

BURK PROPERTIES

IBLA 85-339

Decided July 28, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer NM-A 60618 (TX).

Affirmed.

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

Under 43 CFR 3111.2-2, a noncompetitive over-the-counter offer for acquired lands which includes a request for less than an entire tract of acquired land is, inter alia, required to describe the land by course and distance between the successive angle points of the boundary of the tract sought. Where such a description is not provided, the offer affords no priority and is properly rejected by BLM.

2. Oil and Gas Leases: Noncompetitive Leases

A defect in a noncompetitive oil and gas lease offer may, in the case of over-the-counter offers to lease, be curable. If the defect in the offer is cured, the offer obtains priority on the date it is correctly completed. However, no curative submissions will be received by the Board of Land Appeals to reinstate lease offers which have correctly been rejected by BLM because of the deficiencies.

APPEARANCES: Joan Burk for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Burk Properties has appealed from a decision dated January 4, 1985, of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offer NM-A 60618 (TX).

On November 15, 1984, appellant filed a noncompetitive oil and gas lease offer for 55 acres situated in San Augustine County, Texas, pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1982). Appellant described the land as Government Tract 632a, "Less and Except 53 acres out of which tract was leased" under NMA-52418, and enclosed a map of the entire tract, consisting of 1,084 acres.

BLM's decision rejected the offer for failure to comply with 43 CFR 3111.2-2(b). That regulation requires a description of lands by courses and distances where the lands sought are less than the entire tract acquired by the United States, and where such lands have not been surveyed under the rectangular system of public land surveys.

On January 28, 1985, appellant filed a notice of appeal indicating its intention to obtain the required land description. With its appeal to this Board, appellant has submitted a description by courses and distances and a map of the lands sought. The appeal letter indicates that copies of these documents were also sent to the BLM State Office.

[1] Under 43 CFR 3111.2-2(b), a noncompetitive over-the-counter offer for acquired lands which includes a request for less than an entire tract of acquired land is required to describe the land by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. BLM correctly rejects an offer which does not provide such a description. Moreover, the map which was also originally submitted was inadequate as it failed to delineate the portion of the tract sought for lease as required by 43 CFR 3111.2-2(d).

[2] In Gain R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984), the Board noted that it had long followed the practice of permitting an offeror to "cure" a deficiency in an offer so that the offer could earn priority from the date the filing is perfected in conformity with Departmental regulations. In Cassarino, we departed from this practice, observing, inter alia, that "allowing such defective offers to be 'cured' and restored to efficacy by the submission of new material after BLM has adjudicated and rightly rejected them is improper, contrary to efficient administration, and contrary to the public interest." (Emphasis added.) The reasons for this finding are concisely explained in the Cassarino opinion and need not be repeated herein. The result in Cassarino governs the disposition of the instant appeal. Appellant's defective over-the-counter offer cannot be cured or resuscitated with new priority by the submission of new material after the offer has been properly rejected by BLM. Correction of deficiencies and perfection of the offer can occur only before rejection by BLM, with priority as of the date and time of perfection.

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.

James L. Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge.

R. W. Mullen
Administrative Judge

