

Appeal from decisions of the Oregon State Office, Bureau of Land Management, denying requests to withdraw oil and gas lease offers and cancelling in part an oil and gas lease. OR 39696 and OR 39697.

Affirmed.

1. Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Lands Subject To--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

Lands that are already included in a valid, outstanding oil and gas lease are not subject to being leased again, and BLM properly rejects any over-the-counter offer insofar as it covers lands included in the outstanding lease.

2. Oil and Gas Leases: Lands Subject To--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease--Oil and Gas Leases: Patented or Entered Lands

BLM must reject a noncompetitive over-the-counter oil and gas lease offer insofar as the land sought has been patented with no reservation of oil and gas to the United States.

3. Oil and Gas Leases: Description of Land--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

The terms of a noncompetitive over-the-counter oil and gas lease offer for public domain lands (Form 3100-11) provide that the offeror offers to lease "all or any" of the lands described on the offer that are available for lease. Under 43 CFR 3111.1-1(e), BLM is expressly empowered to accept over-the-counter noncompetitive

offers either "in whole or in part." In operation, BLM construes an over-the-counter oil and gas lease offer to include all available land in the tract described in the offer. After unavailable lands are rejected from the offer, the balance is properly leased. When BLM's authorized officer signs the lease forms, the offer is accepted in part, and a binding lease is created for the lands that were available for leasing, so that the offeror becomes liable for rental on the leased lands.

4. Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

Under 43 CFR 3110.2, a lease offer may be withdrawn only if it is received by the proper BLM office before the lease has been signed. A withdrawal received after the lease is signed is ineffective, as a binding lease is created as of the time the offer form is signed by BLM.

5. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

A parcel that is included in a lease which has terminated is subject to leasing only under the simultaneous noncompetitive system, as provided by 43 CFR 3112.1-1. Where this parcel is subsequently included in a lease issued by BLM pursuant to a noncompetitive over-the-counter lease offer form, this lease is issued in violation of controlling regulations, and BLM properly cancels the lease insofar as it covers the parcel.

6. Appeals: Generally--Oil and Gas Leases: Offers to Lease--Rules of Practice: Appeals: Effect of

The effect of 43 CFR 4.21(a) is only to suspend the authority of the deciding official to exercise jurisdiction directly relating to the subject of the appeal. It does not have the effect of suspending BLM's authority to act on matters that are functionally independent from the subject of the appeal. The unavailability of some lands in a noncompetitive over-the-counter lease offer has no effect on the validity of the offer for the remainder of the lands in the offer. Thus, the question of the correctness of BLM's rejection of part of an offer is independent from the question of the status of the offer for the remainder of the lands that it covers, so that BLM is free to accept the offer for the remainder notwithstanding that the time for appealing the partial rejection has not expired.

APPEARANCES: Robert B. Bunn, Honolulu, Hawaii, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On December 31, 1985, Robert B. Bunn filed two over-the-counter noncompetitive oil and gas lease offers with the Oregon State Office, Bureau of Land Management (BLM). Lease offer OR 39696 sought Federal oil and gas rights to lands in T. 20 S., R. 20 E., Willamette Meridian, and lease offer OR 39697 sought rights to lands in T. 20 S., R. 21 E., Willamette Meridian, both in Crook County, Oregon.

On February 5, 1986, BLM issued two decisions rejecting these offers in part. As to OR 39696, BLM held that 80 acres were not available for leasing because they were included in oil and gas lease OR 35941, which had been issued previous to the filing of Bunn's offer. 1/ As to OR 39697, BLM held that 120 acres were not available for leasing because title had been conveyed from the United States without a reservation of the oil and gas rights. 2/ Each of BLM's decisions specified that the partial rejection would become final 30 days from receipt of the decision, in the absence of an appeal.

On February 13, 1986, BLM signed the offer forms submitted by Bunn, thus issuing leases OR 39696 and OR 39697 to him for the balance of the lands for which he had applied.

By two letters dated February 14, 1986, received by BLM on February 18, 1986, Bunn attempted to withdraw his lease offers and requested a refund of the advance rentals on the leases. By decisions dated February 28, 1986, BLM denied the requests to withdraw, holding that the leases were signed on behalf of the United States by an authorized officer before his request was received, and that, since the leases were valid, it was unable to refund his monies, as provided in Item 4(b) of the lease agreement.

