

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-1107

Decided November 8, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 52846.

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. Where the offeror submits 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 the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

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

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James M. Chudnow and John L. Messinger have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 29, 1982, rejecting in part oil and gas lease offer M 52846 to the extent they had applied for land subject to earlier-filed oil and gas lease offers which had subsequently ripened into leases.

The record shows that over-the-counter offers M 52100 and M 52110 were filed July 24, 1981, including some of the same lands appellants had applied for in their over-the-counter offer filed August 26, 1981. Appellants had applied for a lease covering 1,000 acres for various parcels of land in secs. 4, 9, 15, 20, and 32, T. 6 S., R. 3 W., Principal meridian, Madison County, Montana. BLM issued the leases effective June 1, 1982, and July 1, 1982, to the applicants having the priority in time of filing.

Appellants have filed this appeal objecting to BLM accepting the earlier-filed conflicting applications stating that these filings had wording which specifically exempted patented land merely using the words "All Except Patents," and not specifically exempting "all except patents without a mineral reservation." They contend BLM should not have taken it upon itself to add in patented acreage specifically exempted from the filings, *i.e.*, land patented with a mineral reservation to the United States.

[1] 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 the subdivision may not be available for leasing. *See* 43 CFR 3101.1-4(a), (d); William B. Collister, 71 I.D. 124 (1964). The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper where the offeror submits full rental for the section or subdivision. James M. Chudnow, 68 IBLA 228 (1982); James M. Chudnow, 67 IBLA 76 (1982); Milan S. Papulak, 30 IBLA 77 (1977); William B. Collister, *supra*. Because such qualifying phrases fail to describe specifically the land to be excluded from the offer, offers containing such phrases must be construed as applications for the entire section or subdivision to which the qualifying phrases apply. Accordingly, 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 which has not been specifically identified, and rejection of the offer is required where the offer fails to submit sufficient rental within the limits of curable deficiency. In effect, therefore, such an offer is deemed to be for the entire section and necessarily embraces land patented with a mineral reservation.

We have examined the case records of the earlier filed over-the-counter offers and find that these offers generally describe the lands requested by legal subdivision, section, township, and range consistent with the requirements of 43 CFR 3101.1-4(a). The applicants described the lands requested and added the descriptive phrase "all except patents." Absent identification of the patents on the offer, the offer must be construed to encompass all available land in the section. The records reflect that in both situations the applicants submitted sufficient rental to cover all the acreage within the regularly described subdivisions including all patented acreage. ^{1/}

^{1/} Actually, the money tendered with both offers was deficient, but the deficiency in each was less than 10 percent and therefore subject to curative action. *See* 43 CFR 3111.1-1(e).

Such description is acceptable when accompanied by full payment of the first year's rental based on the total acreage of the application. James M. Chudnow, supra. Accordingly, the earlier offers were properly filed and had priority. The leases properly issued and the rejection of appellants' offer was correct.

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.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge

