

HENRY P. ELLSWORTH

IBLA 86-179

Decided April 28, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM A 60330 (TX).

Affirmed.

1. Oil and Gas Lease: Applications: Descriptions -- Oil and Gas Leases: Acquired Land Leases -- Oil and Gas Leases: Description of Land

BLM is without jurisdiction to alter, modify, or correct an over-the-counter noncompetitive oil and gas lease offer in order to provide an acceptable description or to construe ambiguities in an offer to make it acceptable. A noncompetitive over-the-counter lease offer for acquired lands which correctly describes the lands as described in the Declaration of Taking, but includes a description of the land by course and distance which is incorrect, is properly rejected since the incorrect description renders the face of the offer subject to corrections absent which the lease could not issue.

APPEARANCES: Margaret G. Knodell, Esq., Corpus Christi, Texas, for appellant; Gayle E. Manges, Esq., Office of the Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Henry P. Ellsworth has appealed a decision dated November 4, 1985, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer NM A 60330 (TX) for acquired land in Nueces County, Texas. BLM rejected the offer citing 43 CFR 3111.2-2(b) because appellant's description of land by courses and distances failed to include the course and distance for the final call in the description. BLM also noted that in comparing the direction of the lines in the description with the true meridian shown on the map submitted with the offer, some of the courses and corner designations did not follow proper direction.

The land in issue lies within an area known as OLF Waldron Field and was acquired by the United States in a Declaration of Taking (DT), Civil Action No. 176 (D. Tex., filed Jan. 7, 1942). This document describes the land as S 1/2 sec. 50; N 1/2 sec. 51, Flour Bluff and Encinal Farm and Garden Tracts, Nueces County, Texas.

Appellant's offer contained the above description and also recited a description by courses and distances. Appellant asserts that its failure to include one course and distance was a typographical error, and that the call was not necessary to fulfill the requirement of the regulation, because the entire tract, not just part of it, was requested for lease. Citing Kirby Lumber Corp. v. Cain, 255 F.2d 72 (5th Cir. 1958), appellant contends that in any event its course and distance description is adequate to identify the desired land.

The applicable regulation, 43 CFR 3111.2-2(b), provides:

(b) If the lands have not been surveyed under the rectangular system of public land surveys, they shall be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired lands constitute less than the entire tract acquired by the United States, it shall be described 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.

As appellant correctly points out, because he offered to lease the entire tract, he need not have provided a description by courses and distances. See Bruce Anderson, 85 IBLA 270 (1985). The fact that he did provide an incorrect description, however, rendered the face of his offer subject to correction absent which a lease could not issue. BLM cannot make such corrections. Amoco Production Co., 81 IBLA 323 (1984).

In its January 14, 1986, answer, BLM notes: "There are two succeeding offers for the same land, NM-A 60395 (TX) and NM-A 60397 (TX). BLM has determined that NM-A 60395 (TX) also has a defect in its description. At this point it appears that NM-A 60397 (TX) is the offer with the correct description" (Answer at 2). If there were no intervening offers, the appellant would be allowed a reasonable time to furnish a corrected description, BLM adds.

In response appellant argues that the description in lease offer NM A 60397 (TX) is identical to that contained in his offer, i.e., reference to the court judgment under which the United States obtained title, and identical accompanying map.

The description in the competing lease offer NM A 60397 (TX) reads:

All of OLF WALDRON FIELD as shown on the attached Real Estate Summary Map, prepared by and filed with the Naval Facilities Engineering Command, Charleston, South Carolina, and further

described as 640 acres acquired by Declaration of Taking, Civil Action 176, and so depicted on the said map, NAVFAC Drawing No. 5029093.

Tract - Civil Action 176

Appellant described the land as follows:

Being 640 acres, more or less, being the same 640 acres comprised of the south one-half (S/2) of section fifty and the north one-half (N/2) of section fifty-one, Flour Bluff and Encinal Farm and Garden tracts, Nueces County, Texas, more particularly described in metes and bounds as follows: Beginning at a point being the northwesterly corner of Section 51, which is the same as the southwesterly corner of Section 50, going North 29° 00' East 2640 feet to the northwest corner of the tract, thence South 61° 00' East a distance of 5280 feet to the southeast corner of the tract, and, thence North 61 degrees 00' West a distance of 5280 feet to the southwest corner of the tract, and thence North 29° 00' East a distance of 2640 feet to the point of beginning.

A description by course and distance is required to be provided where the offeror desires less than the entire tract acquired by the United States. 43 CFR 3111.2-2(b), supra. By including a description by course and distance to more particularly describe the land sought which was not compatible with the actual description of the land acquired by the DT, appellant created an ambiguity in his offer.

[1] The description stated in the offer is the principal source used to "delimit" the lands sought. Dorothy L. Davis, 88 IBLA 282 (1985). The necessity of a correct and accurate description in the offer was thoroughly explained in James M. Chudnow, 70 IBLA 71, 74 (1983):

BLM receives a large volume of oil and gas lease applications and does not have the time or money to spend determining the precise proper description of the lands desired. * * * The burden of submitting an offer which accurately describes the lands sought is placed by the regulations appropriately on those seeking to benefit from Federal lands. Milan S. Papulak, [63 IBLA 16 (1982)]; Sam P. Jones, 45 IBLA 208 (1980). This Board has held that where BLM would have to go outside the offer form itself to determine exactly what land the offer embraced, the offer should be rejected as insufficient. See Leon Jeffcoat, 66 IBLA 80 (1982).

In Bob G. Howell, 63 IBLA 156, 158 (1982), this Board held that not only was BLM not required to alter, modify, or correct erroneous descriptions in offers, but it was without authority to do so, or to construe ambiguities therein in such a way as to make them acceptable. Our reasons for this position were stated in this manner:

First, by "qualifying" [a] deficient first-filed offer which otherwise would be unacceptable, BLM is acting to the prejudice of one who subsequently filed a proper offer which is entitled to statutory priority. Second, in attempting to interpret the true intention of the offeror, BLM runs a risk of doing so improperly, resulting in an action contrary to the offeror's intention, as occurred in B. D. Price, [34 IBLA 41 (1978)]. Third, attempts to resolve such errors and ambiguities in some cases and not in others is violative of the salutary objective of consistent, uniform administration, and can lead to charges of favoritism, discrimination, and prejudice. Fourth, such efforts frequently are administratively troublesome, costly, and time-consuming.

These reasons dispose also of appellant's argument based on Kirby Lumber Corp., *supra*, which held that under Texas law where a deed described three known boundaries of a quadrilateral tract, and a known area, no surveying impediment prevented location of the fourth boundary, and such a deed would be deemed to identify the lands intended to be conveyed. First, as is clear from the Chudnow and Howell cases, the impartial and effective adjudication of oil and gas lease offers is paramount, as BLM may issue a noncompetitive lease only to the first qualified applicant. 30 U.S.C. § 226(c) (1982). The interpretation and/or correction of an offer such as appellant's would compromise these policies as well as the interests of any junior offerors whose land descriptions were correct on the face of their offers. Second, we adhere to the Department's long-standing position that a description that fails to close is a defective description which does not entitle the offeror to award of the lease. Amoco, *supra* at 325.

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.

Gail M. Frazier
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

John H. Kelly
Administrative Judge