

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-989

Decided December 13, 1982

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting offers to lease for oil and gas. M 52959, M 52960, and M 53636.

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 surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, 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 the patented 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 LEWIS

James M. Chudnow and John L. Messinger appeal from three decisions of the Montana State Office, Bureau of Land Management (BLM), dated May 6 and 25, 1982, rejecting over-the-counter offers to lease for oil and gas M 52959, M 52960, and M 53636. Each offer was rejected because the first year's rental submitted with the offer was deficient by more than 10 percent, contrary to 43 CFR 3103.3-1.

In their statements of reasons on appeal, appellants charge error in BLM's method of calculating rental due and contend that the appropriate rent was, in fact, submitted based upon the acreage which they intended to lease. Had BLM excluded acreage subject to patents in calculating rent due, it would have found that adequate rent had been submitted, appellants maintain.

In offer M 52959, appellants submitted rent in the amount of \$1,365 for lands which BLM calculated to be 1,687.73 acres in size. Appellants made no attempt on the face of this offer to exclude patented lands from the lengthy land descriptions set forth in this offer. BLM properly rejected appellants' offer because the rent accompanying the offer was deficient by an amount in excess of 10 percent. James M. Chudnow, 62 IBLA 19 (1982).

In offer M 53636, appellants sought to lease lands in T. 6 S., R. 3 W., Principal meridian, inter alia, and set forth their land description in this way:

SEC. 7: LESS PATENTS: LOTS 3 & 5, N 1/2 N 1/2 NE 1/4 SW 1/4;
& NW 1/4 SE 1/4
SEC. 8: ALL INCLUDING PAT. 901206, LESS
OTHER PATENTS

Rent in the amount of \$2,040 was submitted by appellants with their offer. BLM calculated rent due to be \$2,744, leaving a deficiency in excess of 10 percent. Appellants contend that if BLM had excluded the acreage of those patented lands referred to in their offer, it would have found the rent submitted to be adequate.

Similar facts were before this Board in James M. Chudnow, 67 IBLA 76 (1982). There we held that the addition of phrases such as "all available" and "less patents" to a land description did not make the description improper where the offeror submitted full rental for the section or subdivision affected thereby. Accord, Milan S. Papulak, 30 IBLA 77 (1977). Such qualifying phrases fail to describe specifically the land to be excluded from the offer, we held, and hence offers containing such phrases are properly construed as applications for the entire section or subdivision to which the qualifying phrase has been appended. In the present case, appellants failed to submit rent in an amount sufficient to cover the acreage of the entire section or subdivision affected by patent. Accordingly, BLM properly rejected offer M 53636.

Following issuance of James M. Chudnow, 67 IBLA 76 (1982), and during the pendency of the instant appeal, appellants filed with BLM a letter dated September 25, 1982, identifying by patent number those patented lands appellants wish to exclude from offers M 52959 and M 53636. In Chudnow, supra, this Board also stated that if an offeror does not wish to submit rental for an entire section or subdivision containing patented lands, he may specifically identify the land to be excluded by its legal description or patent number. Accord, Leon Jeffcoat, 66 IBLA 80 (1982). In Jeffcoat, a description reading "Sec. 5: All except patent 51163" was found to be sufficiently precise and unambiguous to satisfy 43 CFR 3101.1-4(a).

Assuming, arguendo, that the moneys tendered to BLM for offers M 52959 and M 53636 are adequate to cover the acreage sought by appellants, as

reduced by the acreage in specifically described patents, appellants must nevertheless prepare a new offer on the appropriate form for BLM's consideration. No priority has been obtained by appellants as a result of their attempted cure by letter of September 25, 1982. Regulation 43 CFR 3111.1-1 requires that five copies of the official offer form, or valid reproduction thereof, shall be filed in the proper office of BLM. Appellants have not met this requirement to date.

Offer M 52960 was accompanied by rent in the amount of \$1,492 for acreage totaling 1,682.59 acres. As in offer M 53636, appellants sought to exclude patented lands from this offer by use of the phrase "less patents." In T. 2 S., R. 4 W., for example, appellant sought the following lands:

SEC. 36: LOTS 1, 5, 6, 7, 8, 9, 11 & 12,
E 1/2 SE 1/4, SW 1/4 SE 1/4,
& NW 1/4 & W 1/2 NE 1/4 LESS PATENTS

Offer M 52960 was properly rejected for insufficient rent, because BLM construed this offer as an application for the entire section or subdivision containing the patented lands. As noted above, if appellants do not wish to submit rental for an entire section or subdivision containing patented lands, they may specifically identify the land to be excluded by its legal subdivision or patent number. Appellants failed to identify specifically such excluded patented lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge