

**Editor's note: Reconsideration denied by order dated July 13, 1972**

ARTHUR E. MEINHART,  
IRWIN RUBENSTEIN, APPELLANTS  
PAN AMERICAN PETROLEUM CORP., APPELLEE

IBLA 70-202

Decided April 18, 1972

Appeal from a decision of the Acting Chief, Office of Appeals and Hearings, Bureau of Land Management, which reversed the decision of the Bureau's Eastern States Office and held that the appellants' oil and gas lease offers ES-6120 and ES-6121 must be rejected for the reason that the land descriptions did not comply with the requirements of the regulations, and sustained the protest filed by the appellee against the issuance of leases in response to those offers.

Reversed.

Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases:  
Description of Lands--Regulations: Interpretation

Where an offeror for an oil and gas lease seeks to avail himself of a provision of a regulation which permits him to describe lands by "acquisition tract number," and where that term has not been defined, he will not be held to have lost his statutory preference right for failure to comply with the regulation if the numbers given may reasonably be regarded as "acquisition tract numbers" and the description thereby afforded is accurate for the purpose.

APPEARANCES: Arthur E. Meinhart and Irwin Rubenstein, pro se; William E. Block, Jr. for the appellee.

OPINION BY MR. STUEBING

The oil and gas lease offers identified in caption were filed by appellants Meinhart and Rubenstein pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970). The offers described the 75 percent mineral interest reserved to the United States in 3,214.27 acres of land in Ts. 14 and 15 N., R. 1 W., Choctaw Mer., Holmes County, Mississippi. These descriptions employed reference to tract numbers assigned to each parcel by the agency of the United States which had acquired the land, and each offer was accompanied by

one copy of a map prepared by the acquiring agency and showing the identical tracts desired by the offerors as designated by their respective tract numbers. The offers gave the townships and range according to the public land survey, and the accompanying maps showed each numbered tract with a complete metes and bounds description and, where appropriate, indicated the locations of section lines and corners of the public land survey.

Pan American Petroleum Corporation filed a protest in the Eastern States Office against the issuance of leases pursuant to these offers on the ground that the land descriptions in the offers do not comply with the requirements of 43 CFR 3212.1 (1969), 1/ which, at the time, read in pertinent part as follows:

(a) Each offer or application for a lease or permit must \* \* \* (2) be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system), and (3) describe the lands for which the lease or permit is desired as follows:

(i) If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

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1/ Since recodified in a somewhat amended form as 43 CFR 3101.2-3 (1972).

(iii) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

Pan American Petroleum, meanwhile, had filed its own oil and gas lease offers, junior to the Meinhart/Rubenstein offers. The Pan American Petroleum offers described each parcel by metes and bounds in accordance with subparagraph (i) above.

By its decision of December 5, 1969, the Eastern States Office dismissed Pan American's protest, holding that the land descriptions in the Meinhart/Rubenstein offers fully satisfied the requirements of subparagraph (iii) of the regulation and were thereby entitled to priority as of the date of their filing.

Pan American Petroleum appealed from that decision to the Director, Bureau of Land Management. The Bureau's now defunct Office of Appeals and Hearings reversed the decision of the Eastern States Office on the basis of its finding that the tract numbers used in the Meinhart/Rubenstein offers to describe the identical tracts desired were not numbers that were assigned to the tracts by the acquiring agency for the purpose of acquiring the land and, therefore, they were not "acquisition tract numbers" within the context of subparagraph (iii), supra.

The decision noted that in 1940 the Farm Security Administration 2/ purchased approximately 10,000 acres as a single unit from Mileston Planting and Realty Company. The total area was given the designation "Tract No. 34." Subsequently, this unit was subdivided into more than 100 parcels by the acquiring agency, which assigned consecutive numbers to each of the subdivided tracts and mapped the subdivided area to show the tracts according to their assigned numbers. The tracts were then sold to individual purchasers with fractional mineral interests being reserved to the United States. The decision below concluded that the numbers assigned to the subdivided tracts are not "acquisition tract numbers," and it sustained the protest of Pan American.

Now Meinhart and Rubenstein have appealed, arguing that the term "acquisition tract numbers" has not been defined and that the term

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2/ Predecessor agency of the Farmer's Home Administration, Department of Agriculture.

