first with the question of whether the delay was "unreasonable."

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fn. 3 (continued)

in the offer are determined to be within a known geological structure of a producing oil or gas field." 43 CFR 3112.5-2(b). The same principle applies in the case of lease applications.

4/ We will address Susan Dawson's request that filing fees be refunded later in this decision.

5/ Kathleen M. Blake argues that BLM was obligated by "contract," to issue a lease to her when the Acting Assistant District Manager, Rock Springs District, accepted Blake's joinder under the Lake Ridge unit agreement by letter dated Dec. 22, 1983. However, that letter noted that Blake had "received a lease offer for lease W-85911" and concluded that acceptance would be "effective on the date of lease issuance." There is nothing in the December 1983 letter to suggest BLM was thereby obligated to issue a lease to Blake, and it cannot be regarded as a contract to issue a lease. See Vincent Wortman, 92 IBLA 67 (1986); cf. Quadra Geothermal, Inc., 82 IBLA 188, 193 (1984), aff'd, Quadra Geothermal, Inc. v. Clark, Civ. No. 84-3059 (D.D.C. Sept. 25, 1986).

6/ The final BLM adjudication of appellants' lease applications was from 2 to almost 4 years after the various simultaneous oil and gas lease drawings.

It is apparent that the source of the delay was a controversy surrounding the identification of KGS lands, particularly in the Wyoming overthrust belt area. <sup>7/</sup> Nothing that "[r]ecent situations involving oil and gas noncompetitive leasing in \* \* \* Wyoming have identified procedural practices that failed to define properly the extent of Known Geologic Structures," on October 14, 1983, the Director, BLM, ordered the cessation of "issuance of all leases presently under adjudication as a result of SIMO filing," and cancellation of the September and November 1983 drawings (Instruction Memorandum (IM) No. 84-35, dated Oct. 14, 1983, at 1). The Director instructed state offices to reevaluate KGS determinations using "new procedures" prior to further issuance of leases. Id. at 2. Notice of the suspension was published in the Federal Register. See 48 FR 49703 (Oct. 27, 1983).

Leasing was further delayed by the development of amended rules governing simultaneous leasing. Proposed rules were published in the Federal Register on March 15, 1984 (49 FR 9752) and final rules on June 29, 1984 (49 FR 26918).

Puckett et al. maintain that in a series of meetings between the State Directors and the Director, BLM, held between July 15 and 21, 1984, it was decided lease issuance in the Wyoming overthrust belt area would be suspended "until otherwise directed by the Director" <sup>8/</sup> (SOR, Puckett et al., at 12). It is a fact that lease issuance was further delayed by a review of "pending" Wyoming overthrust belt area lease offers and KGS determinations by a Departmental work group, at the direction of the Secretary. See Exh. C, attached to SOR, Puckett et al. In response to that review, the Secretary decided to

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<sup>7/</sup> The overthrust belt is described as a

"[S]eries of extremely complex, folded and faulted rocks that resulted from the movement of one part of the earth's crust up and over ('thrust') another part. The belt extends from the North Slope of Alaska, through western Canada, Montana, Idaho, Wyoming, Utah, and then on south into Mexico. The overthrust belt is considered one of the potentially richest onshore areas in the United States for oil and gas production."

Departmental Memorandum, dated Nov. 29, 1984, at 4 (Exh. C attached to SOR, Puckett et al.).

<sup>8/</sup> In her statement of reasons, Mona C. Munson argues that this "indefinite suspension" constituted a "withdrawal" under section 103(j) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702(j) (1982), of which the Secretary was required to notify Congress, in accordance with section 204(c) of FLPMA, 43 U.S.C. § 1714(c) (1982). The suspension to which appellant refers was an action apparently taken by the Director, BLM. However, the record indicates that the Secretary subsequently suspended noncompetitive leasing in the Wyoming overthrust belt, which action arguably would be subject to section 204(c) of FLPMA. However, "withdrawal" is defined in FLPMA as withholding an area of Federal land "from settlement, sale, location, or entry." 43 U.S.C. § 1702(j) (1982). It plainly does not include withholding issuance of noncompetitive oil and gas leases pending an updated KGS determination. See also Barrick Exploration Co. v. Hodel, Civ. No. 85-0553 (D.D.C. Dec. 11, 1985), at 4 (temporary moratorium).

"defer further action" on those offers determined not to be within a KGS, but expressed no opinion regarding what should be done with those offers either within a KGS or held pending further analysis (November 29, 1984, letter to Congressman Yates (Exh. F, attached to SOR, Puckett et al., at 2)). By memorandum dated March 12, 1985, the Director, BLM, informed the Wyoming State Director that the Secretary had ordered a halt to "noncompetitive oil and gas leasing" in the "Wyoming Overthrust": "All noncompetitive lease issuance actions \* \* \* are to be suspended with maintenance of priority" (Exh. F, attached to SOR, Puckett et al.). In an April 23, 1985, memorandum to the BLM Director, the Secretary stated that the prohibition on "noncompetitive leasing" would remain in effect "until I complete a review of the onshore oil and gas leasing program" (Exh. G, attached to SOR, Puckett et al.). Finally, by memorandum dated May 21, 1985, the Deputy Assistant Secretary, Land and Minerals Management, notified the Director that BLM should "[r]eject all lease applications \* \* \* containing lands within currently classified known geologic structures" (Exh. I, attached to SOR, Puckett et al.). This memorandum was implemented by the Director in IM No. 85-488, dated June 7, 1985. The BLM decisions under appeal herein followed.

