

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. NM-A 49053 TX.

Affirmed in part; set aside and remanded in part.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Lands Subject to

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

2. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Description

A noncompetitive oil and gas lease offer for acquired lands may properly describe the requested land by acquisition tract number assigned by the acquiring agency, in accordance with 43 CFR 3101.2-3(b)(3), where the land has not been surveyed.

APPEARANCES: Bruce Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Bruce Anderson has appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated February 28, 1983, and April 1, 1983, rejecting his noncompetitive oil and gas lease offer, NM-A 49053 TX. 1/

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1/ The February 1983 decision misinformed appellant that the decision was final for the Department from which no appeal to this Board was permitted. This conclusion was based on advice from the Office of the Solicitor that decisions of the Secretary are not appealable. While it is true that decisions of the Secretary are not appealable, where the basis of a BLM decision is a Secretarial Order this Board has jurisdiction to review the case for the purpose of deciding whether the order was properly applied and implemented. See Texas Oil & Gas Corp., 46 IBLA 50 (1980). Accordingly, appellant was entitled to appeal the February 1983 decision. In connection with the appeal

On August 28, 1981, appellant filed a noncompetitive oil and gas lease offer for 3467.01 acres of acquired land situated in Kleberg County, Texas, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981). The requested land was described as "[a]ll of the Kingsville Naval Air Station." The land was further described by acquisition tract numbers with metes and bounds descriptions, and a map depicting the areas sought was included.

On January 3, 1983, the Texas Oil and Gas Corporation (Texas Oil) filed a protest with BLM, contending that appellant's lease offer must be rejected in its entirety because it covered acquired military land which was subject to a moratorium on noncompetitive oil and gas leasing. Texas Oil relied on the fact that on November 1, 1979, the Secretary of the Interior had imposed a moratorium on the issuance of noncompetitive oil and gas leases for Federal lands acquired for military or naval purposes (44 FR 64085 (Nov. 6, 1979)). The moratorium was lifted by the Department, effective July 20, 1981, except as to those lands "in which applications were filed prior to September 21, 1978" (46 FR 37250 (July 20, 1981)). <sup>2/</sup> Texas Oil noted that it had filed a noncompetitive oil and gas lease offer, NM-A 30733 TX, for 2399.67 acres of acquired military land situated in Kleberg County, Texas, on May 12, 1977, and pointed out that appellant's offer came within the exception set forth in the July 1981 Federal Register notice. <sup>3/</sup>

In its February 1983 decision, BLM rejected appellant's lease offer in part. BLM stated that "pursuant to the regulation set out in the Federal Register on July 20, 1981, the protest is sustained in part only as to those lands in conflict with NM-A 30733 TX filed in May 1977 and the remaining lands are suspended until further action is taken."

On March 10, 1983, Texas Oil filed an additional protest with BLM, contending that appellant's lease offer must be rejected as to the remaining land because the land was not described as in the deed by which the United States acquired title, as required by 43 CFR 3101.2-3(b)(1) (1982). In its April 1983 decision, BLM rejected appellant's lease offer as to the remaining land citing a lack of compliance with 43 CFR 3101.2-3(b) (1982).

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fn. 1 (continued)

of the April 1983 decision, appellant challenges the February 1983 decision on the basis that since Texas Oil's land description was in error, BLM could not ascertain which lands Texas Oil filed on in order to determine which lands in his offer were subject to the moratorium. To that extent, we will consider the appeal of the February 1983 decision.

<sup>2/</sup> On Dec. 21, 1982, the Secretary rescinded the November 1979 moratorium, thereby releasing "those lands in which applications were filed prior to September 21, 1978" (48 FR 8280 (Feb. 28, 1983)). Accordingly, these lands are now subject to leasing pursuant to the February 1983 Federal Register notice.

<sup>3/</sup> The record contains a copy of Texas Oil's lease offer, with an attached notation that the offer was rejected Feb. 22, 1983.

In his statement of reasons for appeal, appellant notes that the February 1983 BLM decision did not indicate which part of his offer was rejected, and that Texas Oil's lease offer NM-A 30733 TX was rejected because of an "improper description" and contends that if BLM could not determine the precise location of Texas Oil's lease offer, then it could not decide what lands in his offer remained subject to the moratorium on noncompetitive oil and gas leasing, in accordance with the July 1981 Federal Register notice. Appellant also argues that the land description by acquisition tract number and in part by metes and bounds was proper.

[1] While the February 1983 BLM decision did not advise appellant which part of his lease offer was rejected, there is no basis to conclude that BLM would have had any trouble in determining the extent of conflict between Texas Oil's lease offer and appellant's lease offer. The land included in Texas Oil's lease offer was described in accordance with a certified copy of the judgment in United States v. Andrews, Civ. No. 210 (S.D. Tex. filed Sept. 23, 1942) and was accompanied by a status plat of the land. Moreover, as noted, infra, the land included in appellant's lease offer could similarly be located on the ground. To the extent of this conflict, BLM properly concluded that the moratorium on noncompetitive oil and gas leasing imposed by Secretarial Order was applicable and that appellant's lease offer should be rejected in part. The February 1983 BLM decision is affirmed.

[2] In his lease offer, appellant described the requested land as follows: "All of the Kingsville Naval Air Station. Further described by attached descriptions and Navy Maps (NAVFAC [Naval Facilities Engineering Command, Charleston, South Carolina] Drawings 5029089 and 5030151)." In an attached document, appellant referred to the various parcels by the designations, e.g., Civil 210 and NOy (R) 46380, given on attached Navy maps, entitled "U.S. Naval Air Station, Kingsville, Texas, Real Estate Summary Map," sheets 1 and 2. Appellant also noted that NAVFAC Drawing 5029089 depicted the "perimeter description" of the land included in that map "by courses and distances."

The regulation cited by Texas Oil, 43 CFR 3101.2-3(b)(1) provides in relevant part that in the case of offers to lease acquired lands:

If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

However, we have held that 43 CFR 3101.2-3(b)(3) provides an alternative for the description of unsurveyed lands, i.e., an offeror may describe the land by means of "an acquisition tract number \* \* \* assigned by the acquiring agency." In Walter R. Wilson, Jr., 55 IBLA 96, 97 (1981), we set aside a BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands where the offeror had described the requested land "by reference to the tract numbers assigned by COE [U.S. Army Corps of Engineers]." Accordingly, we conclude that the land description in appellant's lease offer was

proper. 4/ See also Ron W. Howard, 75 IBLA 133 (1983). We note that appellant also complied with the requirement for submitting a map, set forth in 43 CFR 3101.2-3(b)(2). The April 1983 BLM decision is set aside and the case is remanded for further adjudication of appellant's lease offer as to that land which was opened to noncompetitive oil and gas leasing after the July 1981 Federal Register notice. 5/

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 1983 decision is affirmed and the April 1983 decision is set aside and the case is remanded to BLM for further action consistent herewith.

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Gail M. Frazier  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge  
Alternate Member

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Bruce R. Harris  
Administrative Judge

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4/ In rejecting appellant's lease offer, BLM relied on Chevron, U.S.A., Inc., 67 IBLA 266 (1982). The Chevron case, however, is inapposite. The lease offer in that case involved only a portion of an unsurveyed tract of acquired land, which was specifically required by 43 CFR 3101.2-3(b)(1) to be described by courses and distances.

5/ The record indicates that appellant's lease offer was included in a simultaneous oil and gas lease drawing held Sept. 1, 1981, pursuant to the July 1981 Federal Register notice. Thus, as to those lands in appellant's offer that were not subject to the moratorium at the time his offer was filed, his priority was established by the 1981 drawing.