"disposal tract number" as used by the appellee, Pan American Petroleum, to identify the tract numbers, has no sanction in public land law. They allege that an examination of the records discloses that "tract number 34" first found its way into usage in a letter between government officials dated November 14, 1938, nearly two years prior to the government's acquisition of the land, and they state that no survey had been made under tract number 34 and that the designation was merely used as a filing reference and could never be utilized for an accurate description of land. They assert that the land was purchased by the United States with the intention that it would be surveyed into smaller tracts and sold, and they pointed out that a complete and accurate description was furnished by the United States only after survey, subdivision and the assignment of tract numbers. They contend that as the numbers were assigned during the period when the lands were "acquired lands" of the United States, and as the reserved mineral interest is still an "acquired lands" interest, the numbers assigned to the several tracts are "acquisition tract numbers," regardless of the fact that the number 34 was originally used to designate the entirety of the 10,000-acre unit.

The appellee filed an answer to the statement of reasons in which it asserts that because the word "acquisition" refers to the act by which one procures property, only the number assigned at the time of acquisition can be the acquisition tract number, and that any numbers assigned to tracts after the process of acquiring the land is complete cannot properly be said to be acquisition tract numbers. It reasserts that since the numbers were assigned for the purpose of identifying tracts subdivided for disposal, the numbers are in fact "disposal tract numbers."

In order for us to hold that the descriptions in the Meinhart/Rubenstein offers are not in compliance with the regulation it would be necessary for us to forge a definition of the term "acquisition tract number," because heretofore the term has never been defined. The regulation relied upon by appellants merely states, "If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired \* \* \*", etc. Here the "acquiring agency" had "assigned" numbers "to the identical tracts desired" by the appellants. Those numbers were used by the acquiring agency to designate various tracts of acquired lands, and there is no prohibition against the agency amending its number. For oil and gas leasing purposes it makes absolutely no difference whether the acquiring agency assigned the numbers to the tracts of acquired lands for the purpose of facilitating the acquisition process or for some other administrative purpose.

In the absence of any precise definition of the term it was natural for appellants to assume that the numbers assigned by the

acquiring agency to the identical tracts that they desired to lease were precisely what was contemplated and permitted by the regulation, particularly in view of the fact that they were perfectly mapped and the numbers, when used in conjunction with the map, afforded very precise description of the lands included in the offers, whereas "Tract No. 34" was meaningless for this purpose.

As previously noted, "Tract No. 34" was initially used to designate an area of approximately 10,000 acres. That area was subsequently subdivided by the acquiring agency into more than 100 tracts, each of which was assigned a number, among which was one of about 50 acres designated "No. 34", which is not involved in the subject offers. We are not impressed by the appellee's argument that if the numbers assigned to the subdivisions were deemed acceptable great administrative confusion would ensue, because if anyone should apply for Tract No. 34 it would impose a burden on the administrators to ascertain whether the offer contemplated the 10,000-acre tract or the 50-acre tract. This argument becomes untenable when it is remembered that such an offer must be accompanied by a map, "upon which the desired lands are clearly marked \* \* \*."

The obvious purpose of the regulation is to afford alternative acceptable methods by which offerors of oil and gas leases can supply precise, convenient and legally adequate land descriptions. The intent of the regulation is well satisfied by the submission tendered by the offerors. The land office was willing to accept the offers on this basis, and, according to allegations by appellants, had used such numbers in the past as a basis for listing lands available for leasing and for issuing leases in other cases.

Appellees assert that the Department cannot completely disregard the plain language of its regulation. While this aphorism has general application, it is not an immutable verify. For example, if the acquiring agency had designated each of these tracts with a letter at the time of acquisition and the offerors had used such designations, we cannot believe that the Board would sustain the rejection merely on the ground that the regulation specifies "acquisition tract numbers" and "numbers" are not "letters". We offer this as illustrative of the proposition that situations can and do arise where uncompromising adherence to the precise letter of the regulation must yield to a determination of whether the spirit and purpose of the regulation has been met. We regard this as one such situation.