It is apparent from this brief recitation of the relevant history that the delay in the processing and adjudication of appellants' lease applications is attributable to the development and implementation of new procedures for KGS determination, subsequent rulemaking, Departmental review of pending lease offers, and finally, a Secretarial review of the leasing program. We cannot say that any aspect of this delay was "unreasonable," ultra vires or lacking in good faith, especially where it reflects a deliberate attempt by the Department to ensure lands within a KGS would not be leased in contravention of the Mineral Leasing Act. Sherbourne Partnership, 90 IBLA 130 (1985); Joseph A. Talladira, 83 IBLA 256 (1984).

As the court stated in Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1157 (D.D.C. 1984), "Interior is under no duty to act within a certain time limit." We recognize that a noncompetitive lease may well have been issued to each of the appellants, had BLM acted with greater dispatch. However, the fact that processing of appellants' lease applications was delayed until after the KGS determinations, does not ipso facto entitle them, either equitably or legally, to a lease. Hrubetz Oil Co., 93 IBLA 343 (1986). As we said in E. B. Joiner, 78 IBLA 323, 325 (1985), which case had proceeded from the lease application to the lease offer stage:

Contrary to appellant's wishes, the long BLM delay in acting on his offers does not entitle him to leases. The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease offers were pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest,

or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, [380 U.S. 1, 4 (1965)]; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra at 666, D. R. Gaither, 32 IBLA 106 (1977) aff'd sub nom. Rowell v. Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), aff'd in part and rev'd in part on other grounds, 631 F.2d 699 (10th Cir. 1980).

To hold that the Department is to act within time limits would encourage the imprudent processing and adjudication of lease applications and offers, resulting in the improper issuance of leases when the land is clearly situated within a KGS and withholding of lands from leases when the land is clearly not situated within a KGS. Such action would not be to the benefit of the Government or the lease applicant. 9/

[2] A number of the appellants challenge the KGS determinations made by BLM. One challenging a KGS determination has the burden of establishing, by a preponderance of the evidence, that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1982); Carolyn J. McCutchin, supra. When reviewing the evidence for and against BLM's KGS determinations, it is important to keep in mind that a KGS is defined by 43 CFR 3100.0-5(1) as the "trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." A KGS designation recognizes the existence of a continuous entrapping structure on some part of which there is production. Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984). Accordingly, it is not necessary that there be production within or in the immediate vicinity of land designated as part of a KGS, as long as geologic evidence exists that the land contains a geologic structure determined to be productive. If it does, it is presumed to be productive. R. K. O'Connell, 85 IBLA 29 (1985).

We have reviewed the two geologic reports, dated July 11, and December 20, 1984, and signed by Dean P. Stilwell, which are the basis for the two additions to the Big Piney-LaBarge KGS involved herein. These reports indicate that the additions to the Big Piney-LaBarge KGS, originally designated in 1933, were based essentially on a determination of the extent of

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9/ Puckett et al. and Munson contend the delay in adjudicating their lease applications was not commensurate with the treatment of lease applications in "other areas of Wyoming or elsewhere on the public lands" (SOR, Puckett et al., at 29). Such disparate treatment would seem justified by the unusually complex geology of the overthrust belt and the inherent difficulty in making a KGS determination. Appellants provide no evidence that the overthrust belt area was not entitled to special treatment or that such treatment was improper. We fail to see how suspending oil and gas leasing in one area of the public land can be faulted merely because BLM fails to take the same action with respect to all public land. Management of the vast and varied public lands requires flexibility in the manner of study and administration.

the productive limits of the Madison formation. That formation is described as an "elongated anticline lying along the axis of the Moxa Arch," which is a "broad, gently folded basement uplift" extending northwest throughout the Big Piney-LaBarge, Wyoming area (Geologic Report, dated July 11, 1984, at 1). The "upper contact" of the formation is described as having been cut by the "Prospect and Darby Thrusts" to the west and southwest. Id. Initially, BLM relied on 15 wells which had penetrated the Madison formation to establish the productive limits of the formation: 10/

Since all completed wells are productive or had excellent tests, the limit of the reservoir is considered to be the lowest productive tested section in the well at the lowest point on the structure. This well, located in Section 35, T.26N., R.112W., tested 3,851 thousand cubic feet of gas per day on a drill stem test from 15,050 to 15,251 feet. This depth is approximately equivalent to the minus 8400 foot contour line \* \* \*. This closing contour, therefore, is considered to be the outer limit of the presumptively productive reservoir. Where the minus 8400 foot is cut by the two thrust faults, the faults mark the reservoir limit. The undefined addition to the Big Piney-LaBarge field KGS is hereby established to include all 640-acre spacing units, or portions thereof, cut by the minus 8400 foot structure contour on the Madison Limestone \* \* \*. This spacing was used because plans to develop this deep gas resource are based on a minimum of 640 acres per well.

