

JAMES M. CHUDNOW
LAURENT A. GIESBERT

IBLA 82-45

Decided February 24, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management rejecting oil and gas lease offer M-48383.

Affirmed.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

APPEARANCES: James M. Chudnow, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated October 2, 1981, by the Montana State Office, Bureau of Land Management (BLM), rejecting the above oil and gas lease offer because the first year's rental was more than 10 percent deficient. The decision stated as follows:

As part of their offer, the applicants described T. 1 S., R. 11 W., P.M.M., Sec. 25: All available (Incl. Lots 14 thru 33). It has been held that a land description coupled

with the term "all available" constitutes in legal effect a description of all of the land in a given section. In this instance all of Section 25 is 640 acres. Actual acreage of the entire offer is 1,001.52 acres, requiring an advance rental of \$1,002.00. The applicants submitted \$842.00, which is not a legally sufficient rental within the limits of a curable deficiency.

In the statement of reasons appellants cite 43 CFR 3101.1-4(d)(2), which states that in the case of an irregular section within a protracted survey, the offer must describe the entire section and contain a statement that it is intended to include all of the land in the described section which is available for lease. Appellants also cite some dictionary definitions of the words "inclusive" and "available." They assert in essence that, considering the amount of land in sec. 25 which was not available, they submitted sufficient rental.

[1] The land described in sec. 25, however, is surveyed public domain as distinguished from unsurveyed land within a protracted survey. For land of this nature, the regulation at 43 CFR 3101.1-4(a) specifies the manner in which the land must be described in the lease offer as follows: "§ 3101.1-4 Description of lands in offer. (a) Surveyed lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range." (Emphasis in original.) Under this regulation a description of surveyed public domain which identifies "all available" land within a section is not a proper description of the land by legal subdivision, section, township, and range where it is intended to describe less than the entire section. It is clear from the plat in the file that lots 14 through 33 are not the only available lands within sec. 25. In this context the description of land in the lease offer may only be sustained if it is construed as embracing all land in the section subject to the condition of availability. Thus, the Board has held in Milan S. Papulak, 30 IBLA 77, 80-81 (1977):

The identification of a section of land coupled with the expression "all available" constitutes, by the ordinary meaning of the words, an offer to lease all of the land in the given section if that is available or all land which is open to leasing if some of the land is not subject to leasing. The legal effect of this description is the same as a description of all the land in a given section (for example, "Sec. 25: All") without addition of the modifying term "available." The terms of the noncompetitive oil and gas lease itself (Form 3120-3) provide that the applicant "offers to lease all or any of the lands described * * * that are available for lease * * *." Thus, in legal effect, both descriptions constitute an offer to lease all of the land available for leasing within a given section. This Department has in the past been unable to conclude that

the use of the term "available" in an otherwise proper description of all the land in a given section is a ground for holding the description to be legally insufficient where advance rental is submitted for the entire section. William B. Collister, * * * [71 I.D.] at 126.

[2] An offer for a noncompetitive oil and gas lease is properly rejected where the offeror fails to tender the full first year's rental with his offer and the amount of rental tendered is deficient by more than 10 percent of the proper amount due. Thomas F. Keating, 53 IBLA 349 (1981). The decision correctly stated that the offer was deficient by more than 10 percent. It did not meet the requirements of 43 CFR 3103.3-1.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

