

JAMES M. CHUDNOW  
JOHN L. MESSINGER

IBLA 82-743

Decided November 8, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 51960(SD) Acq. and M 51963(ND) Acq.

Affirmed.

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

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "BSFW and FWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

James M. Chudnow and John L. Messinger have appealed from the April 16, 1982, decisions of the Montana State Office, Bureau of Land Management (BLM), rejecting their noncompetitive acquired lands lease offers because the first

year's rental for each offer was more than 10 percent deficient. 1/ The decision rejecting offer M 51960(SD) Acq. indicated that the total acreage of the offer was 876.555 acres, requiring an advance rental payment of \$ 877. Appellants submitted an advance payment of \$ 622, \$ 255 deficient. The decision rejecting offer M 51963(ND) Acq. indicated that the total acreage of the offer was 760 acres, requiring an advance rental payment of \$ 760. Appellants submitted a payment of \$ 650, \$ 110 deficient.

On April 26, 1982, appellants filed a timely notice of appeal. Appellants' lease offers specified, "BSF&W & FWS LANDS" and "BSFW LANDS" in parts of two townships. 2/ Appellants contend that since 43 CFR 3101.1-4 states that an offer may include less than an entire protracted section where only a portion of the section is available for lease, their application requesting only BSFW and FWS (Bureau of Sport Fisheries and Wildlife and Fish and Wildlife Service) "acquired lands within specified areas seems proper. Appellants further contend that it is "inappropriate for the BLM to base their acreage total upon lands unavailable for leasing which were in fact exempted from the filings," where they specified only BSFW & FWS acquired lands.

[1] 43 CFR 3101.2-3(a), which governs the description of acquired lands in a noncompetitive lease, states in part:

1/ The decision on offer M 51960(SD) Acq. rejected the offer as to the W 1/2 NW 1/4 sec. 14 and N 1/2 NE 1/4 sec. 15, T. 128 N., R. 69 W., 5th principal meridian, because the minerals in these lands are public domain minerals and not available for leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), and because the lands have been withdrawn for a waterfowl production area, citing T. R. Young, 20 IBLA 333 (1975) and 43 CFR 3101.3-3. Appellants did not address this portion of the decision in their statement of reasons for appeal.

2/ Lease offer M 51960(SD) Acq. requested the following lands in McPherson County, South Dakota:

"T. 128 N., R. 69 W. 5th P. Meridian  
BSF&W & FWS Land in the following  
Sec. 5: Lots 1 thru 4  
Sec. 7: Lot 4, SE 1/4 SW 1/4, NE 1/4 NW 1/4, N 1/2 NE 1/4  
Sec. 11: S 1/2 NE 1/4  
Sec. 14: W 1/2 NW 1/4  
Sec. 15: N 1/2 NE 1/4  
Sec. 18: N 1/2 of Lot 1, NE NW 1/4 [sic], N 1/2 NE 1/4  
Sec. 23: S 1/2 SW 1/4  
Sec. 24: NE 1/4 NE 1/4  
Sec. 26: NW 1/4 NE 1/4 NW 1/4  
Sec. 27: N 1/2 NE 1/4 NE 1/4."

Lease offer M 51963(ND) Acq. requested the following lands in Stutsman County, North Dakota:

"T. 141 N., R. 67 W. 5th P. Meridian  
BSFW Lands in the following:  
Sec. 26: N 1/2 NE 1/4, SE 1/4 NE 1/4, SE 1/4, & W 1/2  
Sec. 27: E 1/2 NE 1/4  
Sec. 35: N 1/2 NW 1/4."

(a) Surveyed lands. If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

Under this regulation appellants' description of the irregular parcels of land requested should have been stated in metes and bounds. The offer requesting BSF&W and FWS lands within certain legal subdivisions does not constitute a proper description of the irregular parcels encompassed. <sup>3/</sup> Because the qualifying phrases in appellants' offers failed to describe properly the land included in their offers, BLM construed the offer as being for all of the legal subdivisions to which appellants' qualifying language was attached and assessed appellants the full acreage properly described in their offers as required by 43 CFR 3103.3-1. See James M. Chudnow, 67 IBLA 76 (1982).

Appellants' advance payment of only \$ 622 for lease offer M 51960(SD) Acq. was deficient in excess of 29 percent and the payment of \$ 650 for offer M 51963(ND) Acq. was deficient by 14 percent. Where an offeror fails to tender sufficient rental to cover all of the land within his offer and the rental tendered is deficient by more than 10 percent, the offer is properly rejected. James M. Chudnow, *supra*; 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.

Will A. Irwin  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

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<sup>3/</sup> Appellants' reliance on 43 CFR 3101.1-4(d)(2), relating to descriptions in lease offers of lands shown on an approved protracted survey, is misplaced in two respects. First, the regulation applies to offers for public domain lands and, except for the portion involving public domain minerals, appellants' offers involve acquired lands. Second, the townships in question have been actually surveyed, not protracted.