Moreover, as we have seen, the "plain language" of this particular regulation is less than a paradigm of clarity. The meaning of "acquisition" is often controlled by the context in which the word is used. Chandler v. Field, 58 F.2d 370, 373 (D.N.H. 1932). The word "acquisition" can be defined as the act or process of procurement. Jones v. State, 72 S.W.2d 260, 263 (Tex. Crim. App. 1934);

Black's Law Dictionary, 41 (4th ed.). In this sense the term "acquisition tract number" would presumably refer to a number assigned for the purpose of facilitating the acquisition process, or in conjunction therewith, as the original "Tract No. 34" designation in this case. But the word "acquisition" can also refer to property which has already been acquired - a past acquisition. See 1 C.J.S. Acquisition 920; Black's Law Dictionary, *supra*; Webster's New International Dict. 2nd ed. (unabridged); see also cases collected in 1a Words and Phrases 574. In the latter context it is not unreasonable for one to conclude that numbers assigned to tracts of acquired lands by the acquiring agency for the purpose of identifying its acquisitions are "acquisition tract numbers."

The maps which depict each tract desired by the appellants by its designated number also incorporate a metes-and-bounds description of each tract, giving courses and distances between the successive angle points and tied to section lines and corners of the public land surveys, as required by 43 CFR 3212.1(a)(i) (1969). Although there is an insufficient number of map copies to constitute a complete metes-and-bounds description to accompany each of the seven copies of each offer, it is noteworthy for the purpose of demonstrating the accuracy and precision of the description afforded by the maps.

Even though there are insufficient numbers of map copies to satisfy the alternative method, we are of the opinion that appellants' reference to the tract numbers assigned by the acquiring agency should be regarded as compliance with 43 CFR 3212.1(a)(iii) (1969). Multiple copies of the maps are not required under this provision of the regulation. We consider that the term "acquisition tract number" is sufficiently ambiguous to have led appellants reasonably to believe that their submissions were wholly in compliance with the requirement of the regulation. As repeatedly stated by the decisions of this Department, an applicant will not be held to have lost a statutory preference right for failure to comply with the requirement of a regulation unless that regulation is so clearly set out that there is no basis for his noncompliance. Mary I. Arata, 78 I.D. 397 (1971); Georgette B. Lee et al., 3 IBLA 272 (1971); Virgil V. Peterson, A-30685 (March 30, 1967); A. M. Shaffer, Betty B. Shaffer, 73 I.D. 293 (1966); John J. King, A-30472 (February 28, 1966); William S. Kilroy et al., 70 I.D. 520 (1963); Madge V. Rodda et al., 70 I.D. 481 (1963); Donald C. Ingersoll, 63 I.D. 397 (1956).

In view of (1) the ambiguity of the regulation, (2) the precision of the land description submitted, and (3) the satisfaction thereby of the purpose of the regulation, in combination, it is our conclusion that the appellants should not be denied their priority on the basis of a definition not previously articulated.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is reversed, the protest of Pan American Petroleum Corporation is dismissed, and the case is remanded to the Eastern States Office for further adjudication consistent herewith.

Edward W. Stuebing, Member

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We concur:

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Joseph W. Goss, Member

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Frederick Fishman, Member (concurring specially)

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Anne Poindexter Lewis, Member

Concurring opinion by Frederick Fishman.

I believe that the majority opinion is sound and that the regulation is ambiguous. Assuming, arguendo, that the term "acquisition tract number" was couched in "plain language," as urged by the appellee, its meaning is not necessarily plain. Mr. Justice Frankfurter's famous dictum is applicable here:

The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification.

United States v. Monia, 317 U.S. 424, 431 (dissenting opinion) (1943).

I believe that the minority's view rests in part implicitly on the point that the appellants are skilled in oil and gas filings and should be held to a higher standard of comprehension than a mere novice.

I fully recognize that the appellants have been engaged in oil and gas filings for several years and in no wise can be regarded as mere novices. This fact, in my judgment, is immaterial. The test is what the ordinary person reasonably could have taken the regulation to mean. I believe the Board should avoid ad hominem judgments. The Board stated in United States v. Neil Stewart, 5 IBLA 39, 52-53 (February 28, 1972) (79 I.D. 27) as follows:

The appellant argues that the contestant may not rely upon the testimony of Edward Hollingsworth to prove its prima facie case because his original recommendation to the Bureau of Land Management that a discovery had not been made was based upon his erroneous belief that the locators of the claims were not connected with the sand and gravel industry whereas upon his later recognition that the appellant has an established sand and gravel business he changed his recommendation and found that in view of this fact the contestee had met the tests for a valid discovery. \* \* \* Moreover, the determination of the validity of a mining claim cannot rest upon the identity and business of the claim owner. [Emphasis supplied]

We should adhere to objective criteria in our adjudications.

