

SARAH ANN CHRISTIE

IBLA 70-204

Decided July 6, 1971

Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Lands Subject to--Tidelands

Tidelands are not subject to leasing for oil and gas under the Mineral Leasing Act.

Oil and Gas Leases: Lands Subject to

An oil and gas lease offer is properly rejected for lands in an existing lease when the offer was filed, regardless of whether the lease is void, voidable, or valid.

IBLA 70-204 :

AA-5689

SARAH ANN CHRISTIE

: Oil and gas lease offer  
: rejected

: Affirmed

#### DECISION

Sarah Ann Christie has appealed from a decision dated June 9, 1970, by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, which affirmed an Anchorage land office decision of September 12, 1969, rejecting her oil and gas lease offer AA-5689.

The appellant's offer was filed July 16, 1969. It described the lands applied for by protracted survey as all of sections 22, 23, 26 and 27, T. 19 S., R. 5 E., C.R.M., Alaska. The land office rejected the offer as to all of protracted sections 23 and 26, and all of the uplands in sections 22 and 27, as being within oil and gas lease A-062058. That lease issued effective September 1, 1965. The land office rejected the offer as to the balance of sections 22 and 27 for the reason the records show that such lands are below the line of mean high tide off Katalla Bay. It stated that tidelands and submerged lands off the coast of Alaska are not subject to leasing under the Mineral Leasing Act. That statement is correct. Pexco, Inc., et al., 66 I.D. 152 (1959).

The decision of the Office of Appeals and Hearings rejected contentions by appellant that conflicting lease A-062058 was improperly issued. The decision concluded that the land office had properly

issued that lease, reflecting the actual acreage of available lands as 2,465 acres rather than 2,355 acres, as shown on the offer. 1/ The decision stated that although the rental payment submitted with lease offer A-062058 was deficient, the deficiency was less than 10% of the total area. Therefore, by regulation 43 CFR 3123.4, 2/ the defect in the offer by the rental deficiency was curable and was cured when the lessee paid the deficiency within the time required.

Appellant contends that the Bureau misconstrued what the Anchorage land office did. Appellant contends that the land office actually corrected the description in the underlying lease A-062058 by adding non-tidal water bottoms to the lease offer, and that this was not an allowable action under regulation 43 CFR 3123.4. 3/

There was no adjustment by the land office of the description in offer A-062058, but only of the acreage covered by that description. The land office apparently computed the acreage available for leasing as shown on the protracted survey plats. However, in deciding whether appellant's offer was properly rejected, we need not determine the validity of lease A-062058.

Even assuming arguendo that the lease may have been issued improperly, this would not help appellant for it has been a long-stated rule of this Department that if a lease is noted on the Department's records, regardless of whether it is void, voidable, or valid, it segregates the land, and offers for land noted on the records as being within the lease must be rejected. R. B. Whitaker, Mrs. Jacqueline Anderson, 63 I.D. 124 (1956); Joyce A. Cabot et al., 63 I.D. 122 (1956). Regulation 43 CFR Subpart 3112 (1971 ed.), formerly 43 CFR 3123.9, now prescribes the means whereby lands in canceled leases are made available for leasing. The procedure in that regulation would preclude issuance of a lease pursuant to appellant's offer even if we assumed that the conflicting lease would have to be canceled.

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1/ In addition to describing sections 22, 23, 26 and 27, T. 19 S., R. 5 E., C.R.M., Alaska, which conflict with appellant's offer, lease offer A-062058 also described sections 34 and 35 of the same township and range.

2/ Now recodified as 43 CFR 3111.1-1(e) (1971 ed.).

3/ See note 2, supra.

Since appellant's contentions are all directed to the lands in conflict with those in the existing lease, we see no basis for disturbing the conclusion in the Bureau's decision that the water areas which are not in conflict with that lease are tidelands not available for lease under the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1964). Pexco, Inc., supra; L. E. Linck, A-28251 (May 23, 1960); Duncan Miller, A-28499 (November 22, 1960).

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 is affirmed.

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Joan B. Thompson, Member

We concur:

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Francis Mayhue, Member

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Martin Ritvo, Member