Id. at 2. In its December 20, 1984, geologic report, BLM concluded that the KGS should be further extended to the northwest, based on an evaluation of the results of drilling by ARCO Oil and Gas Company in the Rock Creek Unit No. 1 well situated in sec. 28., T. 32 N., R. 116 W., sixth principal meridian, Wyoming. BLM updated the northwest portion of its structural contour map because the Rock Creek Unit No. 1 well indicated that the Prospect Thrust is "at least 3,000 feet above the Madison \* \* \* [and] may not actually cut the Madison for some distance to the west" (Geologic Report, dated Dec. 20, 1984, at 1-2). The December 1984 addition to the KGS was based on inclusion of those "640 acre spacing units, or portions thereof" cut by the minus 8,900-foot structural contour, which is the "lowest tested potentially productive section." Id. at 2. The southwestern boundary of the KGS was still considered to be the Darby Thrust fault.

Appellants' various challenges to the KGS determinations would seem to run the gamut of possibilities. To the extent practicable, we will address the arguments and identify those appellants raising them.

10/ BLM described the 15 wells as follows:

"Eight wells have been completed as shut-in Madison gas wells, three have been completed in other formations with excellent Madison gas shows, and four wells have been drilled and operations have been suspended \* \* \*. One of these four wells had an excellent Madison gas test, but no details of any tests are available on the other three wells." Geologic Report, dated July 11, 1984, at 2.

Munson charges that the enlargement of the Big Piney-LaBarge KGS was not based upon sound geological indicators, but provides no supporting evidence for her allegation. We conclude that Munson has not established by a preponderance of the evidence that the KGS determination, as it affects her lease application, is erroneous. See, Mary Nan Spear, 85 IBLA 303 (1985).

Dawson also challenges the KGS designation of the land sought in her lease application, described as lots 1 through 4, the W 1/2 E 1/2, W 1/2 sec. 17 and lot 1, the SE 1/4 NE 1/4, W 1/2 NE 1/4, W 1/2, SE 1/4 sec. 20, T. 27 N., R. 115 W., sixth principal meridian, Wyoming. Dawson submits a geologic analysis, dated October 24, 1985, prepared by Clare Gregg, an exploration geologist with 30 years experience (including 6 years with the "LaBarge deep structure"). Gregg concludes that the land sought, situated on the southwestern edge of the KGS, is "off-structure." An attached map indicates that Gregg considers the land to be approximately a mile southwest of the minus 11,000-foot structural contour of the Madison formation. BLM, on the other hand, had placed the land well within the area bounded by the minus 8,900-foot structural contour.

Gregg's conclusion is based on a reinterpretation of data developed by J. S. Dixon in a 1982 bulletin entitled "Regional Structural Synthesis, Wyoming Salient of Western Overthrust Belt." This bulletin is also cited by BLM in its May 1984 Geologic Report. Gregg concluded that "Dixon shows normal faults where I interpret an east dipping basement thrust controlling the southwest side of the structure." In response, BLM argues that "the conclusion that an east dipping basement thrust controls the Madison structure is not supported by any data submitted" (Answer at 10). BLM states that in the various studies undertaken in the Big Piney-LaBarge area, including the 1982 Dixon study, "no basement thrust has previously been described." Id. at 11. We must agree that there is no evidence supporting Gregg's hypothesis that the southwestern edge of the KGS is controlled by an east dipping basement thrust which limits the extent of the minus 8,900-foot structural contour. In the absence of such evidence there is merely a divergence of expert opinion regarding the nature of the structural limits of the productive Madison formation. However, a divergence of opinion is not sufficient to establish error in BLM's determination that the land described in Dawson's lease application is within the Big Piney-LaBarge KGS. B. K. Killion, 90 IBLA 378 (1986).

McCutchin (IBLA 85-855) challenges BLM's KGS designation of the land in lease application W-85871, described as lot 5, sec. 35, T. 28 N., R. 112 W., sixth principal meridian, Wyoming. McCutchin relies on the fact that the Split River Fee No. 24-35 well completed in November 1983 by the Diamond Shamrock Corporation and situated in the SW 1/4 sec. 35, T. 28 N., R. 112 W., was determined to be "non-commercial," based on tests in the Second Frontier formation. In response, BLM points out that its KGS determination was based on the Madison formation and that, in any case, the well produced gas from the Second Frontier formation in 1984 and 1985. BLM also states that a portion of the land in McCutchin's lease application is communitized and, therefore, the entire lot "must be made KGS" (Answer at 9). See Lee Oil Properties, Inc., 85 IBLA 287 (1985). It is sufficient, however, to note that McCutchin

has provided no evidence challenging the productive limits of the Madison formation, which is BLM's basis for the KGS determination, and we therefore affirm BLM's decision to include the land in the Big Piney-LaBarge KGS. See, Mary Lee H. Picou, 88 IBLA 356 (1985).

Cuccia also contends that BLM erroneously designated the land described as the NE 1/4 NE 1/4 sec. 28, T. 28 N., R. 112 W., sixth principal meridian, Wyoming, as being in the KGS. Cuccia refers to wells situated in the SE 1/4 NE 1/4 sec. 21, NE 1/4 NW 1/4 sec. 22, NE 1/4 NE 1/4 sec. 27, and the NW 1/4 SE 1/4 sec. 28, T. 28 N., R. 112 W., and argues that BLM's error is demonstrated by the fact that the land is surrounded by "dry holes in all directions." In response, BLM counters that these wells are not controlling, as they "did not penetrate the Madison Formation." Again, we agree that appellant has not challenged BLM's KGS determination, which was made on the basis of the productive limits of the Madison formation, and affirm inclusion of the land sought by appellant in the Big Piney-LaBarge KGS.

