

WILFRED PLOMIS

IBLA 86-1597

Decided June 7, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting a noncompetitive oil and gas lease offer. CA-16908.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

Where, prior to the issuance of a noncompetitive oil and gas lease, BLM makes a determination that the lands covered by the noncompetitive offer are within a known geologic structure, that offer must be rejected.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C. for appellant; Lynn M. Cox, Esq., and William M. Wirtz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Wilfred Plomis has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated July 30, 1986, rejecting his noncompetitive oil and gas lease offer CA-16908.

By decision dated March 18, 1985, BLM notified Plomis that his simultaneous oil and gas lease application had been drawn with priority for parcel No. CA-117 in the February 1985 simultaneous oil and gas lease drawing and required him to execute and return copies of his lease offer within 30 days of receipt of the decision. On April 1, 1985, BLM received executed copies of Plomis' lease offer for 118.17 acres of land situated in lot 2 and the E\ NW^ sec. 7, T. 4 N., R. 17 W., San Bernardino Meridian, Los Angeles County, California. Subsequently, the Chief, Leasable Minerals Section, Branch of Lands and Minerals Operations, by memorandum dated April 8, 1985, requested a Known Geologic Structure (KGS) clearlisting for the lease offer from the District Manager, Bakersfield District Office. The District Manager, by memorandum dated May 29, 1986, notified the California State

Director that the lands were within a KGS, effective March 21, 1986. ^{1/} In its July 1986 decision, BLM rejected Plomis' lease offer pursuant to 43 CFR 3110.3, because the land had been determined to be within a KGS and was, therefore, only subject to leasing by competitive bidding. Plomis has appealed from that BLM decision.

In his statement of reasons for appeal (SOR), appellant does not challenge designation of the land involved herein as within a KGS, but contends that BLM was committed to issuing a noncompetitive oil and gas lease to appellant as of April 24, 1985, when a copy of the April 8, 1985, memorandum was returned to the California State Office with the hand-written notation "Hold-up Further Study" for CA-16908. Appellant claims that notation indicated there were "insufficient facts to classify the subject lands as KGS as of April 24, 1985" (SOR at 7). Appellant argues that this notation was

tantamount to advice that, as of that date, the evidence for classifying the subject lands as being within a known geologic structure did not yet exist. What did exist was the determination that had necessarily been made a short time prior, in order for the lands to be included in the December 1984 simultaneous oil and gas drawing list, that the lands were not within a known geologic structure at that time. And when classification of the lands as known geologic structure was finally made, it was effective May 21, 1986, affirming that there had been no basis for such a classification as of the time of the District Office's report 13 months before.

(SOR at 6).

Appellant argues that, at the time of the request for clearlisting, BLM had decided to issue a lease if the land was found not to be within a KGS and that the subsequent determination that there were insufficient facts was, in essence, a determination that the lands were not within a KGS and, thus, required issuance of a lease. To hold otherwise, appellant contends, would allow or create the appearance of allowing lease issuance to become subject to the politicization of the KGS review process, *i.e.*, that the lands are being deliberately "held back from leasing for the purpose of finding a basis to change their structural status" (SOR at 7). (Emphasis in original.) On this basis, appellant distinguishes other cases where noncompetitive lease offers had been subjected, for different reasons, to extended periods of delay following their filing and then finally rejected following a KGS determination, citing Marc W. Richman, 86 IBLA 143 (1985), Joseph E. Talladira, 83 IBLA 256 (1984), and George Reddy & Associates,

^{1/} In its July 30, 1986, decision BLM stated that the effective date of the KGS was "May 21, 1986." Also, in an Oct. 27, 1987, declaration, Tim S. Moore, a BLM petroleum geologist who performed the KGS evaluation of CA-16908, stated that the KGS was effective May 21, 1986. Whichever date is correct, the subject land was committed to a KGS following submission of appellant's lease offer and prior to any lease being issued.

59 IBLA 359 (1981). In these cases, appellants noted that the delay had been caused by litigation (Richman), suspension of the simultaneous oil and gas lease program (Talladira), and failure promptly to obtain a structural determination (Reddy).

In response to appellant's SOR, BLM contends that it is required to reject a noncompetitive oil and gas lease offer where during any delay in issuance of a lease the land is determined to be within a KGS and that a lease offeror has no vested right to issuance of a lease. BLM also submits the October 21, 1987, declaration of Tim S. Moore, a BLM petroleum geologist, in order to rebut appellant's assertion that BLM had no evidence suggesting that the land was within a KGS at the time it decided to delay issuing a lease. Moore explained that, during the final clearlisting of land included in appellant's lease offer, he discovered a recently completed well near that land, placed the notation "Hold-up Further Study" on the April 8, 1985, memorandum and then, after several months, completed the KGS report which determined that the land was situated within a KGS. He states that the conclusion of the report is "based largely on the existence of two nearby producing wells, the Langdon 1 and the North Ramona 1-7, completed in July 1984 and February 1986, respectively.