Also on February 28, 1986, BLM issued a decision cancelling lease OR 39696 in part, as to 160 acres. Citing 43 CFR 3112.1-1, BLM held that this parcel had been part of a terminated lease, and that it was therefore closed to over-the-counter leasing until after it had been offered on the simultaneous list of lands available for leasing. 3/ BLM noted in its decision that its Leasable Mineral Plat had mistakenly shown the parcel as available for over-the-counter lease offers.

On March 27, 1986, Bunn filed a timely notice of appeal of both of BLM's decisions of February 28, 1986. Bunn did not timely appeal either of BLM's decisions of February 5, 1986, rejecting his offers in part, and they

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1/ The rejected acreage was the SE<sup>NW</sup>, NE<sup>SW</sup> of sec. 26, T. 20 S., R. 20 E., Willamette Meridian.

2/ The rejected acreage was the SE<sup>SW</sup> of sec. 17, and the SE<sup>SW</sup>, NE<sup>SE</sup> of sec. 28, T. 20 S., R. 21 E., Willamette Meridian.

3/ The cancelled acreage was SE<sup>^</sup> of sec. 18, T. 20 S., R. 20 E., Willamette Meridian. The terminated lease was OR 10057.

are thus not directly at issue here. However, for the sake of completeness, we shall address them briefly.

[1] BLM's decision of February 5, 1986, rejected offer OR 39696 in part, holding that 80 acres were not available for leasing because they were included in oil and gas lease OR 35941, which had been issued previous to the filing of Bunn's offer. It is axiomatic that lands that are already included in a valid, outstanding lease are not subject to being leased again, and that BLM properly rejects any offer for lands included in the outstanding lease. Zoe Schluter, 93 IBLA 314 (1986); Charles E. Shaw, 81 IBLA 347 (1984). Thus, BLM's decision correctly rejected the offer insofar as it covered the SE<sup>NW</sup>, NE<sup>SW</sup> of sec. 26, T. 20 S., R. 20 E., Willamette Meridian, as these lands were not available for leasing.

[2] On February 5, 1988, BLM also held, as to offer OR 39697, that 120 acres were not available for leasing because title had been conveyed from the United States without a reservation of the oil and gas rights. BLM must reject a noncompetitive over-the-counter oil and gas lease offer where the land sought is patented with no reservation of oil and gas to the United States. Golden Eagle Petroleum, 67 IBLA 112 (1982). Where the Federal Government does not own the mineral interest in lands, it obviously cannot issue a valid lease for these interests. Thus, BLM's decision also correctly rejected the offer insofar as it covered the SE<sup>SW</sup> of sec. 17, and the SE<sup>SW</sup>, NE<sup>SE</sup> of sec. 28, T. 20 S., R. 21 E., Willamette Meridian, as these lands were also unavailable for leasing.

[3] Bunn stresses on appeal that his offers were for the entire area specified by them, not for some lesser area, and suggests that he is not bound by a lease for less than the total acreage for which he applied. We disagree.

The terms of Bunn's noncompetitive oil and gas lease offer for public domain lands (Form 3100-11) provide that the offeror "offers to lease all or any of the lands [described on the offer] that are available for lease." (Emphasis supplied.)

Under 43 CFR 3111.1-1(e), BLM is expressly empowered to accept over-the-counter noncompetitive offers either "in whole or in part." In operation, BLM properly construes an over-the-counter oil and gas lease offer as including any and all available land in the tract described in the offer, even if doing so reduces the size of the parcel sought. See Bruce Anderson, 85 IBLA 270, 271 (1985); Milan S. Papulak, 30 IBLA 77, 80 (1977); John Oakason, 21 IBLA 185, 187 (1975). Pursuant to longstanding Departmental policy, after unavailable lands are rejected from the offer, the balance is properly leased: "[I]f 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." William B. Collister, 71 I.D. 124, 125 (1964).

Thus, in the instant case, Bunn filed offers for "all or any" of the lands described on his offer forms. BLM properly excluded lands that were not available from the offers and notified Bunn that his offers were rejected for these unavailable lands. By subsequently signing the lease forms and issuing the leases on February 13, 1985, BLM indicated its acceptance, in part, of these lease offers. 43 CFR 3111.1-1(e). At that time, a binding lease was created for the lands that were available for leasing, and Bunn became liable for rental on the leased lands.