By far the most serious challenge to BLM's KGS determinations is that presented on appeal by R. K. O'Connell and incorporated by reference in the appeals of DiPaola, Hannifin, McCutchin (IBLA 85-866), and Puckett et al. O'Connell has submitted a geologic analysis prepared by M. R. Holm and C. S. O'Connell. The Holm/O'Connell report challenges the December 1984 addition to the Big Piney-LaBarge KGS based on the minus 8,900-foot structural contour. The contour is considered by BLM to be the lowest proven production in the Madison formation, based upon the Rock Creek Unit No. 1 well (referred to by Holm/O'Connell as the Broad Canyon No. 1 well). Holm/O'Connell contend that this well did not penetrate the same geologic block of the Madison formation as the balance of the "Big Piney-LaBarge structure," taking into consideration the existence of offsetting faults. Holm/O'Connell assert that the Rock Creek Unit No. 1 well penetrated the Madison formation in the "hanging wall of the Prospect fault" and, consequently, the "subthrust" Madison formation in the Big Piney-LaBarge structure is "necessarily much deeper than the BLM assumed" at this point and to the east (Holm/O'Connell Report at 12). Therefore, Holm/O'Connell conclude that use of the minus 8,900-foot structural contour as the limit of the reservoir is "invalid." Id. Holm/O'Connell conclude that the lowest proven production in the Madison formation should be revised to the minus 8,400-foot structural contour demonstrated by the data obtained from the American Quasar No. 35-22 well.

Holm/O'Connell base their conclusions on analysis of two cross-sections plotted using data from various wells in the area (Exhs. I and IV) and a revised structural contour map (Exh. VI). The cross-section identified as Exhibit I is an east-west cross-section from a point on the western border of T. 32 N., R. 117 W., sixth principal meridian, Wyoming, near the western edge of the KGS, to a point in the center of T. 32 N., R. 114 W., and passing through the Rock Creek Unit No. 1 well and five other wells. This cross-section depicts the Prospect and Darby faults as cutting across the various formations, including the Madison formation. Holm/O'Connell contend that their identification of the Prospect fault is supported by the rule of "balanced cross sections" that the "length of any defined stratigraphic unit lying immediately against a thrust fault in the hanging wall must equal the

length of the same unit against the fault in the footwall." Id. at 7. They note that given their placement of the fault, the Triassic section in the hanging wall and footwall are both 35,000 feet in length.

In the Holm/O'Connell cross-section, the Madison formation is depicted as being truncated by the Prospect fault just to the east of the Rock Creek Unit No. 1 well. The cross-section also depicts another fault, which Holm/O'Connell describe as an "imbricate fault off the Prospect fault." Id. at 6. Holm/O'Connell contend that this imbricate fault accounts for a thickened Triassic section and a fold in the overlying Darby fold block. Id. On the east-west cross-section, the Madison formation is depicted as dipping steadily through the Rock Creek Unit No. 1 well. Just to the east of the well, the Madison formation is cut off completely by the Prospect fault, with a separate "subthrust" Madison formation at greater depth. That latter formation was projected to crest at about the minus 9,200 foot structural contour in T. 32 N., R. 115 W.

In response, BLM has submitted its own version of the cross-section (Exh. A) using the "same data as used by Holm and C. S. O'Connell" (Answer at 5). This cross-section depicts the Prospect fault as a continuation of the fault which was intersected by the Rock Creek Unit No. 1 well at the Triassic horizon, referred to as the "imbricate fault" in the Holm/O'Connell report. In the BLM cross-section, this fault does not intersect the Madison formation, which is shown as rising gradually from east and west with its anticlinal crest in the area of the Rock Creek Unit No. 1 well. 11/ BLM notes that the length of the Triassic section in the hanging wall "approximates" the length of the Triassic section in the footwall. Id. at 6. BLM states that ARCO, the company that drilled the Rock Creek No. 1 well, had also determined that the "thrust fault in the Triassic is the Prospect Thrust." Id. Finally, BLM argues that its conclusion that the Madison formation penetrated in the Rock Creek Unit No. 1 well is part of the Big Piney-LaBarge structure is supported by the fact that ARCO had recovered a "high percentage of CO<sub>2</sub>," characteristic of the formation within the main structure "on the Moxa Arch," and not the thrust belt. Id. at 6, 7.

A primary question raised by the evidence discussed thus far is whether the fault encountered in the Rock Creek Unit No. 1 well is the Prospect fault, as BLM contends, or an "imbricate fault" off the Prospect fault, as Holm/O'Connell contend. R. K. O'Connell contends that the fault identification is "crucial to the interpretation of the structure in the area," particularly

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11/ On Exhibit A, BLM places the anticlinal crest west of the Rock Creek Unit No. 1 well. See Reply Brief at 2. The actual crest appears to be to the east of the well. R. K. O'Connell notes this discrepancy as indicating that the cross-section "does not reflect the Madison structure contoured by Mr. Stilwell in his geologic report" (Reply, dated Mar. 3, 1986, at 1). BLM attributes the discrepancy to the "small vertical scale of the cross section" and the fact that the formation east and west of the well is "very broad and flat" (Reply Brief at 1). We accept this explanation. Given these factors, the crest could easily be shifted west to the point identified by BLM, in conformity with BLM's structural contour map.

when considering the effect of the fault on the Madison formation (Reply, dated Mar. 3, 1986, at 2). Indeed, in its December 1984 geologic report at page 1, BLM's conclusion that the Madison formation, encountered in the Rock Creek Unit No. 1 well at the minus 8,900-foot structural contour, continues to the northwest rather than being cut off by the Prospect fault is based on BLM's determination that the Prospect fault encountered in the well lies "at least 3,000 feet above the Madison."

