

VESTER SONGER

IBLA 83-21

Decided December 23, 1982

Appeals from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive offers to lease acquired lands for oil and gas, NM-A 45941 (OK) and NM-A 45952 (OK).

Affirmed in part, reversed in part.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:  
Applications: Six-mile Square Rule

An offer to lease acquired lands for oil and gas which cannot be embraced within a 6 mile square or within an area not exceeding six surveyed sections is defective and unless the exception expressed in 43 CFR 3110.1-3(b) applies, should be rejected.

2. Oil and Gas Leases: Applications: Six-mile Square Rule

The area limitation found in 43 CFR 3110.1-3 is stated as an alternative, and the rule may be satisfied by complying with either containment of the lands requested within a square 6 miles in length and width or within an area six surveyed sections in length and width.

3. Oil and Gas Leases: Applications: Six-mile Square Rule

43 CFR 3110.1-3 specifically states that an offer shall be within the designated area limitation and where it is clear that the lands applied for cannot be included within an area conforming to the regulation, the offer must be rejected in its entirety.

APPEARANCES: Vester Songer, Esq., Hugo, Oklahoma, pro se.

OPINION OF ADMINISTRATIVE JUDGE STUEBING

Vester Songer appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 27, 1982, rejecting several noncompetitive offers to lease acquired lands for oil and gas because of the failure to comply with the 6 mile square, or area limitation, rule as set forth in 43 CFR 3110.1-3(b). Appellant appeals the decision as it affects two of the offers rejected, NM-A 45941 (OK) and NM-A 45952 (OK). 1/

NM-A 45941 (OK) and NM-A 45952 (OK) were filed on June 8, 1981, for acquired lands within the Fort Gibson Project, Oklahoma. The offers were respectively submitted upon the approved form for acquired lands, 3110-3 (March 1978), and each referred to attached lists and maps for a description of the lands requested. The lands requested were not described in the offers by the rectangular survey system, but by the acquisition tract number assigned by the acquiring agency. See 43 CFR 3101.2-3(b)(3). Thereafter, BLM rejected these two offers, with four others, because appellant "exceeded the 6 mile area limitation."

In his statement of reasons, appellant argues against the rejection of NM-A 45941 (OK) because the width of the area described in the offer, in fact, does not exceed 6 miles. He protests against the rejection of NM-A 45952 (OK) because several tracts listed in that offer were unavailable for leasing. He contends that those tracts should have been excluded from BLM's application of the area limitation rule.

[1] 43 CFR 3110.1-3(b), the regulation applied by BLM reads:

Acquired lands. An offer may not include more than 10,240 acres. An offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area.

---

1/ NM-A 45952 (OK) was transmitted from BLM with NM-A 45951 (OK). The two files were originally docketed together as IBLA 83-15. However, NM-A 45951 (OK) is an appeal from an Aug. 18, 1982, decision rejecting the offer for noncompliance with 43 CFR 3101.2-3, description of lands in offer. Because NM-A 45952 (OK) was rejected in the same decision and for the same reason as NM-A 45941 (OK), we transfer it from IBLA 83-15 and assign it to docket IBLA 83-21 for administrative convenience.

An offer which cannot be embraced within a 6 mile square or within an area not exceeding six surveyed sections is defective, unless the exemption pertaining to acquired lands applies, and should be rejected. See Robert W. David, 35 IBLA 205 (1978); William B. Murray, 7 IBLA 158 (1972).

[2] The lands requested in NM-A 45941 (OK) extend from tract number 806 in sec. 29, T. 18 N., R. 20 E., Indian meridian, Oklahoma, on the east, across seven sections to tract number 619A in sec. 29, T. 18 N., R. 19 E., Indian meridian on the west. It is obvious that the offer violates the six surveyed sections limitation. See Hugh E. Pipkin, 71 I.D. 89 (1964). However, appellant has furnished a certificate from a licensed surveyor which states that an east-west line between the boundaries of the offer would measure 5.982 miles. The surveyor's result was based on information obtained from (a) a U.S. Army Corps of Engineer's map for the Fort Gibson Project, (b) the exact legal descriptions for tracts 806 and 619A as found in the respective county clerk's records, and (c) the original Government survey.

The regulation is stated as an alternative: within an area 6 miles square or not exceeding six surveyed sections in length or width. The rule cannot be construed to mean that the offer must always be limited to the confines of six sections in length or width. An offer will satisfy the requirements of the regulation where the lands requested are contained in a 6 mile square with sides running north-south and east-west. See Adam G. Macauley, A-26419 (Sept. 3, 1952) (rejection of the argument that the sides of the square need not run due north-south and east-west).

Although the lease offer does not comply with the six surveyed section requirement, appellant has submitted evidence that it does conform to the 6 miles square limitation. The original survey used by appellant's licensed surveyor is the recognized official survey and the dimensions recorded therein show that the distance between the east and west boundaries of NM-A 45941 (OK) is less than 6 miles. Thus, BLM misapplied the regulation with respect to this offer.

[3] The lands requested in NM-A 45952 (OK) extend from the offer's eastern boundary in sec. 4, T. 20 N., R. 20 E., Indian meridian, to the offer's western edge in sec. 33, T. 20 N., R. 19 E., Indian meridian, exceeding six surveyed sections in width. Appellant admits that the offer exceeds 6 miles measured east to west, but notes that several of the eastern most tracts in the offer were unavailable for leasing at the time it was filed. If these tracts are deleted from the offer, as appellant contends they should be, the permissible area limit would not be exceeded.

43 CFR 3110.1-3 specifically states that the offer shall be within the designated area limitation. The determination as to whether lands applied for can be contained within the area limitation is made on the basis of the offer as it is filed. Where it is clear that the lands applied for cannot be included within an area conforming to the regulation, the offer must be rejected in its entirety. Mervin E. Liss, 68 I.D. 86 (1961). Appellant's argument overlooks the fact that the regulation is concerned with offers, not with leases, and requires the rejection of an offer that exceeds the permissible limit.

The decision to not consider all the lands requested would amount to a modification or amendment of appellant's offer as filed. When the offer was filed, it did not comply with the regulations and was therefore defective. It is well established that a noncompetitive oil and gas lease may only be issued to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Where the offer has been filed "over-the-counter," a defect can be remedied prior to the filing of any junior offer and earn priority as of that time. See John L. Messinger, 65 IBLA 20 (1982). The records show that subsequent noncompetitive offers were submitted on all lands requested in NM-A 45952 (OK) before appellant sought to remedy it. Thus, BLM was required to reject the offer where appellant was not the first qualified applicant because his offer did not comply with the regulations.

Both offers involve acquired lands that have been surveyed under the rectangular survey system. The exception to the 6 mile square rule applies only where acquired lands have not been surveyed under that system, and thus it is inapplicable with respect to these offers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision on NM-A 45941 (OK) is reversed and the decision on NM-A 45952 (OK) is affirmed.

---

Edward W. Stuebing  
Administrative Judge

We concur:

---

C. Randall Grant, Jr.  
Administrative Judge

---

Bruce R. Harris  
Administrative Judge