

THOMAS J. CARMODY  
ANNA S. CARMODY

IBLA 85-708

Decided November 4, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer AA 67604.

Affirmed.

1. Oil and Gas Leases: Applications: Six-mile Square Rule

When a description of lands sought in an offer to lease public lands for oil and gas cannot be embraced within a 6 mile square or within an area not exceeding six surveyed sections the offer is defective and must be rejected in its entirety, pursuant to 43 CFR 3110.1-3(b). 43 CFR 3110.1-3(b) specifically states that an offer shall describe lands within the designated area limitation.

2. Oil and Gas Leases: Noncompetitive Leases

A defect in an over-the-counter noncompetitive oil and gas lease offer may be cured prior to rejection. If the defect in the offer is cured, the offer obtains priority on the date it is correctly completed. However, after BLM has rejected an offer because of deficiencies, no curative submissions will be accepted.

APPEARANCES: Thomas J. Carmody and Anna S. Carmody, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thomas J. and Anna S. Carmody have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 22, 1985, rejecting noncompetitive oil and gas lease offer AA 67604. BLM rejected the offer because the lands described in the offer were not entirely within a 6-mile square or an area of six surveyed sections in length or width, as required by 43 CFR 3110.1-3(b).

Appellants filed this over-the-counter noncompetitive lease offer on December 7, 1984, for approximately 1,280 acres described as being in two sections: sec. 24, T. 15 S., R. 8 W. and sec. 35, T. 15 S., R. 9 W., Kateel

River Meridian, Alaska. The described townships are unsurveyed public land subject to protraction diagrams filed June 9, 1960.

In its decision BLM rejected the offer, citing the following regulation as the basis for rejection:

(b) A parcel or an offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer or parcel shall be 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.

43 CFR 3110.1-3(b).

In their statement of reasons for their appeal, appellants state that when filing this offer on their behalf, the Commonwealth Management Corporation typed the wrong Range designation, Range 8, for one of the two sections in the offer. Commonwealth had told appellants it typed the intended Range 9 designation for both sections. <sup>1/</sup> Appellants ask for reconsideration of their offer as an offer to lease sections 24 and 35, T. 15 S., R. 9 W. As an alternative, appellants now offer to delete part of the lands from their offer, or to split their offer into two separate offers.

[1] The two sections listed on appellants' application do not fall within a 6 mile square. 43 CFR 3110.1-3(b) specifically requires that the offer shall contain a description of lands within the designated area limitation. <sup>2/</sup> The determination of whether lands applied for come within the area limitation is made on the basis of the offer as filed. When the lands in an oil and gas lease offer cannot be included within an area measuring 6 miles by 6 miles, the offer must be rejected in its entirety. Hugh Pipkin, 71 I.D. 89 (1964). The regulation is applicable to offers, not leases, and mandates the rejection of an offer if the lands described exceed the permissible limit. The offer, as filed, did not comply with the regulations, and appellant did not qualify for issuance of a lease. A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). BLM correctly rejected the offer because it was defective. James M. Chudnow, 79 IBLA 1 (1984); Richard W. Rowe, 69 IBLA 135 (1982); see Vester Songer, 69 IBLA 296 (1982).

[2] As announced by the Board in Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984), appellants may not cure defective offers after adjudication and rejection by BLM. The Board stated "allowing such defective offers

<sup>1/</sup> Commonwealth also apparently filed an excessive advance until payment.

<sup>2/</sup> The only exception to the 6 mile square rule applies to unsurveyed acquired lands. See Excelsior Exploration Corp., 91 IBLA 76 (1986). The exception does not apply to this case because the lands sought are public, not acquired, lands.

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." 78 IBLA at 245, 91 I.D. at 11. The holding in Cassarino governs the disposition of this appeal. Appellants' defective over-the-counter offer cannot now be cured or resuscitated with new priority by changing the land description after BLM properly rejected the offer.

As previously noted oil and gas lease offerers can correct deficiencies and perfect their offers so long as the correction is made before rejection by BLM, with priority being established as of the date and time of perfection. Burk Properties, 93 IBLA 117 (1986). Because appellants' attempt to make corrections was not submitted prior to rejection, the correct procedure in this case would be to file a new offer, which BLM would consider as of the time of filing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