At the outset, we note that there is no evidence that the Rock Creek Unit No. 1 well encountered what Holm/O'Connell assert to be the main Prospect fault, which is distinguished by them from the "imbricate fault." 12/ The only wells along the cross-section which also encounter the Prospect fault are two wells to the east, well No. 13-16A Soda Unit situated in sec. 16, T. 32 N., R. 115 W., and well No. 23-15 Soda Unit situated in sec. 15, T. 32 N., R. 115 W. However, in its cross-section A-A', BLM posits a Prospect fault which encompasses the fault line encountered in all three wells. 13/

Holm/O'Connell also challenge BLM's identification of the Prospect fault, claiming it violates the rule of "balanced cross-sections." In its Reply Brief at page 2, BLM argues that this rule, "while an established principle for structural interpretation, is not as precise as the Appellant seems to imply" and points to "unequal lengths" in Holm/O'Connell's cross-section B-B' which would also appear to violate the same rule, if strictly applied. We conclude appellants have not established that the apparent discrepancies with respect to the comparative lengths of formations in the hanging wall and footwall along the Prospect fault in BLM's cross-section A-A' are not within acceptable limits.

Holm/O'Connell also contend that their cross-section is supported by data derived from a "seismic line" (OT-81-120) mapped by Dixon (Holm/O'Connell Report at 4). BLM argues that this data is inconsistent with data generated by the later drilling of the Rock Creek Unit No. 1 well, and, in any case, does not depict an "imbricate fault" (Reply Brief at 5). We find that the reliability of evidence regarding the seismic line has not been sufficiently established to be given much weight.

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12/ R. K. O'Connell challenges BLM's reliance on the fact that ARCO purportedly identified the "imbricate fault" as the Prospect fault claiming this conclusion to be unsupported by any evidence. Nevertheless, the fact remains that no major fault other than the Darby fault and the fault at issue was encountered in the ARCO well.

13/ In overlay A-2 (Exh. III), which is an overlay for cross-section A-A' (Exh. I), Holm/O'Connell project BLM's Prospect fault "through the Triassic," thereby cutting off the Madison formation somewhat west of the Rock Creek Unit No. 1 well and resulting in a serious discrepancy in the hanging wall and footwall of the Triassic (69,000 feet versus 14,000 feet) (Holm/O'Connell Report at 7). However, BLM's cross-section A-A' does not project such a steep Prospect fault west of the well. See BLM's Exhibit A. Moreover, Holm/O'Connell present no evidence to support such a steep projection.

Holm/O'Connell also argue that BLM's placement of the Prospect fault "violates constraints placed on the system by data from the surface and wells." However, BLM has generated a cross-section which arguably conforms to those constraints. Finally, R. K. O'Connell argues it is improper for BLM to draw the conclusion that the Madison formation penetrated in the Rock Creek Unit No. 1 well is part of the main Big Piney-LaBarge structure, rather than in the hanging wall of the Prospect fault, by comparing the CO<sub>2</sub> content of wells drilled in the thrust belt to those drilled in the main structure because the Rock Creek Unit No. 1 well is the "first and only test well of its kind in this area" (Reply, dated Mar. 3, 1986, at 2). In its Reply Brief at page 3, BLM states: "The Moxa Arch is the only area in Southwest Wyoming where the Madison Formation is consistently enriched with CO<sub>2</sub>. No other tests in the Wyoming Thrust Belt including Madison tests in the Prospect and Darby Thrust sheet have recovered similar CO<sub>2</sub> rich gas." Although we cannot attribute much weight to the evidence derived from one well in this particular area, evidence that wells in the Moxa Arch encounter "CO<sub>2</sub> rich gas," and those in the thrust belt generally do not, supports BLM's conclusion. We are simply not convinced that appellants have established by a preponderance of the evidence that the Prospect fault cuts across the Madison formation in the vicinity of the Rock Creek Unit No. 1 well in the manner described by them. The evidence is equally as convincing that the formation is unaffected by the Prospect fault. Moreover, we note that the formation was not encountered in any of the other wells along cross-section A-A'. Thus, there is simply a lack of hard evidence with which to determine what occurs to the formation east and west of the Rock Creek Unit No. 1 well at depth. <sup>14/</sup> BLM's postulation is as plausible as Holm/O'Connell's. Again, we have merely a divergence of expert opinion.

