

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM A 57558.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Known Geologic Structure

An applicant seeking a noncompetitive oil and gas lease for acquired lands who challenges a determination by BLM that land is within a known geological structure of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error. The Board of Land Appeals may properly consider data compiled both before and after a KGS determination in reviewing the merits of such determination.

APPEARANCES: Ronald L. McCutchin, Dallas, Texas, for appellant; Margaret C. Miller, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

In Carolyn J. McCutchin, 84 IBLA 368 (1985), the Board set aside and remanded a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 5, 1984, rejecting appellant's simultaneous oil and gas lease offer NM A 57558. Appellant submitted her offer on March 7, 1984, after being informed that her application to lease parcel NM 248 had been drawn with first priority in BLM's August 1983 drawing of simultaneously filed applications. BLM rejected this offer because the lands described therein had been determined to be within an unnamed, undefined known geological structure (KGS). The Board set aside BLM's decision because the case file did not reveal the operative facts and geologic analysis upon which the KGS determination was based.

BLM rejected appellant's offer for a second time by decision of August 14, 1985, and McCutchin filed a timely notice of appeal therefrom. This decision alluded to accompanying documentation compiled in support of the KGS determination. This documentation included a diagram of Ts. 20-21 N.,

Rs. 2-4 W., New Mexico Principal Meridian, showing certain lands, including those sought by appellant, designated as an undefined addition to several undefined KGS's. The lands within this undefined addition were determined to be KGS lands effective March 15, 1984, 8 days after appellant's offer was filed. The diagram identifies five wells upon which BLM's March 15, 1984, KGS extension was based. All of these wells are said to be producing from the El Vado sandstone member of the Mancos Shale. ^{1/} Producing intervals of this sand formation were correlated between at least 14 holes with structure contour and isopach maps, BLM states. The BLM diagram also depicts a structure contour of the El Vado sandstone and an isopach of the entire El Vado sandstone member of the Mancos Shale.

Further documentation included a memorandum from the District Manager, Albuquerque, to the State Director, New Mexico, dated June 26, 1985, reciting that 45 wells had been drilled and completed or were in the process of being tested by the effective date of the KGS expansion. Individual well records are provided for these wells. The memorandum also states that 26 wells were drilled within or near the KGS following the March 1984 KGS expansion. Of these, BLM states that 19 are producing within the KGS or within a spacing unit's distance (40 acres) of the KGS boundary, two are shut-in, and five wells outside the KGS have been plugged and abandoned.

In her statement of reasons, appellant acknowledges that there have been some commercial wells completed in the area of her offer, but she maintains that because of the Mancos formation's fractured and highly unpredictable nature, lands within her offer should not be included in a KGS. The best producers are at least one mile to the west of the offered lands, appellant contends, and the formation becomes less and less fractured as it extends eastward. In support of her argument that no evidence exists to justify inclusion of the offered lands in a KGS, appellant points to a dry hole in sec. 3, T. 20 N., R. 3 W.

In response to appellant's arguments, BLM argues that appellant offers no evidence for her statement that the Mancos formation becomes less and less fractured ^{2/} as it extends eastward. Accompanying BLM's response of June 17, 1986, is a diagram of Ts. 20-21 N., Rs. 2-4 W., showing oil wells east of the lands in NM A 57558 that were producing from the Gallup/Mancos reservoir prior to the effective date of the KGS extension, March 15, 1984. ^{3/} This same diagram also shows that subsequent to March 15, 1984, some 14 additional wells were completed to the east of NM A 57558. Individual well records for

^{1/} BLM states that the Mancos reservoir is also known as the Gallup or Niobrara. Memorandum of June 10, 1986, from the District Manager, Albuquerque, to the Field Solicitor, Santa Fe.

^{2/} High-density fracturing, BLM explains, enhances production. *Id.* at 2.

^{3/} See map "A" entitled "Unnamed Undefined KGS & Well Location and Status." among these wells were the 11-16 San Isidro (sec. 11, T. 20 N., R. 3 W.) and the 4-14 Johnson (sec. 4, T. 20 N., R. 2 W.) showing initial production of 400 and 120 barrels of oil per day, respectively.

two such wells ^{4/} show initial production from the Gallup/Mancos Shale reservoir to be 1122 and 368 barrels of oil per day. Production in lesser quantities resulted from each of the 12 remaining wells.

As to appellant's charge that the dry hole in sec. 3, T. 20 N., R. 3 W., shows that the KGS does not extend eastward of secs. 32, 29, and 28 in T. 21 N., R. 3 W., BLM points out that this well, the 1-3 Pam, was "not drilled deep enough to test the Mancos" (Response at 1). Such well does not, therefore, indicate the presence or absence of the Mancos reservoir in the area, BLM explains.

Appellant's lease offer was filed pursuant to section 3 of the Act of August 7, 1947, 30 U.S.C. § 352 (1982), commonly known as the Mineral Leasing Act for Acquired Lands (Act). Section 3 provides that deposits of oil and gas acquired by the United States and which are within lands acquired by the United States may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions of the Act.

Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." This limitation applies equally to the leasing of acquired lands. See 43 CFR 3100.3-1. It is well settled 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 noncompetitive lease offer must be rejected. Evelyn D. Ruckstuhl, 91 IBLA 384 (1986); Elcoex, Inc., 68 IBLA 130 (1982); 43 CFR 3112.5-2(b). Rejection of a lease offer is mandated even where, but for the delay in lease issuance, the lease might have issued prior to the KGS determination. Frederick W. Lowey, 76 IBLA 195 (1983). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. 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).

[1] An applicant for a noncompetitive oil and gas lease who challenges a determination by BLM that land is within the KGS of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984); Richard E. O'Connell, 98 IBLA 283 (1987). Appellant's unsupported charge of decreased fracturing of the Mancos formation fails to meet this standard. Data compiled both before and after the effective date of BLM's KGS extension belies appellant's suggestion that lands to the east of NM A 57558 are off structure. The Board may properly consider data compiled both before and after a KGS determination in reviewing the merits of such determination. Appellant's reference to the dry hole in sec. 3, T. 20 N., R. 3 W., is fully answered by BLM's data furnished in response to appellant's statement of reasons.

^{4/} These wells are the 10 San Isidro 16 (sec. 16, T. 20 N., R. 3 W.) and the 16 Johnson 6 (sec. 6, T. 20 N., R. 2 W.).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, this decision of the New Mexico State Office, dated August 14, 1985, is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge