

Editor's note: Errata dated Jan. 29, 1971 -- In the second sentence of the second paragraph, page 230, "Conley" should be "Sheldon."

GEORGE E. CONLEY

IBLA 70-56

Decided January 13, 1971

Oil and Gas Leases: Lands Subject to Applications: Generally

Land included in an outstanding oil and gas lease is not available for leasing to others and an application filed for such land must be rejected whether or not the outstanding lease was properly issued.

Oil and Gas Leases: Applications: Description -- Oil and Gas
Leases: Lands Subject to

When land which was inadequately described in an oil and gas lease offer and in the lease thereafter issued is adequately identified prior to the filing of a conflicting offer after the lease issued, the land considered to be in an outstanding oil and gas lease is not available for leasing to others.

1 IBLA 227

IBLA 70-56 :

NM-A 0214711

GEORGE E. CONLEY

: Acquired land non-competitive oil and gas lease application rejected

: Affirmed

DECISION

George E. Conley has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated April 8, 1969, which affirmed a New Mexico land office decision of February 19, 1968. The land office decision rejected Conley's acquired lands oil and gas lease offer NM-A 0214711 as to lands in sections 1, 2, 12, 13, 14, 23, 26 and 27 in T. 19 S., R. 26 E., N. M. P.M., New Mexico, for the reason that the lands were unavailable for leasing, as they were included in six other oil and gas leases. Also, part of the land in lease NM-A 0214711 was included in Conley's offer NM-A 0161403, the subject of another decision of even date herewith which authorized the leasing of available lands totaling 112.493 acres subject to special stipulations requested by the Bureau of Reclamation, the agency exercising jurisdiction over the lands. 1/

Conley directs his appeal only to lands included in leases BLM-A 014479, BLM-A 014478 and BLM-A 013261, originally issued to Vilas P. Sheldon. Appellant's basic contention is that the lands were so ambiguously described in the offers of the three leases as to make it impossible to ascertain whether his offer was in conflict with these three leases. He argues that the following descriptions are inadequate and ambiguous.

Lease BLM-A 013261 - "32.45 acres in the SW 1/4 NE 1/4 of sec. 34."

1/ See IBLA 70-53. Conley has executed the lease forms and special stipulations.

Lease BLM-A 014479 - "Sec. 1 tracts east of west edge of lake 440 acres." "Sec. 12 NE 1/4, about 43 acres in SE 1/4." "Sec. 13 73 acres in NE 1/4, 45 acres in SE 1/4, and 82 acres in SW 1/4."

Lease BLM-A 014478 - "Sec. 27 tracts east of west edge of lake 55 acres in E 1/2 SE 1/4, SE 1/4 NE 1/4." (Township and Range given for all descriptions.)

These three leases were the subject of another decision in which the same argument was made as to other tracts described in the same manner. Duncan Miller, A-30600 (December 1, 1966). In that decision it was held that in the absence of a regulation prescribing requirements governing the description of lands covered by an offer for a mineral lease of acquired lands, a description in such terms (i.e. "Section 34 . . . and East 30 acres in NE 1/4 NE 1/4") was acceptable. It then rejected an offer insofar as it conflicted with BLM-A 013621. The decision further stated that descriptions in such terms in BLM-A 014479 failed to comply with the regulation which had been promulgated in the interim between the filing of BLM-A 013621 and BLM-A 014479, i.e. 43 CFR 200.5 (1949). Consequently, it was held that the earlier ambiguous offer, and the lease which issued pursuant thereto, had no priority over a later-filed lease offer with a proper land description which was pending at the time the lease was issued. It held, absent other considerations, that it would have been necessary to cancel the lease as to the areas in conflict with Miller's offer. ^{2/}

Applying the holdings of Miller, *supra*, to this appeal, we conclude that the description in BLM-A 013261 is adequate and that the descriptions in BLM-A 014778 and 014779 were inadequate when filed.

Therefore, the tract in BLM-A 013261 was included within an outstanding oil and gas lease at the time Conley filed his offer. It is well established that land included in an outstanding lease is not available for leasing, whether the outstanding lease was properly issued or not. Stephen P. Dillon, Martha M. Roderick, 66 I.D. 148 (1959); Joyce A. Cabot, Allen B. Cabot, Walter G. Davis et al., 63 I.D. 122 (1956); Arnold R. Gilbert, 63 I.D. 328 (1956).

^{2/} It withheld cancellation of the lease pending resolution of the question of applicability of the bona fide purchaser provision of the Mineral Leasing Act, as amended. 30 U.S.C. § 184 (h)(2) (1964).

Does the same principle apply to the other two leases? Although Miller, supra, held the description inadequate vis-a-vis Miller, there is an important distinction between Miller's situation and Conley's. Miller filed his offer before a lease was issued on Sheldon's conflicting offers. Here Conley did not file his offer until September 7, 1961, more than six years after the leases had been issued, effective March 1, 1955.

By the time Conley filed, the lands in conflict had been the subject of extensive discussion between Sheldon, the Bureau of Land Management and the Bureau of Reclamation. On November 10, 1953, Conley filed a map on which the tracts were identified with relation to the public land survey and the edge of the lake. 3/ Thereafter, the acreage was computed, leases issued, assignments approved and the leases extended, all before Conley filed. In other words the lands in conflict were adequately identified long before any right could have accrued to him. 4/

The lease was then at most one which was technically defective. The Department has held many times that so long as an outstanding lease remains in existence, whether or not it is valid, the land it covers is not available for leasing and will not become available until the termination of the outstanding lease is noted on the tract book and any offer filed prior to such action must be rejected. 5/ Charles E. Howell, Sr., A-29130 (November 20, 1962).

Since Conley's offer must be rejected, there is, in the absence of any intervening rights, no objection to the amendment of the defective descriptions. Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166, 171-172 (1956); Stephen P. Dillon, Martha M. Roderick, supra.

3/ The several descriptions were amended in separate decisions issued on March 5, and May 13, 1964.

4/ The record shows that Conley examined the file in BLM-A 014478 on April 8, 1958, and that on November 3, 1962, he withdrew his protest filed under NM-A 0214711 against the three leases.

5/ BLM-A 014479 expired on February 28, 1965. It has not been made available for leasing pending the resolution of this conflict.

In the circumstances, we conclude that the rule barring the filing of oil and gas lease offers for lands covered by an outstanding lease is applicable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Edward W. Stuebing, Member

I concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

