

DONALD J. KUNKLE
INGRID M. KUNKLE

IBLA 85-613

Decided November 5, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer AA-67346.

Affirmed.

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

The Board will affirm a BLM decision rejecting a noncompetitive over-the-counter oil and gas lease offer for public domain lands where the lands cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width, as required by 43 CFR 3110.1-3(b).

APPEARANCES: Donald J. Kunkle, pro se, and for Ingrid M. Kunkle.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Donald J. Kunkle and Ingrid M. Kunkle have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated April 12, 1985, rejecting noncompetitive oil and gas lease offer AA-67346.

On August 3, 1984, appellants filed a noncompetitive oil and gas lease offer for 2,560 acres of public domain land situated in secs. 19 and 30, T. 10 S., R. 10 W., sec. 35, T. 10 S., R. 11 W., and sec. 11, T. 9 S., R. 10 W., Kateel River Meridian, Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). In its April 1985 decision, BLM rejected appellants' lease offer because the lands applied for are "not entirely within a six (6) mile square or an area of six (6) surveyed sections in length or width," as required by 43 CFR 3110.1-3(b), citing William B. Murray, 7 IBLA 158 (1972), in support of its decision.

In their statement of reasons for appeal, appellants submit various proposals intended to achieve compliance with the "six mile square" rule, while preserving all or a portion of their original offer. Appellants propose separating the offer into three offers, grouping either secs. 19 and 30 or secs. 30 and 35 with two other new sections or deleting secs. 11 and

35. Appellants submit a check in payment of the filing fees for two new lease offers, in connection with their first proposal, and, alternatively, request a refund of one half of the first year's advance rental payment previously submitted, as would be appropriate if their third proposal were accepted.

[1] The applicable regulation, 43 CFR 3110.1-3(b), provides that for a lease offer for public domain lands: "The lands in an offer * * * 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." 1/ Appellants' lease offer clearly violates the regulation, whether measuring the acceptable area by miles or sections. See Vester Songer, 69 IBLA 296, 298 (1982). In such circumstances, BLM is required to reject a lease offer as violative of the regulation. James M. Chudnow, 79 IBLA 1 (1984); Richard W. Rowe, 69 IBLA 135 (1982); William B. Murray, *supra*.

Appellants seek to amend their existing lease offer by either adding or deleting acreage to achieve compliance with 43 CFR 3110.1-3(b). While a defective over-the-counter lease offer may be amended at the request of the offeror prior to rejection of the offer, with priority as of the time the offer is perfected, once the offer has been properly rejected by BLM, an amendment will not be permitted. James M. Chudnow, *supra* (citing Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984)). Accordingly, appellants' offer to amend their lease offer on appeal in order to achieve compliance with 43 CFR 3110.1-3(b) will be rejected, as BLM has already properly rejected the underlying offer. 2/

Appellants may, of course, submit a new lease offer (or offers) which complies with 43 CFR 3110.1-3(b). Any offer submitted would have priority at the time of filing, assuming the land is still available for oil and gas leasing. 3/ 43 CFR 3111.1-1(b).

1/ Appellants assert they assembled their lease offer based on information provided by BLM employees on the "availability" of parcels for leasing and that they were unaware of the regulatory limitation. While appellants may not have ready access to the cited regulation, a person dealing with the Government is deemed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

2/ Upon return of the case, BLM will process a refund of the first year's rental submitted with appellants' original lease offer and the filing fees submitted on appeal. The original filing fee is "nonrefundable." 43 CFR 3111.1-1(a); Marie W. Suto, 73 IBLA 61 (1983).

3/ The record indicates, however, that the land in sec. 11 is subject to a junior offer, AA-67601, filed Dec. 6, 1984, which would have priority over any new offer filed by appellants.

Therefore, 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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