Holm/O'Connell also contend the crest of the Big Piney-LaBarge structure on the Moxa Arch trends in a more north-south direction rather than the northwest-southeast direction BLM posits. They base this contention primarily on the two Holm/O'Connell cross-sections north of township 29 north. Based on these cross-sections, Holm/O'Connell posit a turn to a more north-south trend at that point, paralleling the surface traces of the Darby and Prospect faults. <sup>15/</sup> This is depicted on a revised structural contour map (Exh. VI). We have already dealt with cross-section A-A', noting that the crest of the

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<sup>14/</sup> BLM's cross-section A-A' does not depict the formations above the Darby fault, because "this data is not critical to the determination of the trap in the Madison formation" (Answer at 5). R. K. O'Connell argues that the data is "critical to the construction of any such cross-section, as it places constraints on the deeper structure" (Reply, dated Mar. 3, 1986, at 1). Appellants, however, have not demonstrated how these "constraints" have bearing upon the location of the Madison formation, which is placed below the Prospect fault by BLM.

<sup>15/</sup> Holm/O'Connell state that the trend of the Darby and Prospect faults provide "clues" to understanding the trend of the "underlying Moxa Arch-LaBarge Platform," citing the various studies of the area (Holm/O'Connell Report at 11). In its Answer at 8, BLM contends that the work of D. L. Blackstone, Jr., and P. H. Wach indicates that the "Moxa Arch continues to the northwest

Madison formation may actually be somewhat to the west of the Rock Creek Unit No. 1 well, as BLM contends. See note 11. Cross-section B-B' (Exh. IV) parallels cross-section A-A' 8 miles to the south, incorporating data from surface outcrops and the No. 4-2 Hoback North Unit well situated in sec. 2, T. 30 N., R. 115 W., as well as seismic data (Dixon's OT-81-120 "seismic line"). Point B is situated west of the KGS in T. 30 N., R. 118 W., and point B' is situated near the eastern border of the KGS in T. 30 N., R. 114 W. Holm/O'Connell argue that the crest of the Big Piney-LaBarge structure in cross-section B-B' "lies in the east half of Township 30 North, Range 115 West, approximately six miles east of where the BLM maps it" (Holm/O'Connell Report at 8-9).

BLM did not submit a cross-section comparable to Exhibit IV but contends that a cross-section, "along the same line as Holm and C. S. O'Connell's Exhibit IV, can be constructed \* \* \* to fit the available data and Mr. Stilwell's Madison structure map" (Answer at 5-6). It would have been useful if BLM had submitted its own version of cross-section B-B'. Nevertheless, BLM's structural contour map identifies BLM's placement of the crest of the Madison formation along cross-section B-B'. On the other hand, Holm/O'Connell's cross-section B-B' is not sufficiently supported by concrete evidence to establish an error on the part of BLM in its interpretation. Holm/O'Connell depict the Madison formation as steadily dipping below the prospect fault just west of the No. 4-2 Hoback North Unit well. However, this depiction is based on one control well, which did not penetrate the Madison formation, and Dixon's "seismic line," whose reliability has already been called into question.

Holm/O'Connell have also used BLM's structural contour map to identify BLM's placement of the Madison formation in relation to cross-section B-B'. Holm/O'Connell note that, given BLM's structural configuration, the formation would be cut off by the Prospect fault at a point identified by them to be near in the center of T. 30 N., R. 116 W. On the other hand, BLM posits that the formation continues westerly of the point where Holm/O'Connell assert that it is cut off. Holm/O'Connell do not have concrete evidence which would support their placement of the Prospect fault line at depth. They again argue that the related Triassic formation as cut by the Prospect fault would violate the rule of "balanced cross-sections." However, this argument is based on Holm/O'Connell's placement of the fault line, and this

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fn. 15 (continued)

beneath the thrust belt." R. K. O'Connell states that these opinions are merely "[s]peculation": "Blackstone states: 'The platform probably (emphasis added) continues to the northwest . . .'. Wach's paper is even less definite: 'It is speculated that the arch may continue to the northwest . . .'" (Reply, dated Mar. 3, 1986, at 2; emphasis in original). We find this evidence to be of little weight (Reply, dated Mar. 3, 1986, at 2). Holm/O'Connell have not established that the trend of the Big Piney-LaBarge structure on the Moxa Arch necessarily follows the trend of the fault lines. On the other hand, the opinions of Blackstone and Wach regarding that trend, as quoted by R. K. O'Connell, are not definitive.

placement is subject to differing interpretation. We, therefore, cannot say that appellants have shown error in BLM's placement of the crest of the Madison formation along cross-section B-B' by a preponderance of the evidence. There is merely a divergence of expert opinion. By so saying, we conclude that there is no firm evidence that the lowest proven productive section in the Madison formation is not the minus 8,900-foot structural contour identified in the Rock Creek Unit No. 1 well and as mapped by BLM.

With two exceptions, all of the land sought by appellants is within the limits of the minus 8,900-foot structural contour or the Darby thrust which cuts across the contour along the southwestern edge of the contour. Thus, with these two exceptions, all of the land is well within the limits of the Big Piney-LaBarge KGS and is at least considered to be presumptively productive of oil or gas. BLM, therefore, properly rejected noncompetitive oil and gas lease applications for this land. 16/ Thunderbird Oil Corp., 91 IBLA 195 (1986), appeal filed, Planet Corp. v. Hodel, Civ. No. 86-679 HB (D.N.M. June 10, 1986).

[3] A portion of the land sought in the lease applications filed by R. E. Puckett and Stan F. Waliszek is outside the limits of the minus 8,900-foot structural contour, but within a 640-acre State spacing unit. This land is situated in sec. 6 and sec. 8, T. 31 N., R. 115 W., sixth principal meridian, Wyoming, and is crossed diagonally by the minus 8,900-foot structural contour. The result is that some of the land sought by Puckett and Waliszek is outside the limits of the contour, but included in the KGS because it is within the spacing unit. In the past we have affirmed the practice by the Department of drawing a KGS boundary on the basis of the smallest legal subdivision (quarter quarter section) crossed by the edge of a producing structure. Charles J. Babington, 4 IBLA 43 (1971). In Pamela S. Crocker-Davis, 94 IBLA 328 (1986), we reversed a BLM decision rejecting a lease application to the extent the application embraced land "beyond each quarter quarter section of land actually traversed by the exterior boundary drawn along the zero net effective reservoir isopach." In Crocker-Davis, we reversed the decision because BLM had provided no theoretical justification for including this land within the KGS, either in IM No. 84-439 (Apr. 19, 1984), or elsewhere. Indeed, there is no suggestion that designation as a State spacing unit necessarily implies the presence of a producible accumulation of hydrocarbons. Inclusion of the spacing unit within the KGS appears to be based more on administrative convenience than on geologic information.

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16/ Blake also argues that the KGS determination was improperly made "retroactively." We note that the land within appellant's lease application was designated as within the Big Piney-LaBarge KGS effective May 25, 1984, the "completion date of [BLM's KGS] review" (Geologic Report, dated July 11, 1984, at 2). The effective date was, thus, the date the producing character of the structure was actually known, in accordance with 43 CFR 3100.3-2 (formerly 43 CFR 3100.7-3 (1982)) and IM No. 83-392 (Mar. 17, 1983). See Lee Oil Properties, Inc., 85 IBLA 287, 292 (1985). This approach was upheld in Skelly Oil Co. v. Morton, Civ. No. 74-411 (D.N.M., Memorandum Opinion filed July 16, 1975).

In Crocker-Davis, the limits of the KGS were defined by the stratigraphic accumulation of producible hydrocarbons, using an isopach map of net effective reservoir thickness. In the present case, the limits of the KGS were defined by the structural accumulation of producible hydrocarbons, using a structural contour map. However, in both cases, additional land was included in the KGS merely because it fell within the 640-acre State spacing unit. Thus, we likewise reverse the BLM decisions involved herein to the extent they rejected the lease applications of Puckett and Waliszek for land outside the smallest legal subdivisions crossed by the minus 8,900-foot structural contour.

[4] The final issue raised by Susan Dawson on behalf of herself and other lease applicants is whether BLM is required to refund filing fees because the KGS determination was made either on the basis of information available at the time BLM solicited applications for the lease drawings or on the basis of later-acquired information. Appellant argues that to allow BLM to keep the noncompetitive filing fees, and then to put the land up for competitive bidding, constitutes "unjust enrichment" and undermines the public's confidence in the fairness of the simultaneous leasing system (SOR, Susan Dawson, at 7). In its answer at pages 11-12, BLM argues that "there is nothing in the record to show the BLM acted other than in good faith in initially concluding that the parcels in question were available for leasing under the simultaneous system."

We are not able to determine from the record now before us whether the KGS determinations effective May 25, and December 20, 1984, were made on the basis of information available to BLM at the time BLM solicited lease applications for the September 1982, May 1983, and July 1983 drawings. With two exceptions, the references in the geologic reports are to studies conducted prior to 1982. The results of the drill stem and production tests, as well as the general status of the various wells, appended to the reports are for the most part undated. However, we note that the December 20, 1984, expansion of the KGS was based principally on a test of the Madison formation in the Rock Creek Unit No. 1 well prior to its abandonment on July 26, 1984. This well was described in the Geologic Report, dated December 20, 1984, at page 1, as "recently completed." Moreover, the effective dates of the two KGS determinations in 1984 indicate that the geologic basis for expansion of the KGS, i.e., the areal extent of the productive limits of the Madison formation, was not actually known by BLM until those dates. See note 16.

Applicants in the simultaneous oil and gas leasing system are generally not entitled to a refund of their filing fees. See Evelyn D. Ruckstuhl, 91 IBLA 384 (1986). In accordance with long-standing Departmental regulation, the filing fee is considered to be "nonrefundable." 17/ 43 CFR 3112.2-2. The only exceptions are where an application is deemed "unacceptable," in which

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17/ At the time of the September 1982, and May and July 1983 lease drawings, filing fees were retained except in certain instances where the applications were returned prior to the drawing. See 43 CFR 3112.5(a) (1981). Otherwise, filing fees "shall not be returned." 43 CFR 3112.6-1 (1981).

case a \$ 75 processing fee is retained and the balance of the filing fee is returned (43 CFR 3112.3(b)) and where a parcel is "removed [by BLM] from the parcel list," in which case the filing fee is returned (43 CFR 3112.3(d)). In Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), the Board en banc reviewed BLM decisions rejecting lease applications deemed "unacceptable" within the meaning of 43 CFR 3112.3(b) at the time they were filed but erroneously included in the drawing. We concluded, however, that the erroneous inclusion of the applications in the drawing "did not alter their status [as unacceptable]." Id. at 176, 91 I.D. at 135. We noted that BLM was required to consider the applications as unacceptable at the time of filing under 43 CFR 3112.3(a). Thus, we gave the applicants the benefit of 43 CFR 3112.3(b), and held they were entitled to the return of their filing fees minus a \$ 75 processing fee. We stated that to hold otherwise would render the regulation "arbitrary and capricious by hinging the fate of thousands of dollars in filing fees on the degree of screening performed by BLM before the drawing." Id. at 177, 91 I.D. at 135.

