

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 83-160

Decided November 15, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer M-55647.

Affirmed.

1. Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected where the rental tendered with the lease offer is deficient by more than 10 percent.

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

OPINION BY ADMINISTRATIVE JUDGE GRANT

James M. Chudnow and John L. Messinger have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated November 2, 1982, rejecting their noncompetitive over-the-counter oil and gas lease offer M-55647. The decision stated that appellants' first year rental payment was deficient by more than 10 percent in that the lease offer described 2,559.13 acres of land requiring a payment of \$2,560 while appellants submitted only \$2,300. Thus, a deficiency of \$260, greater than 10 percent of the rental due, was created in violation of 43 CFR 3103.3-1 (1982).

On appeal, appellants contend that an "Amended -- Corrected" offer to lease submitted to BLM on July 12, 1982, corrected a typographical error in their lease offer of June 28, 1982, deleting from the land description the N 1/2 SE 1/4 of sec. 28, T. 11 N., R. 12 E., Principal meridian, Montana, and adding to the land description the NE 1/4 NE 1/4 of the same section. Appellants contend that the filing of this amended offer constituted a withdrawal of the N 1/2 SE 1/4 reducing the acreage described in the lease offer so as to bring the rental payment within the limits of a curable deficiency. 43 CFR 3111.1-1(e) (1982).

The record shows that on June 28, 1982, appellants filed a noncompetitive over-the-counter oil and gas lease offer for certain lands situated in Wheatland County, Montana, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). Appellants' lease offer indicated that it contained 2,300 acres and was accompanied by a rental payment of \$2,300.

On July 12, 1982, appellants submitted to BLM what they termed an "amended-corrected" copy of an offer to lease and lease for oil and gas. The amended lease offer purported to revise the original description by deleting from the offer the N 1/2 SE 1/4 of sec. 28, T. 11 N., R. 12 E., Principal meridian, Montana, and adding the NE 1/4 NE 1/4 of the same section. In response to the "amended" offer, BLM advised appellants by letter of July 21, 1982, that it could not accept an amendment to the original offer which describes additional lands. BLM indicated that if appellants sought to lease new lands, a new offer must be filed, whereas if appellants sought to eliminate lands in the original offer a partial withdrawal must be filed.

The first issue raised by this appeal is whether the filing of the "amended" lease offer purporting to add certain lands to the lease offer and delete certain other lands is properly construed as a withdrawal of the offer as to the lands omitted from the "amended" offer. Assuming such an instrument may be construed as a withdrawal, the question is whether a lease offer which is fatally defective for failure to include the required advance rental payment may be revived by a subsequent partial withdrawal.

[1] Each noncompetitive over-the-counter lease offer filed must be accompanied by full payment of the first year rental based on the total acreage in the lease offer. 43 CFR 3103.3-1 (1982). An offer which is deficient by more than 10 percent of the amount of the rental payable is properly rejected. 43 CFR 3111.1-1 (1982); D. M. Yates, 74 IBLA 18 (1983). We know of nothing in the regulations or prior Departmental precedent which would permit an offeror to resurrect an offer which is defective for failure to pay adequate rental by withdrawing the lease offer as to sufficient land to reduce the rental deficiency to less than 10 percent.

In the only cases found where over-the-counter oil and gas lease offers deficient in rental by more than 10 percent were reinstated, the underpayment was induced by revised regulations and outdated terms on the lease offer form respecting the rental rate per acre. In addition, the balance of the rental was tendered prior to a final Departmental decision rejecting the offers. Thomas F. Keating, 53 IBLA 349 (1981); George S. Swan, 39 IBLA 47 (1979). These cases are properly distinguished from the subject appeal in which appellants simply failed to pay the rental required for the acreage described in the lease offer.

Further, we believe that appellants are simply wrong in characterizing the "amended" offer as a withdrawal of lease offer M-55647 as to those lands omitted from the amended offer. The amended offer added certain land not described in the original offer and deleted certain land included in the original offer. Thus, in reality this constituted a new lease offer. As such it was nugatory since it was filed without either filing fees or advance rental. Appellants were advised by BLM letter of July 21, 1982, that the amended offer could not be accepted as such. They were advised that if they desired to delete certain land from the existing offer, they could file a partial withdrawal. This they failed to do.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

