

BRUCE ANDERSON

IBLA 84-427

Decided March 6, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer for acquired lands, NM-A 47649.

Affirmed in part; reversed and remanded in part.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:
Description of Land

A noncompetitive oil and gas lease offer for acquired land not within the area of the public land surveys may properly describe the land in the offer by metes and bounds, giving the course and distance between successive angle points on the boundary of the tract.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:
Description of Land

An oil and gas lease offer is considered to be an offer to lease any and all lands described therein. The fact that part of a tract of land described in an oil and gas lease offer is unavailable for leasing does not ordinarily require rejection of the entire lease offer.

APPEARANCES: Bruce Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bruce Anderson appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 9, 1984, rejecting his acquired lands oil and gas lease offer, NM-A 47649, in its entirety for an improper land description. BLM held that a portion of the land described in the offer is situated within the city limits of Corpus Christi, Texas, and is unavailable for leasing. The decision noted the requirement of the regulation at 43 CFR 3101.2-3(b)(1) (1982) 1/ that an applied-for tract not located within the area of the public land surveys be described by courses and distances between successive angle points on the boundary of the tract. BLM then rejected the offer for failure to describe the "excluded" area (apparently referring to the land within the city limits) within the tract applied for by metes and bounds, citing Chevron, U.S.A., Inc., 67 IBLA 266 (1982), for support.

1/ This regulation has been recodified and now appears at 43 CFR 3111.2-2(b). 48 FR 33677 (July 22, 1983).

In his statement of reasons for appeal, Anderson argues that he properly described the desired tract of acquired land by courses and distances, as required by the regulation. Anderson avers that BLM improperly failed to recognize that his offer was expressly made for all available land within the described tract. Appellant contends that there is no requirement that an offeror identify lands which may be unavailable by metes and bounds if the application is filed for the entire tract. Appellant contends that BLM has misconstrued the precedent of Chevron, U.S.A., Inc., *supra*.

[1] The responsibility of furnishing a proper and adequate description of lands in an over-the-counter acquired lands oil and gas lease offer is upon the offeror. Husky Oil Co., 74 IBLA 264 (1983); Leon Jeffcoat, 66 IBLA 80 (1982). At the time of Anderson's offer, the adequacy of an acquired lands description was controlled by Departmental regulation found at 43 CFR 3101.2-3 (1982). The purpose of the Departmental regulations for descriptions in offers is to require the offeror to give a description which is at least sufficient on its face to delimit the lands in the offer. *See* James M. Chudnow, 70 IBLA 71 (1983); Milan S. Papulak, 63 IBLA 16 (1982). This appeal involves lands located in Texas where the public land survey system is inapplicable. *See* United States Department of the Interior, Bureau of Land Management, Manual of Surveying Instructions, 1-23 (1973 ed.). Acquired lands not surveyed under the public land survey system must be described (1) as in the conveying deed or document, (2) by courses and distances tied into the description in the deed or conveyance document, or (3) by the acquisition tract number, depending on the circumstances. The offer must also be accompanied by a map clearly marked showing the location of the lands requested. 43 CFR 3101.2-3 (1982); *see* 43 CFR 3111.2-2(b), (d).

The lands described in Anderson's offer were acquired by the United States for the Department of the Navy through condemnation proceedings on September 16, 1940 for use as an air field. The lands in the acquired tract have been designated Cabaniss Field. In his lease offer submitted August 18, 1981, Anderson requested "[a]ll of ALF Cabaniss Field, see attached description." His attachment to the offer included a description by courses and distances of the perimeter of the Cabaniss Field tract. Anderson supplied copies of the Department of the Navy's Real Estate Summary Map Drawing No. 5032256 which depicts the property line for Cabaniss Field in courses and distances. This boundary was clearly accentuated on the map to depict the extent of the offer.

[2] The terms of appellant's noncompetitive oil and gas lease offer for acquired lands (form 3110-3) provide that the applicant "offers to lease all or any of the lands described * * * that are available for lease." (Emphasis added.) After an offeror has described lands applied for, it is incumbent on BLM to determine the exact land that can be leased. William B. Collister, 71 I.D. 124, 126 (1964). Therefore, Anderson's offer is properly construed to include all available land in the described tract.

On March 12, 1969, the City Council of Corpus Christi, Texas, approved an ordinance to annex several areas into the city limits. Included as a part of the annexation was a 70.46-acre parcel out of lots 1 and 2, sec. 13, and lot 4, sec. 8, Bohemian Colony Land Subdivision embracing a portion of land within the Cabaniss Field tract described by Anderson.

Lands within an incorporated city may not be leased under the Mineral Leasing Act for Acquired Lands. 30 U.S.C. § 352 (1982); 43 CFR 3100.0-3(b)(2)(ii). Therefore, appellant's lease offer is properly rejected as to the those lands within the corporate city limits. However, we find no basis for rejecting the entire offer for failure of appellant to provide a metes and bounds description of that portion of the tract which was unavailable because it had been annexed.

Contrary to the decision of BLM, we find that, pursuant to longstanding Departmental policy, after unavailable lands are rejected from the offer, the balance is properly leased. This policy is summarized as follows in William B. Collister, *supra*:

The Department has never recognized the rejection of a lease offer merely because it described land that was not available for leasing. On the contrary, if an offer describes an entire section of land and only one quarter of that section is available for leasing, a lease is issued for that quarter and the offer is rejected as to the balance of the section.

71 I.D. at 125. This is consistent with the intent of the lease offeror to lease any and all of the lands described which are available for lease. See Milan S. Papulak, 30 IBLA 77 (1977).

The Board did not alter this principle in deciding Chevron, U.S.A., Inc., *supra*. In that case, the offeror sought to lease only part of an acquired lands tract. The offeror in that case described a tract by metes and bounds, but expressly excluded from the application a portion of the tract adjoining the boundary which was not described by metes and bounds. Thus, the Board affirmed rejection of the offer in Chevron on the ground that the tract applied for in the lease offer had not been delineated by courses and distances as required by the regulation at 43 CFR 3101.2-3. See Sam P. Jones, 45 IBLA 208 (1980). Thus, Chevron is clearly distinguishable from the present case.

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 in part and reversed in part and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

