

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting in part and suspending in part oil and gas lease offer ES 31340 (Ark.).

Set aside and remanded.

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

Under 30 U.S.C. | 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil and gas field. 43 CFR 3110.3(a).

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

A BLM decision rejecting a noncompetitive oil and gas lease offer on the grounds the parcel sought to be leased lies within a known geologic structure, will be set aside and remanded, where the record on appeal contains no supporting geological data to substantiate the basis for the determination.

APPEARANCES: Larry Childress, Rogersville, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Petex, Inc. (Petex), has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated December 17, 1985, which rejected in part, and suspended in part, its noncompetitive oil and gas lease offer.

On May 17, 1982, Petex filed over-the-counter noncompetitive oil and gas lease offer, ES 31340 (Ark.), describing certain lands situated within T. 12 N., R. 25 W., secs. 27, 28, and 29, fifth principal meridian, Johnson County, Arkansas. The BLM decision states in part:

The lease offer is rejected in part as to the lands described below for the reasons stated:

Lands within a known geologic structure (43 CFR 3110.3(a)): T. 12 N., R. 25 W., 5th Principal Meridian, Sec. 27, All; Sec. 28, All.

ES 12594 - Expired April 31, 1985 (All lands which are not within a known geological structure of a producing oil or gas field, or a favorable petroleum geological province in Alaska, and were covered by Federal oil and gas leases which have been cancelled, terminated, relinquished or expired are subject to leasing only in accordance with the simultaneous leasing procedures. (43 CFR 3112.1-1)) Sec. 27, SW[^]NE[^].

Total rejected acreage - 386.00 acres more or less.

With respect to the remaining lands in sec. 29, BLM advised that the offer would be "held in suspension until a departmentally imposed moratorium prohibiting oil and gas lease issuance in Arkansas is lifted," at which time the lease offer would be processed.

The regulation cited in the decision (43 CFR 3110.3(a)), provides:

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 or a favorable petroleum geological province in Alaska, the offer shall be rejected in whole or in part as to such lands, as appropriate.

On appeal, Petex challenges only that portion of the decision which rejects its offer in part based on the determination that the lands are situated within a known geological structure (KGS). In its notice of appeal, Petex argues that the designation, by BLM, of the land as a KGS was in error and was arbitrary, and further, that the KGS designation had no sound geologic basis because:

(a) DISTANCE: The nearest well capable of producing gas (in NE SW 35-12N-25W, Johnson County, Arkansas) is over 1[^] mile to the southeast of the easternmost portion of the lease application acreage.

(b) DISTANCE: The majority of the subject acreage is over 2 miles northwest of the nearest gas well (in Sec. 35).

(c) DISTANCE: The nearest well to the subject acreage is a dry hole and is located 1 mile south of the subject acreage in NE SW of Section 33.

(d) GEOLOGY: The nearest well capable of production (in NE SW of Section 35) is on a different and separate fault block system than the subject acreage. * * * [Emphasis in original.]

A geological map showing the location of these wells, in relation to the lands described in the lease offer was attached. The only documentation in the record file, regarding designation of the lands encompassed by appellant's lease offer as KGS land, is a memorandum dated July 8, 1985, from the District Manager, Southeast District, BLM, to the State Director. The memorandum states, as follows:

Based on past drilling activity and established production, the following areas are within an addition to the Batson Low-Gap Field known geologic structure effective July 3, 1985.

Johnson County, Arkansas
T. 12 N., R. 24 W., 5th P.M.
Sections: 30
T. 12 N., R. 25 W., 5th P.M.
Sections: 25-28, 32-34

Unleased Federal mineral interests will be affected. This determination expands the Batson Low-Gap Field KGS by approximately 2880 acres.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 226(b) (1982), provides that public domain lands within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." Where lands embraced in a noncompetitive oil and gas lease offer are designated as within a KGS prior to issuance of the lease, the offer must be rejected. Carolyn J. McCutchin, 86 IBLA 13, 14 (1985); R.C. Altrogge, 78 IBLA 24 (1983). See also 43 CFR 3110.3(a). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

[2] The Board has consistently held that where a KGS determination is challenged, the record on appeal must contain sufficient information to permit an informed decision on the issue presented. Carolyn J. McCutchin, supra at 14; Thomas Connell, 82 IBLA 132 (1984). In Connell the Board said,

where on appeal from rejection of a noncompetitive oil and gas lease offer, appellant submits evidence tending to contradict a determination that land embraced in the lease offer is within a KGS and there is nothing in the record to support the decision except the conclusory statement that the land is in a KGS, the decision may appropriately be set aside and the case remanded to substantiate the basis for the KGS determination in light of the information tendered by appellant.

Thomas Connell, supra at 133.

The BLM casefile does not contain any documentation sufficient to withstand appellant's challenge to the KGS determination. The memorandum from the District Manager, Southeast District, to the State Director, merely states that the determination was made based on past drilling activity and

established production. No basis for that conclusion was provided in the record. Appellant offered evidence to the contrary, to show that no wells capable of production exist in the area which would warrant inclusion of the land at issue within a KGS.

Considering BLM's conclusory determination that the land in question is within a KGS, and its failure to affirmatively substantiate the basis for the KGS determination (see e.g., Thomas Connell, supra) the record is so incomplete as to prevent meaningful review by this Board.

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 set aside, and the case is remanded.

Gail M. Frazier
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member