The oil and gas regulations in no way give any inkling of the meaning of "acquisition tract number." Nor is there anything in the regulations that supports the appellee's interpretation as the sole

interpretation; it " \* \* \* derives [no] significance and sustenance from its environment \* \* \*" United States v. Monia, supra, at 432 (dissenting opinion). That the term may have an esoteric meaning to the governmental personnel engaged in mineral leasing activities is not a sufficient base to charge the public with notice thereof.

Dissenting opinion by Mrs. Thompson.

I must disagree with the conclusion in the majority opinion that the term "acquisition tract number" in regulation 43 CFR 3212.1(a)(iii) (1969), in effect when the offers in this case were filed, must be defined before that phrase may be given any meaningful interpretation in application. Likewise, I see no ambiguity in the phrase in its context in the regulations. I believe, however, the effect of the majority opinion will create an ambiguity in its meaning which was not there before.

Before analyzing the language of the regulation further, certain facts in this case which are not disclosed in the majority opinion should be mentioned to set this case in proper perspective. I doubt that appellants misunderstood or were misled by the language of the regulation in describing the lands here. Instead, it appears that they simply did not understand the facts.

Appellants' offers identified the public land survey townships and ranges in which the parcels are located and referred to an accompanying sheet identifying each parcel by a "unit number", its acreage, and gave the name of persons listed as "vendors". The reference to "vendors" shows that they thought the subdivided parcels were tracts that were acquired by the Government from the "vendors", and the tract numbers were those assigned by the Government when it acquired them. Instead, however, the persons named as "vendors" were actually the purchasers of the particular parcel from the Government, and the tract numbers were assigned after the acquiring agency subdivided the tract for purposes of disposing of the farm unit parcels.

The land office decision also referred to "vendors", which indicates that it did not go beyond the information submitted by the appellants in concluding that the unit numbers were the acquisition tract numbers assigned by the acquiring agency. That decision, therefore, cannot be considered as reaching any different interpretation of the phrase "acquisition tract number" than was reached by the Bureau's appeal decision. It is not an indication of any ambiguity in the language of the regulation, but, rather, that the land office and appellants did not sufficiently investigate the facts.

The Bureau's appeal decision was the first ruling based directly upon information from the acquiring agency manifest in the record. In response to the allegations of the protestor, the Bureau's Office of Appeals and Hearings sought information from the acquiring agency.

In a response dated March 18, 1970, the Acting Assistant Administrator, Farmers Home Administration, the successor agency to the Farm Security Administration which acquired the land comprising the Mileston Project, of which the lands applied for are a part, summarized the procedure followed in the acquisition and disposition of the tract, stating:

Our files show that this land was acquired by the Federal Government in 1940 from the Mileston Planting and Realty Company, Jess Deen Jones Estate. The land was purchased as one unit and identified as acquisition tract No. 34. The land was subdivided for sale into units of small acreages and numbered numerically from 1 to 100, plus. The units, as subdivided were conveyed by the Government to individual purchasers. In the Government's deeds of conveyance a percentage of the mineral interests was reserved to the Government and later transferred to the Department of the Interior pursuant to P.L. 760, 81st Congress.

From this, I believe, the Bureau's appeal decision correctly concluded that the only tract number which the acquiring agency assigned as an "acquisition tract number" is the number 34 assigned to the entire tract during the process of acquiring the tract. 1/ The "unit" numbers assigned when the acquiring agency subdivided the tract were to facilitate the disposition of the lands and not to identify the parcel when it became that agency's property.

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1/ There is absolutely no basis for the misleading conjecture of the concurring opinion that my view in this case "rests in part implicitly on the view that the appellants are skilled in oil and gas filings and should be held to a higher standard of comprehension than a mere novice." It offers nothing to support this subjective remark. This is an unsupportable and uncalled-for-statement to set forth a proposition which has no bearing on the disposition of this case.

