

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 83-159

Decided February 2, 1984

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. M-55649.

Affirmed.

1. Oil and Gas Leases: Applications: Amendments -- Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Applications: Six-mile Square Rule -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Rentals

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

2. Oil and Gas Leases: Applications: Amendments

Prior to its rejection, a deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information to BLM in order to obtain priority as of the date of filing that data, however, a proposed amendment changing the land description submitted after rejection of the lease offer constitutes a new offer requiring the filing of a new lease offer.

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

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James M. Chudnow and John L. Messinger have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated October 26, 1982, rejecting their noncompetitive oil and gas leases offer, M-55649.

On June 28, 1982, appellants filed a noncompetitive oil and gas lease offer for "1,082" acres of land situated in Granite and Judith Basin Counties, Montana, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). In its October 1982 decision, BLM rejected appellants' lease offer because the oil and gas rights in a portion of the land are not federally owned, 1/ the land was not within a 6-mile square area in accordance with 43 CFR 3110.1-3(a), and the first year's advance rental payment which accompanied the offer was deficient by more than 10 percent. Appellants had submitted a rental payment in the amount of \$1,082 which, when the actual total acreage (1,228.83 acres) was computed at an annual rental of \$1 per acre or fraction thereof, resulted in a deficiency of \$147 or approximately 12 percent.

In their statement of reasons for appeal, filed November 15, 1982, appellants advise that their oil and gas lease offer contained a "typographical error" in that it referred to T. 11 N., R. 13 W., rather than T. 11 N., R. 13 E., and that they notified BLM of this error "some months ago." Appellants maintain that when the lease offer is corrected it includes land within a 6-mile square area and that the first year's advance rental payment initially submitted was not deficient by more than 10 percent because the offer as amended embraces 1,188.83 acres. Appellants nevertheless submitted to BLM a check in the amount of \$147 to cover the deficiency.

[1] There is nothing in the case file indicating that appellants filed a request with BLM to amend its offer prior to issuance of the decision rejecting appellants' lease offers. The record contains a copy of the oil and gas plat for T. 11 N., R. 13 W., Principal meridian, Granite County, Montana, which indicates that the land in that township which was included in appellants' lease offer had been patented without a mineral reservation to the United States. Such land is not subject to oil and gas leasing and appellants' lease offer must be rejected to the extent it includes such land. Golden Eagle Petroleum, 67 IBLA 112 (1982), and cases cited therein. BLM must also reject a noncompetitive oil and gas lease offer where "the lands in the offer" are not "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," as required by 43 CFR 3110.1-3(a). Vester Songer, 69 IBLA 296 (1982), and cases cited therein. Appellants' lease offer plainly did not come within either alternative of the regulation. Finally, BLM must reject a noncompetitive oil and gas lease offer where the offeror fails to tender the full first year's advance rental with his offer, as required by 43 CFR 3103.3-1, and the amount of rental tendered is deficient by more than 10 percent. Gigantosaurus Resources, Inc., 70 IBLA 52 (1983). Appellants'

1/ This portion of the land is described as 560 acres of land situated in the N 1/2 N 1/2, S 1/2 NE 1/4 and S 1/2 sec. 29, T. 11 N., R. 13 W., Principal meridian, Granite County, Montana. The remainder of the land is described as 668.83 acres of land situated in lots 2-7 and the E 1/2 NW 1/4, NE 1/4 SW 1/4, N 1/2 SE 1/4 and NE 1/4 sec. 31, T. 12 N., R. 14 E., Principal meridian, Judith Basin County, Montana.

remittance was deficient by more than 10 percent. Accordingly, it was appropriate for BLM to reject appellants' lease offer.

[2] Appellants state that they notified BLM of the "error" in their lease offer but that BLM failed to correct it by amending the offer form. BLM may amend the offer form by changing the land description upon request of the offeror. John L. Messinger, 65 IBLA 20 (1982); C. C. Hughes, 33 IBLA 237 (1977).

It is well established that where an over-the-counter oil and gas lease offer is amended to remedy a "curable" defect the offer will earn priority only as of the date the defect is remedied. 2/ Id. There is no evidence that appellants supplied the corrective information to BLM at any time prior to rejection of their lease offer. Such information has been submitted on appeal. We do not regard the information submitted by appellants as remedying a defect such that the offer would earn priority as of the date their error was corrected, as the change proposed by appellants constitutes a new lease offer.

BLM rejected appellants' lease offer because of specific defects. The amendment to the offer proposed by appellants does not make it acceptable under the regulations; they present a new offer for consideration. In changing the description from R. 13 W. to R. 13 E., appellants substitute different land some 216 miles away from that described in their original offer. BLM had previously processed the offer for the land appellants clearly indicated they wanted to lease. That land was unavailable, hence rejection of the offer was appropriate. Appellants do not challenge the status of the land described in their offer, they seek to reinstate the offer by substituting a new offer on appeal. Such a practice has never been allowed by the Board. In the past, the Board has permitted offerors to cure defects in their offers in order to gain priority as of the time the filing was acceptable under the regulations. See Gian R. Cassarino, supra. However, what appellants propose does not

2/ Departmental regulation 43 CFR 3111.1-1(e) provides for certain "[c]urable defects" such that a lease offer "containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met," and have priority as of the original date the offer was filed. These defects are to be distinguished from those where the offeror will earn priority only as of the date the defect was remedied. We note, that the practice of allowing offerors to cure defects on appeal to earn priority was recently examined by the Board in Gian R. Cassarino, 78 IBLA 242, 91 I.D. ___ (1984). Therein we held:

"Henceforth, the Board will no longer permit defective regular, 'over the counter' noncompetitive oil and gas lease offers to be resuscitated with new priority by the submission of 'curative' material after those offers have been properly rejected by BLM. Such defective offers may still be cured before their rejection by BLM, with priority as of the date and time of their perfection. Prior Departmental decisions holding to the contrary will no longer be followed." 78 IBLA at 247, 91 I.D. at ___ (emphasis in original).

address the defects in the offer BLM processed, rather, it requires BLM to process a new offer. In order to have BLM consider their offer for land in T. 11 N., R. 13 E., appellants must file a new lease offer.

Accordingly, 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.

Gail M. Frazier
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Edward W. Stuebing
Administrative Judge

