

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting in part oil and gas lease offer M 53119 (ND) Acq.

Affirmed.

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

Under 30 U.S.C. | 226(b)(1) (1982), lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within a known geologic structure prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected, notwithstanding that the offer was filed prior to such determination. BLM's delay in processing the lease offer can afford an offeror no rights because BLM is not obligated to issue a noncompetitive lease merely because it has received an offer for a particular parcel of land.

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

An applicant for a noncompetitive oil and gas lease who challenges a determination that land is within a known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error by a preponderance of the evidence.

APPEARANCES: Lowell J. Simons, Redding, California, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lowell J. Simons has appealed from a decision dated October 25, 1985, by the Montana State Office, Bureau of Land Management (BLM), rejecting in part his noncompetitive oil and gas lease offer M 53119 (ND) Acq. Appellant originally filed the offer on September 25, 1981, requesting 491.20 acres in Williams County, North Dakota, described as follows: NE<sup>^</sup>, NW<sup>^</sup>, sec. 22; lot 4, W\SW<sup>^</sup> sec. 29; and SW<sup>^</sup>NE<sup>^</sup>, N\SE<sup>^</sup>, lot 4, sec. 30, T. 153 N., R. 102 W., fifth principal meridian. In its decision, BLM stated that 35.68 acres of sec. 22 had been determined to be within the Trenton Known Geological Structure (KGS) effective January 3, 1985. It

therefore rejected the offer as to these lands. On February 4, 1986, effective March 1, 1986, BLM issued a lease for the lands which were not classified KGS.

In his statement of reasons, appellant contends that the KGS determination is arbitrary and capricious in that the KGS boundary is whimsical, fanciful, speculative, and not subject to provable facts. Appellant objects further because he was not informed which geological formation was pertinent to the KGS classification. Appellant notes that a well in sec. 22 is located more than a third of a mile north of the northwesterly boundary of the 35.68 acres at issue. Appellant contends that there have been no extensions south from that well. Appellant further asserts that there has been an inordinate delay in processing his lease offer.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 226(b)(1) (1982), provides that public domain lands which are within a KGS of a producing oil or gas field "shall be leased \* \* \* by competitive bidding." This limitation applies equally to the leasing of acquired lands. 43 CFR 3100.3-1. 1/ It is well settled that where part of the 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 as to those lands within the KGS. 43 CFR 3112.5-2(b); Evelyn D. Ruckstuhl, 91 IBLA 384 (1986); Angelina Holly Corp., 70 IBLA 294 (1983), aff'd, 587 F. Supp. 1152 (D.D.C. 1984); Elcoex, Inc., 68 IBLA 130 (1982). 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). A delay in processing the lease offer can afford an applicant no rights because BLM is not obligated to issue a noncompetitive lease merely because it has received an application or offer for a particular parcel of land. Kathleen M. Blake, 96 IBLA 61, 64-67 (1987), and cases there cited. 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).

[2] BLM's KGS determination is based on a report by its Division of Mineral Resources. The report states that the Trenton field was discovered

1/ In his statement of reasons, appellant correctly noted that BLM cited an inapplicable regulation, 43 CFR 3100.3-2, as the basis for its action. The applicable regulation, 43 CFR 3100.3-1, provides as follows:

"| 3100.3-1 Determination by Bureau.

"The authorized officer shall determine the boundaries of known geological structures of producing oil or gas fields outside of Alaska and favorable petroleum geological provinces in Alaska. All lands within such boundaries shall only be leased competitively to the highest responsible qualified bidder. All other lands shall be leased noncompetitively, if at all, to the first qualified applicant."  
BLM's citation of an inapplicable provision of the CFR does not render its otherwise proper adjudication invalid and cannot provide appellant with rights not authorized by law.

in 1981 with completion of the Mosbacher-Pruet No. 1 Martin in sec. 22. Initial production was obtained from the Ordovician Red River formation. The report describes completion and production history of two other wells in secs. 16 and 21. Also described, by means of correlation diagrams, are the structure and stratigraphy of the Trenton KGS. The report states that the basis of the KGS classification are the Red River and Devonian Duperow structures. 2/

A KGS is defined as "technically 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." 43 CFR 3100.0-5(1). 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, 185 (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 the land is determined to be "presumptively productive" on the basis of geologic evidence of the existence of a productive structure underlying the land. See R. K. O'Connell, 85 IBLA 29, 32 (1985).

The Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon its reasoned opinion. Bruce Anderson, 63 IBLA 111, 113 (1982). A determination by Departmental technical experts will ordinarily not be set aside where it is not arbitrary or capricious and is supported by competent evidence. Ralph E. Peterson, 94 IBLA 340, 342 (1986); Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom., Planet Corp. v. Hodel, No. 86-679 HB (D.N.M. May 6, 1987). Thus, we may properly rely here on the report by BLM's Division of Mineral Resources.

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).

The initial boundaries of a KGS are not preclusive of the possibility of future changes. They are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent of the geological structure producing oil or gas. Robert G. Lynn, 61 IBLA 153 (1982). As indicated in the file, the reservoir limits were based on data from wells in secs. 16, 21, and 22. Appellant's allegations that the limits were arbitrarily drawn are thus unsupported. Although appellant has voiced disagreement with BLM's KGS determination, he has not provided sufficient technical data to overcome it. Therefore, since he has not met the burden of showing by a preponderance of the evidence that the KGS determination is in error, it must be affirmed. Bender v. Clark, supra.

2/ A copy of the documentation supporting the KGS classification was furnished appellant in March 1986. No response has been received.

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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 affirmed.

Gail M. Frazier  
Administrative Judge

I concur:

David L. Hughes  
Administrative Judge

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