The facts concerning appellants' designation of the purchasers as "vendors" rather than as the "vendees" are mentioned simply to illustrate that there was no apparent ambiguity in the language of the regulation which misled the appellants. However, neither the Bureau's decision nor this dissent rests on these facts or on any ad hominem basis. I share the repugnance in the general proposition that decisions should not be made on an ad hominem basis, but there is no such basis here. The generalizations of the concurring opinion add nothing to the rationale of the majority opinion. The objective standards employed in interpreting the regulation are established by my analysis infra.

Does this mean that the appellants could not lease the farm units as subdivided by the acquiring agency? Of course not. Appellants could have described the lands by metes and bounds. Paragraph (i) of regulation 43 CFR 3212.1 (1969), sets forth the usual manner whereby lands may be described. Where the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range, and any boundaries which do not conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If the land is not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

The majority recognizes that the maps submitted by appellants, which have a metes and bounds description, cannot alone be considered as supplying the metes and bounds description since the record shows only one copy of each map submitted with each offer. 2/

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2/ Paragraph 4 of the "General Instructions" of the lease offer form submitted by appellants (Form 3200-3, November 1967) provided that seven copies of the offer must be prepared and filed in the land office. This was also required by regulation 43 CFR 3212.4(b) (now set out in 43 CFR 3111.1-2(a) (1972)). Paragraph 5 of the "General Instructions" provided as follows:

"If additional space is needed in furnishing any of the required information, it should be prepared on additional sheets, initialed and attached and made part of this offer to lease, such additional sheets to be attached to each copy of the form submitted."

If an offer was not filed in accordance with the applicable regulations it was to be rejected without priority to the applicant as specified by 43 CFR 3212.4(d). Because there were not copies of the maps which could be attached to each copy of the offer form submitted, the maps cannot be looked to as supplying the essential metes and bounds description as each copy of the offer must contain a complete description. Cf. Duncan Miller, A-28926 (July 30, 1962), and Duncan Miller, A-28840 (September 14, 1962), where references to parcel numbers and pages of the Bureau's availability list containing metes and bounds descriptions were held insufficient to meet regulatory requirements for a metes and bounds description.

They conclude that because the lands can be identified on the map the reference to the tract numbers assigned by the acquiring agency for disposal purposes is adequate. To do so, however, they must rely on paragraph (iii) of 43 CFR 3212.1 (1969), which provides:

(iii) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

That paragraph permits a description by reference to the acquisition tract number assigned by the acquiring agency so long as a map is also furnished showing the lands. If that paragraph specified only that a tract number assigned by the acquiring agency would be acceptable, appellants' contentions to the effect that the subdivided tract numbers should be acceptable would have merit. The regulation, however, adds the modifier "acquisition." Since in construing regulations, as well as statutes, effect must be given, if possible, to every word (see 2 J. SUTHERLAND, STATUTORY CONSTRUCTION § 4705 (3d ed. F. Horack, Jr. 1943)), the use of the modifier must be considered as limiting the word it modifies. Therefore, the tract number which is acceptable is the number assigned by the acquiring agency which comes within the meaning of the modifier "acquisition."

The majority contends it would be necessary "to forge a definition" of the term "acquisition tract number" in order to find the descriptions in the appellants' offers to be inadequate because the term has never been defined before. They then proceed to find that because there may be more than one meaning of "acquisition" in the dictionaries the term "acquisition tract number" is "sufficiently ambiguous to have led appellants reasonably to believe that their submissions were wholly in compliance with the requirement of the regulation". As I have indicated, I doubt that the appellants were misled by this term. They simply did not investigate the facts sufficiently, as the errors in their statements accompanying the offers demonstrate.

The fact that there has been no regulatory definition of the term "acquisition tract number" is not a reason to hold that it cannot be given a meaning, or that the word "acquisition" should not be considered as specifying the tract number that will be considered acceptable under the regulation. If it were necessary to define every phrase in a regulation before it could be considered as having operable effect, the regulations would be

useless or would become overburdened with definitions, undoubtedly some of which would need explanations or refinements of the defining language. The majority in effect has defined the term "acquisition tract number" as meaning "any tract number" assigned by the acquiring agency. I cannot agree with such a definition.

It is hornbook law that words must be understood by their most common and usual meaning and in the context in which they are used. As stated in 1 C.J.S. Acquisition 920, the word "acquisition"

\* \* \* is generally used as meaning the act of acquiring or gaining property, the act of procuring property, purchase, taking with or against consent; and also it may be employed as referring to the thing which is acquired or gained, especially a material possession obtained by means.

