

OSAGE ASSOCIATES JANUARY 1983

IBLA 87-79

Decided february 21, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing the annual rental for noncompetitive oil and gas leases. W-84382.

Reversed.

1. Oil and Gas Leases: Burden of Proof--Oil and Gas Leases: Known Geologic Structure

Delineation of a KGS recognizes the existence of a continuous entrapping structure, on some part of which there is production, or of numerous related, but nevertheless independent, stratigraphic or structural traps. A party challenging a determination that lands are within a KGS must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question. When the necessary showing is made, a BLM decision increasing the rental on the basis of the KGS determination will be reversed.

APPEARANCES: Karl E. Schlachter, Stratford, Connecticut, for Osage Associates January 1983; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Karl E. Schlachter, as Administrator for Osage Associates January 1983, has appealed a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 18, 1986, which increased the annual rental for noncompetitive, nonproducing oil and gas lease W-84382. The lease is for 641.52 acres, consisting of the lots 1 through 8 and the W\ E\, and NE^ SE^, sec. 31, T. 26 N., R. 96 W., sixth principal meridian, Sweetwater County, Wyoming, and was issued with an effective date of June 1, 1983. The effect of BLM's decision is to increase the annual rental rate from \$1 per acre to \$2 per acre through the fifth lease year.

The basis for BLM's decision was a determination that the leased lands are within the Washakie Basin Known Geologic Structure (KGS). The Washakie Basin KGS is an extremely large stratigraphic KGS which includes portions of approximately 50 townships in the Washakie and Great Divide Basins of Sweetwater and Carbon Counties, Wyoming. Appellant's oil and gas lease is on the northern boundary of the KGS.

[1] A KGS is defined as "technically the trap in which an accumulation of oil and 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(l). Delineation of a KGS recognizes the existence of a continuous entrapping structure, on some part of which there is production, or of numerous related, but nevertheless independent, stratigraphic, as well as structural, traps. Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom., Planet Corp. v. Hodel, Civ. No. 86-679 HB (D.N.M. May 6, 1987).

An appellant challenging a KGS determination must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question. Id. The law is settled that a party challenging a BLM determination that lands are within a KGS has the burden of establishing by a preponderance of the evidence that inclusion of the land is erroneous. Bender v. Clark, 744 F.2d 1424, 1429-30 (10th Cir. 1984); Carolyn J. McCutchin, 103 IBLA 1 (1988); Thunderbird Oil Corp., supra at 201.

The Secretary of the Interior has delegated the responsibility for determining the existence and extent of KGS's to his technical experts in the field. When these experts make a determination that lands qualify for inclusion in a KGS, the Secretary is entitled to rely upon their reasoned opinion. Thunderbird Oil Corp., supra at 202; Champlin Petroleum Co., 86 IBLA 37, 40 (1985). A determination by a Departmental technical expert will be upheld when it is not arbitrary and capricious and is supported by competent evidence. Thunderbird Oil Corp., supra; Lowell J. Simons, 104 IBLA 129, 131 (1988).

Appellant's statement of reasons contains a number of arguments which concern the depressed economic conditions governing the oil and gas industry. As noted by BLM in its response, a KGS determination is based upon geologic information and economic conditions are not relevant to the issue of whether BLM properly included appellant's leased land within the KGS. See Beard Oil Co., 99 IBLA 40, 47 (1987). Accordingly, we will not address these arguments.

Concerning the geology of the area of the leased land, appellant contends: "The last two drilling tests which occurred between this parcel and the last nearest production resulted in dry holes at 13,350 and 14,904 feet respectively." In its response, BLM agrees, stating:

The two (2) holes in question were the #1 Forbes-Federal, which was a producing gas well and later plugged and the #1 Andri-Federal which did not produce, but had gas cut mud

in the borehole. As stated earlier, the periphery [sic] of the reservoir, in a stratibound deposit, is thinner or of a lower porosity and would produce less than an internal lease. The last good control point for the reservoir limit is the #1 Forbes-Federal well. Using equal spacing porosity lines and equal spacing reservoir thickness lines, the reservoir would extend under Mr. Schlachter's lease.

We reverse because we have previously determined that neither the #1 Andri-Federal nor the #1 Forbes-Federal well is sufficient to support a conclusion that nearby land is properly included within the Washakie Basin KGS as presumably productive land.

In Richard E. O'Connell, 98 IBLA 283 (1987), the Board considered an appeal concerning the inclusion of lands in sections 4 and 9, T. 25 N., R. 95 W., within the same KGS. In regard to the BLM geological report for the KGS, the Board noted:

The terminus of the zero net upper Almond reservoir isopach formation is shown, on an attached map of the KGS, to cross the southeast quarter of sec. 4 and to include most of the east and south halves of sec. 9. Id. at 3. This formation is considered by the report to be productive of oil and gas. The basis for this conclusion is apparently the existence of two wells, the 1 Andri-Federal and the 1 Forbes-Federal, drilled in sec. 1 and 14, respectively, T. 25 N., R. 97 W., and said by counsel for BLM to "exhibit the reservoir qualities used for the Washakie Basin creation and expansion into T. 25 N., R. 97 W."

Id. at 284. After considering the evidence submitted on appeal, the Board concluded that the geologic evidence presented by appellant's expert, Donald M. Van Sickle, had "overcome BLM's justification for the extension of the KGS to secs. 4 and 9 since Van Sickle's analysis covering the effect of the Andri-Federal and the Forbes-Federal wells remains unexplained and un rebutted by BLM." Id. at 286-87. Accordingly, the Board concluded that "the extension of this KGS was made in error" and reversed BLM's decision. Id. at 288. 1/

As noted above, appellant's leased lands lie in sec. 31, T. 26 N., R. 96 W. The isopach map for the Washakie Basin KGS, Upper Almond Reservoir, shows the zero isopach contour to cross through the middle of the section. The #1 Andri-Federal well in section 1 is within one-half mile of the leased land and the #1 Forbes-Federal well in section 14 is approximately 3 miles distant. As appellant notes, there are no other wells near the leased land and nearest area of production, which is over 4 miles away. The Board's decision in Richard E. O'Connell, supra, that BLM erred in its Washakie Basin KGS report in regarding these wells as providing sufficient

1/ In a concurring opinion, Administrative Judge Harris agreed that "BLM erred in extending the Washakie Basin KGS to include secs. 4 and 9." Id. at 289.

data for extending the KGS is controlling. Just as the wells do not support a conclusion that the productive portion of the upper Almond formation extends to the northeast to leased land under consideration in that case, the wells must also be regarded as insufficient to support a conclusion that the upper Almond extends to the north to include the area of appellant's lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed. 2/

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

2/ We additionally note that the boundaries of the KGS were improperly located insofar as they include each 640-acre section touched by the zero contour line shown on the isopach map for the KGS. In Pamela S. Crocker-Davis, 94 IBLA 328, 332 (1986), the Board concluded that, absent some justification to show the relation between state-established spacing units and the concept of a KGS, BLM should include in a KGS only the smallest legal subdivision (quarter quarter section) traversed by the boundary of the structural or stratigraphic trap. Accord Celeste C. Grynberg, 106 IBLA 219, 222 (1988); Charles J. Rydzewski, 105 IBLA 9 (1988); Ecological Engineering Systems, 104 IBLA 117, 121 (1988). Absent a justification showing that the spacing unit implies the presence of hydrocarbons, use of state spacing units to determine the boundaries of a KGS would appear to be based on administrative convenience rather than geologic information. Kathleen M. Blake, 96 IBLA 61, 75-76 (1987).