[1] Under section 17(b)(1) of the Mineral Leasing Act, as amended, 30 U.S.C. | 226(b)(1) (1982), Congress provided that public domain lands "within any known geological structure of a producing oil or gas field * * * shall be leased to the highest responsible qualified bidder by competitive bidding." Courts interpreting this statutory provision have consistently held that, given the restriction to "competitive bidding," the Department has no discretion to issue a noncompetitive oil and gas lease for land situated within a KGS. McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). See also Rocky Mountain Exploration Co. v. U.S. Department of the Interior, Nos. 85-2560 and 86-1220 (10th Cir. Oct. 26, 1987).

Where the determination of the KGS status of lands subject to an oil and gas lease offer is delayed for whatever reason and during that delay the land is determined to be within a KGS, we have affirmed BLM's subsequent rejection of the offer in every case because of the statutory prohibition on noncompetitive leasing. See, e.g., Shaw Resources, Inc., 98 IBLA 96 (1987); Guy W. Franson, 30 IBLA 123 (1977). Departmental regulation 43 CFR 3110.3 clearly requires that result when it states:

If, prior to the time a noncompetitive lease is issued, all or part of the lands in the offer are found to be within a known geological structure of a producing oil or gas field * * * the offer shall be rejected in whole or in part as to such lands, as appropriate. [2/]

See also 43 CFR 3112.5-2(b).

2/ The recently enacted Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (1987), amended 30 U.S.C.

87).

Moreover, there is no time limit on BLM's decision to either reject a lease offer or issue a lease. Justheim Petroleum Co. v. Department of the Interior, 769 F.2d 668, 670 (10th Cir. 1985). BLM is not committed to issue a lease either by virtue of selection of a lease application in a simultaneous oil and gas lease drawing or the subsequent submission of a lease offer. Shaw Resources, Inc., *supra* at 98; Wally J. Picou, 95 IBLA 98, 101 (1986).

Although appellant recognizes these principles, he nevertheless seeks to have some limitation placed on them such that BLM may not arbitrarily withhold a determination of the KGS designation. Appellant argues that there must be some date at which the Government is committed to issuance of a lease. In this case he asserts it was April 24, 1985, when the State Office received the memorandum with the notation "Hold-up Further Study," because that notation was tantamount to a determination that no KGS existed on that date.

There is no evidence in this case to support a claim that BLM arbitrarily delayed determination of the KGS status of the land. Moore's statement provides adequate justification for the procedure BLM followed in this case. He explained why he put the notation on the memorandum and that explanation is reasonable. The fact that the subsequent KGS determination relied, in part, on a well completed in February 1986 does not undercut BLM's position. That is not a factor which BLM could have ignored.

To the extent that appellant is concerned that "this Board is the sole bulwark between unbridled BLM discretion on whether, why, and how long to delay lease issuance, on the one hand, and the inequitable consequences that can result for lease offerors, on the other" (Appellant's Response to Filing by BLM at 2), we note that the facts of the present case do not warrant the concern expressed by appellant. That is not to say that concern is groundless, only that it is misplaced given the facts in the present case.

Having made the KGS determination, the actions of BLM were dictated by section 17(b) of the Mineral Leasing Act, 30 U.S.C. | 226(b)(1) (1982). As the court said in McDade v. Morton, *supra* at 1013:

The unambiguous language of the Mineral Leasing Act states that leases for land within a known geologic structure of an oil or gas field shall be leased by competitive bidding. The logical and sensible regulatory result under such wording is to preclude any type of leasing other than by means of competitive bidding whenever it becomes apparent that the applied for leases involve

fn. 2 (continued)

| 226(b)(1) (1982), to provide for an all-competitive leasing procedure for the leasing of Federal oil and gas, with noncompetitive leasing occurring only on a limited basis following competitive offering. Offers pending when that Act was enacted are to be processed under the provisions applicable before it was amended, however. Section 5106(a), P.L. 100-203, 101 Stat. 1330-259 (1987).

lands within a known geologic structure. To hold otherwise would fly in the face of the "plain meaning" of the statute's words. [Emphasis in original.]

Accordingly, we conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer for land situated within the North Ramona KGS.

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.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

IBLA 86-1597