Likewise, in the present case, 43 CFR 3112.1-1(a) provides that "all lands which are not within a known geologic structure of a producing oil or gas field" are subject to leasing under the simultaneous leasing system. In addition, 43 CFR 3112.1-2 provides that "lands available for leasing shall be described in leasing units identified by parcel numbers" and 43 CFR 3112.1-3 provides that a "list of lands for which applications will be received shall be posted in the proper BLM office." The thrust of these regulations (which were in effect at the time of the lease drawings included herein) is that BLM is specifically constrained by regulation from posting lands as available for simultaneous leasing if they are situated in a KGS. BLM is precluded from leasing KGS lands noncompetitively by the Mineral Leasing Act, and the constraint is statutory. BLM must delete parcels from the list of land available for simultaneous leasing where they are designated as being within a KGS. Cf. Shaw Resources, Inc., supra at 168 n.6, 91 I.D. at 130 n.6. Moreover, in circumstances where BLM should have deleted a parcel, i.e., because it knew or is deemed to have known that the posted land was situated within a KGS at the time it solicited lease applications but proceeded with the lease drawing, applicants will be entitled to the return of their entire filing fees in accordance with 43 CFR 3112.3(d). 18/ See 33 Comp. Gen. 45, 47 (1953). This approach avoids application of the regulation in an arbitrary and capricious way, depending solely on whether BLM exercised the requisite care when listing parcels for simultaneous leasing.

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18/ At the time of the lease drawings involved herein, Departmental regulation also provided that an application, "together with the filing fee," would be returned prior to a lease drawing where it was "[f]iled for a parcel which is withdrawn by the Bureau of Land Management." 43 CFR 3112.5 (1981). In any case, we would apply the current amended regulation, 43 CFR 3112.3(d), for the benefit of appellants, where to do so does not contravene public policy considerations or intervening rights. James E. Strong, 45 IBLA 386 (1980).

The crucial question is whether BLM knew or should have known that the posted land was situated within a KGS. The answer to this question depends on whether BLM possessed all the relevant information, in appropriate form, necessary to make a KGS determination at the time it solicited lease applications and at the time of its subsequent decision to proceed with the lease drawing, or whether the subsequent KGS determination by BLM was based on later-acquired information. As noted supra, the record in the present case indicates that this information was not available to BLM until after the lease drawings. Appellant has not provided contrary evidence to rebut this conclusion. Accordingly, we conclude that BLM is entitled to retain the filing fees submitted, in accordance with 43 CFR 3112.2.

R. K. O'Connell, and Puckett and others request a hearing before an Administrative Law Judge. Puckett et al. also request oral argument before the Board. After our review of the evidence, we find appellants have not proffered sufficient factual evidence to raise a material issue of fact which must be resolved at a hearing. The record is adequate for a decision by the Board. Appellants' request for a hearing, which is granted at the discretion of the Board (43 CFR 4.415), is denied. See Woods Petroleum Co., 86 IBLA 46 at the discretion of the Board (43 CFR 4.25), as the parties have already submitted extensive arguments in support of their positions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and reversed in part.

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R. W. Mullen  
Administrative Judge

We concur:

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Wm. Philip Horton  
Chief Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

## APPENDIX A

BLM No.	Lease Parcel Appellant	Parcel	tion No.	Date of IBLA For Drawing Decision	Applica- Applied
85-786	Kathleen M. Blake	W-85911	WY-601	May 1983	6/28/85 85-787 John Paul Cuccia
W-85871	WY-561	May 1983	6/28/85 85-857	Albert E. DiPaola	W-85912 WY-602 May
1983	6/28/85 85-858			R. E. Puckett	W-85913 WY-603 May
1983	6/25/85 85-859			Charlene Dwyer	W-85941 WY-631 May
1983	6/25/85 85-860			LaVada S. Jackson	W-85942 WY-632 May
1983	6/25/85 85-861			R. K. O'Connell	W-85943 WY-633 May
1983	6/28/85 85-862			Maxine B. Hannifin	W-85944 WY-634 May
1983	6/25/85 85-863			Macon Oil 5-83	W-85945 WY-635 May
1983	6/25/85				
85-864	Julian S. Carr	W-85946	WY-636	May 1983	6/25/85 85-865 Virginia L. Allison
W-85947	WY-637	May 1983	6/25/85 85-866		Carolyn Jane McCutchin
W-87045	WY-576	July 1983	6/28/85 85-867	Bulldog Oil 7-83	W-87063 WY-594 July
1983	6/27/85 85-868			Susan Dawson	W-87064 WY-595 July
1983	6/27/85 85-869			Mona C. Munson	W-87066 WY-597 July
1983	6/28/85 85-870			Welpet Energy, L.P.	W-87067 WY-598 July
1983	6/27/85 85-871			Stan F. Waliszek	W-87069 WY-600 July
1983	6/25/85 86-331			Cheryl Anne Christensen	W-87049 WY-580
July 1983	6/28/85 86-1270			Ralph V. Barskey	W-83312 WY-664 Sept.
1982	5/21/86				