

MURPHY OIL CORPORATION

IBLA 73-253

Decided September 26, 1973

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer ES-9204 (Louisiana).

Reversed and remanded.

Regulations: Generally! ! Regulations: Interpretation

Regulations should be so clear that there is no basis for an oil and gas lease offeror's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

APPEARANCES: H. Y. Rowe, Esq., Murphy Oil Corporation, El Dorado, Arkansas, for appellant.

OPINION BY MR. FISHMAN

Murphy Oil Corporation has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated December 12, 1972, rejecting its oil and gas lease offer ES 9204 (Louisiana), filed May 24, 1971, pursuant to 30 U.S.C. §§ 351-359 (1970), commonly called the Acquired Lands Leasing Act.

The decision recited in applicable part as follows:

The above! numbered oil and gas lease offer describes by metes and bounds a tract of land lying in Sections 51, 52 and 53, T. 18 N., R. 13 E., East Carroll Parish, Louisiana.

The application is rejected for the reason that it was not accompanied by a map showing the location of the land requested, as required by the regulations governing land description.

Appellant asserts that 43 CFR 3101.2-3(a), in force now and at the time the offer was filed, does not require the filing of a map where the lands in the area have been surveyed. He further asserts that where the description of the lands cannot be conformed to legal subdivisions, a metes and bounds description following the specifics of the regulations suffices.

The Eastern States Office apparently took cognizance of 43 CFR 3212.1(a) (1970), which reads in part as follows:

(a) Each offer or application for a lease or permit must (1) contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally! owned acquired lands in the same State; (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. (Emphasis supplied.)

However, the regulation was recodified in 43 CFR 3101.2-3 (1971), to read as follows:

§ 3101.2-3 Description of lands in offer.

(a) Surveyed lands. 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.

(b)(1) Lands not surveyed under the rectangular survey system. If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. 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.

(2) Each offer or application must 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).

(3) 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.

(c) Accreted lands. Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

It is clear that the lands in issue lie in a surveyed area within the ambit of 43 CFR 3101.2-3(a). Therefore, at first blush, it would appear that 43 CFR 3101.2-3(b), which by its terms applies only where "the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of public land surveys," would have no relevance to the case at bar.

We fully recognize that in the recodification of 43 CFR 3212.1(a) (1970), the requirement for a map in all cases may have been omitted inadvertently, save where the land applied for conforms to legal subdivisions. However that may be, we stated in James W. Smith, 6 IBLA 318, 324 (1972), as follows:

It has long been established that the Secretary is bound by his own regulation so long as it remains in effect. McKay v. Wahlenmeier, 226 F.2d 35, 43 (D.C. Cir. 1955). A regulation promulgated pursuant to the Mineral Leasing Act [or the Acquired Lands Leasing Act] has the force of law and binds

the Secretary as well as others. Chapman v. Sheridan! Wyoming Coal Co., Inc., 338 U.S. 621, 629 (1950).

See Service v. Dulles, 354 U.S. 363 (1957); Accardi v. Shaughnessy, 347 U.S. 260 (1954).

The doctrine cited above in a sense begs the question of what the current regulation means with respect to the requirement of a map.

The recodification of 43 CFR, 35 F.R. 9502, stated that it did not intend to change substantive provisions. This factor lends color to the view that 43 CFR 3212.1(a) (1970), was not changed in substance. Moreover, 43 CFR 3101.2-3(b)(2), which, according to its title relates only to lands not surveyed under the rectangular survey system, states that "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." It is also highly unlikely that the former requirement of a map for accreted lands was intended to be removed by the recodification, 43 CFR 3101.2-3(c).

The point need not be belabored that the governing regulations are something less than crystal clear.

The Board has held that regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease. Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); Georgette B. Lee, 3 IBLA 272 (1971). See Duncan Miller, 7 IBLA 360 (1972); Andrew W. Miscovich, 6 IBLA 100, 79 I.D. 410 (1972); Louis Alford, 4 IBLA 277 (1972). Cf. Arthur E. Meinhart, 5 IBLA 345 (1972). In the circumstances, we find that appellant is not to be deprived of its statutory preference right because it did not file a map.

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 reversed and the case remanded for further appropriate consideration not inconsistent herewith.

Frederick Fishman
Member

We concur:

Edward W. Stuebing
Member

Joseph W. Goss
Member

