

IBLA 85-788, IBLA 85-851
IBLA 85-852, IBLA 85-853

Decided June 12, 1987

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offers. W 087070, W 085915, W 087050, W 087071.

Affirmed.

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

The drawing of an oil and gas lease applicant's name under the simultaneous leasing system does not create any property or contract right in the party whose name is drawn, but merely establishes the priority for purposes of filing a noncompetitive lease offer. It creates only a right to have the application fairly considered under the applicable statutory criteria. Timely return of executed lease forms and payment of the first year's rental constitutes an offer to lease. An offer to lease is not accepted until the lease forms are signed by the authorized BLM officer.

2. Oil and Gas Leases: Offers to Lease

The fact that land has been posted for filing of applications under the simultaneous leasing system does not bind the Secretary to lease the land noncompetitively, nor is the Secretary bound to lease the land when a qualified applicant has been selected. A noncompetitive lease offer must be rejected whenever it is determined that the land for which the offer is made is within a known geologic structure.

3. Oil and Gas Leases: Offers to Lease

There is no time limit within which a decision to reject a lease offer or issue a lease must be made.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant Shaw Resources, Inc.; C. M. Peterson, Esq., Denver, Colorado, for appellants Bulldog 5-83 and James R. Sanders, Jr.; Ronald Lee McCutchin, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Shaw Resources, Inc., Bulldog 5-83, James R. Sanders, Jr., and Ronald Lee McCutchin have appealed from four decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated June 25, 1985, rejecting each of their noncompetitive applications for oil and gas leases. ^{1/} BLM rejected the applications because the lands within the proposed lease parcels had been determined to be within the Mickelson Creek known geologic structure (KGS) effective March 8, 1985, and for this reason were not subject to noncompetitive leasing under 43 CFR 3112.5-2(b). Because all four appeals concern the same KGS determination, they were consolidated by order dated September 9, 1985.

In his notice of appeal, appellant McCutchin requested that all geology and engineering data used in evaluating the lease parcel be sent to him so that he could prepare a statement of reasons. The Rock Springs District Office, BLM, denied this request by letter dated August 8, 1985, because much of the information used in preparing the report for the Mickelson Creek KGS "was proprietary and confidential as requested by the company that supplied this data." In a letter dated September 20, 1985, however, the Rock Springs District Office informed McCutchin that it had determined that a portion of the report was not confidential and enclosed a copy of that portion of the report.

In addition to the request by McCutchin, the statement of reasons filed on behalf of appellants Bulldog 5-83 and Sanders requested that BLM be required to make available the geologic map or maps and report for the Mickelson Creek KGS. Acting on behalf of BLM, the Office of the Solicitor opposed releasing the information to appellants on the grounds that it included proprietary and confidential information and submitted the maps, well logs, and report to the Board. By order dated March 11, 1986, the Board found that it was unclear whether, under the applicable law, the information was properly regarded as proprietary or confidential and additionally determined that not all of the information submitted to the Board was clearly confidential. Accordingly, we returned the documents to BLM with instructions to review them and make available to appellants those portions which were not

^{1/} The appellants, case numbers, and Wyoming State Office numbers of the appeals consolidated in this decision are:

IBLA 85-788	Shaw Resources, Inc.	W 087070	IBLA 85-851
Bulldog 5-83	W 085915	IBLA 85-852	James R. Sanders, Jr.
W 087050	IBLA 85-853	Ronald Lee McCutchin	W 087071

BLM's decisions were addressed to the three applicants drawn for each of the parcels. All of the appellants were selected for first-priority lease offer except for Bulldog 5-83 which was selected for second priority.

confidential, with the remainder to be returned to the Board with documentation justifying their confidentiality. By response received May 21, 1986, the Solicitor informed the Board that BLM had received written permission to release the information from the company originally submitting the data to BLM. For this reason, no documents were returned to the Board. Rather, they were made available to appellants at the Rock Springs District Office. The certificate of service accompanying the response stated that a copy was sent to each of the appellants or their attorneys.

No further response or statement of reasons raising grounds challenging the Mickelson Creek KGS determination has been received from any of the appellants. Accordingly, we conclude that the parties have abandoned any intent to challenge the propriety of the determination, and we turn to the other issues raised in their statements of reasons.

Appellant Shaw argues that BLM's withholding of the issuance of its lease for an extended time was an abuse of discretion and violated the rules of fundamental fairness. Shaw further argues that placing the parcel in the simultaneous lease pool and receiving filing fees, then later determining the parcel to be within a KGS so that it is leased under the competitive leasing system constitutes a form of fraud. Appellants Bulldog 5-83 and Sanders contend that the Department should be estopped from asserting that the land has been classified as being within a KGS. These contentions are best addressed by reviewing the basic principles governing the simultaneous leasing procedures.

[1] The posting of a list of parcels as available for leasing under the simultaneous leasing system 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 in the party whose name is drawn, 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). It creates only a right to have the application fairly considered under the applicable statutory criteria. Justheim Petroleum Co. v. Department of the Interior, 769 F.2d 668, 670 (10th Cir. 1985). Timely return of executed lease forms and payment of the first year's rental constitutes an offer to lease. An offer to lease is not accepted until the lease forms are signed by the authorized BLM officer. 43 CFR 3112.6-2; see Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963).

[2] Prior to accepting an offer to lease, the authorized BLM officer is required to determine that all matters pertaining to the lease, including the status of the land to be leased, are proper. "The fact that land has been offered for lease does not bind the Secretary to actually lease the land, nor is the Secretary bound to lease the land when a qualified applicant has been selected." McDonald v. Clark, 771 F.2d 460, 463 (10th Cir. 1985). The Mineral Leasing Act requires that lands within a "known geological structure of a producing oil or gas field" be leased 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, *supra* at 464.

[3] Contrary to the suggestion of appellant Shaw, there is no time limit within which a decision to reject a lease offer or issue a lease must be made. Justheim Petroleum Co. v. Department of the Interior, *supra* at 670, and cases cited therein. In Kathleen M. Blake, 96 IBLA 61 (1987), the Board recently reviewed a similar argument advanced by appellants whose lease offers were delayed in adjudication, as were the offers in these appeals, pending Departmental review of procedures used to identify KGS lands. After finding the delay in adjudication of appellants' noncompetitive lease offers was due to the development and implementation of new procedures for KGS determinations and review of pending offers in light thereof, the Board could not find the delay "'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." 96 IBLA at 66. Consequently, the facts of the cases on appeal provide no basis for appellants' claims as to abuse of discretion, violation of fundamental fairness, or estoppel. No evidence has been offered to support the allegation of fraud, and the facts shown by the case files do not even remotely suggest the improper purpose alluded to by appellants.

The status of the lands was changed prior to any action on appellants' lease applications; therefore, BLM properly rejected the applications. Justheim Petroleum Co. v. Department of the Interior, *supra*. Accordingly, 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.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge.