In dictionary definitions, see, e.g., Webster's New International Dictionary 23 (2d ed. unabr. 1949) and Black's Law Dictionary 41 (4th ed. 1951), the first definitions relate to the initial acquiring of property. Other definitions when the word is used alone as a noun may, as the quotation above shows, relate it to the thing acquired. Judge Hand has said, "words are chameleons, which reflect the color of their environment." Commissioner of Internal Revenue v. National Carbide Co., 167 F.2d 304, 306 (2nd Cir. 1948). The color of the environment of regulation 43 CFR 3212.1 (1969) clearly reflects that the meaning of the term "acquisition tract number" is the number assigned by the acquiring agency when it initially acquired the tract. The only other exception in that regulation to the requirement that a metes and bounds description must be used when a description cannot be conformed to a public land survey is in paragraph (ii), where lands are not in the area of the public land surveys. Paragraph (ii) provides that:

\* \* \* it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

The regulation then provides for metes and bounds descriptions as necessary as follows:

If the desired land constitutes less than the entire tract acquired by the United States, it must 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 land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

As this paragraph shows, if less than the entire tract acquired by the United States is desired a metes and bounds description is required. I believe this was also the intent of the drafters of paragraph (iii). The tenure of the entire regulation 43 CFR 3212.1 (1969) relates to the original acquisition of land by the United States for purposes of description. Considering that the usual, most common meaning of "acquisition" relates to the initial act of acquiring property, coupled with the use of the term "acquisition tract number" in relation to its "environment" in the regulation, it is difficult to understand how that phrase could have any other meaning than the original tract number assigned by the agency when the parcel was acquired, rather than numbers assigned by the agency later for disposal purposes. As colored by its environment there can be no doubt or ambiguity as to the purport or intent of its meaning. Furthermore, a review of Departmental decisions under earlier regulations, which served as the background for the ultimate amendment of the regulations adding paragraph (iii), indicates that permissible references to tract numbers assigned by the acquiring agencies and maps showing the lands were to the tract numbers as assigned by the agency when it acquired the land. See, e.g., Celia R. Kammerman et al., 66 I.D. 255 (1959); Merwin E. Liss, A-27924, A-27940 (August 31, 1959); Merwin E. Liss, A-28142 (January 19, 1960). Cf. Charles D. Lee, A-30535 (May 19, 1966).

I believe the majority in reaching its conclusion was unduly influenced by the fact that the tract originally acquired by the Government was a large piece of land over the 2,560 acre minimum for an individual oil and gas lease. This is not the usual situation and should not serve as a reason for construing the regulation as was done by the majority when there was another way the desired lands could be described for oil and gas leasing purposes. The majority also blithely assumes that for "oil and gas leasing purposes it makes absolutely no difference whether the acquiring agency assigned the numbers to the tracts of acquired lands for the purpose of facilitating the acquisition process or for some other administrative purpose." It also makes light of the fact pointed out by the protestor that a subdivided farm unit was designated as "tract No. 34" as well as the original entire tract when it was acquired, and of its contention that possible ambiguities may arise because of these two designations, by pointing to the

vast discrepancy between the acreages of the tracts and to the fact the tract would be marked on the map. Nevertheless, although the facts of this case may lend themselves to easy and glib distinctions, other factual circumstances may not do so so easily or convincingly. In any event, it is not necessary to determine here whether the regulation should or should not permit a description by any tract number given by the acquiring agency. The crucial question is whether it did so. I do not believe it did.

Where there are conflicting parties claiming priorities to an oil and gas lease, the officers of this Department are bound to apply the language of the regulations. They cannot ignore it. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Since the Bureau's Office of Appeals and Hearings determined from the acquiring agency what tract had been assigned an acquisition tract number, and because that tract was not the identical tract desired for leasing, I believe appellants could not use paragraph (iii). Instead, they should have described the tracts desired by metes and bounds in accordance with paragraph (i) of the regulations. As they failed to meet the requirements of the regulations, which I believe are not ambiguous, I would sustain the protest of Pan American Petroleum Corporation and affirm the action of the Bureau's appeals office in rejecting appellants' offers.

Joan B. Thompson, Member

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We concur:

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Martin Ritvo, Member

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Newton Frishberg, Chairman