[4] Bunn argues that BLM should have allowed him to withdraw his offers in these circumstances, and he also requests that we allow him to withdraw them. Presumably, Bunn desires a refund of the advance first-year's rental paid on the leases.

Bunn's attempt to withdraw his offers was not received by BLM until February 18, 1986, 5 days after the signing of the lease. Under 43 CFR 3110.2, a lease offer may be withdrawn only if it is received by the proper BLM office before the lease has been signed. Thus, the attempted withdrawal was not effective, and BLM correctly so ruled in its decision of February 28, 1986. Bunn's similar request to this Board on appeal is also untimely.

[5] Bunn also challenges BLM's decision of February 28, 1986, canceling lease OR 39696 in part, as to 160 acres. We hold that this decision must be affirmed, notwithstanding that a binding lease was created when the lease forms were signed by BLM on February 13, 1986. BLM noted that this acreage had earlier been included in a lease which had subsequently terminated and held that it was, therefore, subject only to simultaneous noncompetitive offers, as provided by 43 CFR 3112.1-1. <sup>4/</sup>

Bunn has not disputed that the acreage had previously been subject to a lease that had terminated. It is established that an oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled administratively by BLM where the lands described in such lease had been included in a prior lease, since terminated, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, as required by 43 CFR 3112.1-1. Inexco Oil Co., 93 IBLA 124 (1986); see Mike Guffey, 78 IBLA 139 (1983). Thus, BLM was required to cancel lease OR 39696 as to this 160 acres, as it was erroneously issued for this parcel pursuant to Bunn's over-the-counter offer, instead of through the simultaneous

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<sup>4/</sup> The recently enacted Federal Onshore Oil and Gas Leasing Reform Act of 1987, 101 Stat. 1330, requires the leasing of Federal lands for oil and gas development through an all-competitive leasing procedure with noncompetitive leasing occurring only on limited, alternative bases.

leasing procedures, as required by regulation. <sup>5/</sup> Of course, Bunn is entitled to a refund of the advance rental submitted for the canceled acreage.

Bunn argues that BLM should not have issued a final lease during the 30-day period allowed for appeal following its February 5, 1986, decisions. He notes that the decisions allowed 30 days for appeal before they became final, during which time a question was still open as to whether a portion of the lease could be issued; thus, Bunn suggests that final leases should not have been issued during this time.

Bunn misperceives the operation of the provisions suspending the effect of BLM's decisions during the 30-day appeal period. Bunn did have the right to appeal BLM's partial rejections of his lease offers, as these decisions clearly adversely affected him. See 43 CFR 3101.7-5. Thus, the effect of BLM's partial rejections was suspended under 43 CFR 4.21(a) during the 30-day period when they were subject to appeal. However, the actual decisions being appealed were the rejections of parts of Bunn's offers, so that 43 CFR 4.21(a) operated merely to preserve the viability of these offers as to the rejected lands during the time an appeal could have been filed or during the pendency of the appeal. This means that, if Bunn had successfully appealed these rejections (which he did not), he could have been awarded a lease for the rejected parcels. See Patricia C. Alker, 79 IBLA 123, 126 (1984); Goldie Skodras, 72 IBLA 120, 122 (1983).

This does not mean, as suggested by Bunn, that BLM was barred from taking any action on the remainder of his lease offers during the time when its decisions of February 5, 1986, were subject to appeal. The effect of 43 CFR 4.21(a) is only to suspend the authority of the deciding official to exercise jurisdiction directly relating to the subject of the appeal. It does not have the effect of suspending BLM's authority to act on matters that are functionally independent from the subject of the appeal. East Canyon Irrigation Co., 47 IBLA 155 (1980). As discussed above, the unavailability of some lands in a lease offer has no effect on the validity of the offer for the remainder of the lands in the offer: the offer for the remainder is in effect and may be accepted by BLM regardless of the fact that a portion of the offer has been rejected. Thus, we regard the question of the correctness of BLM's rejection of part of Bunn's offers as independent from the status of his offers for the remainder of the lands that they covered, so that BLM was free to accept the offers for the remaining lands notwithstanding that the time for appealing the partial rejections had not expired.

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<sup>5/</sup> As BLM's decision noted, the authority of the Department of the Interior to administratively cancel leases that are issued in violation of regulation has been recognized by the Supreme Court in Boesche v. Udall, 373 U.S. 472 (1963).

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.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

102 IBLA 298

