

JAMES R. NICHOLSON

IBLA 74-214

Decided July 25, 1974

Appeal from decision of the Eastern States Land Office, Bureau of Land Management, rejecting oil and gas lease offers ES 10410, 10437, and 10438.

Affirmed.

Oil and Gas Leases: Acquired Lands Leases—Oil and Gas Leases: Applications:
Description

A noncompetitive oil and gas lease offer to lease acquired lands surveyed under the public land surveys must be rejected where it describes the land applied for as river bottoms within certain surveyed sections because the description cannot be conformed to the public land surveys and the offeror failed to describe the stream boundaries by metes and bounds, giving courses and distances between the successive angle points with a tie to a public land survey corner.

APPEARANCES: James R. Nicholson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appeal by James R. Nicholson from a decision dated January 25, 1974, by which the Eastern States Land Office, Bureau of Land Management, rejected his noncompetitive oil and gas lease offers ES 10410, 10437, and 10438 to lease acquired lands of the United States in the State of Florida. The offers were rejected because the land descriptions cannot be conformed to the public land surveys, and the lands are not described by metes and bounds as required by 43 CFR 3101.2-3(a).

The lands are described in the respective offers, as follows:

ES 10410. T. 3 N., R. 27 W., Tallahassee Meridian; River bottom in Big Juniper Creek in Sections 1, 12, and 13 (Est. 5 miles of 50 Ft. width). Total area 30.5 acres.

ES 10437. T. 5 N., R. 27 W., Tallahassee Meridian: River bottom in Big Coldwater Creek in Sections 29 and 32; and River bottom in Big Juniper Creek in Section 36; also, river bottom in Big Coldwater Creek in Section 28. Total area 37 acres.

ES 10438. T. 4 N., R. 27 W., Tallahassee Meridian: River bottom in Big Coldwater Creek in Sections 5, 8, 17, 18 and 19; and river bottom in Big Juniper Creek in Sections 1, 11, 12, 13, 14, 23, 24, 25, 36. Total area 146 acres.

The regulation controlling here reads:

(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. 43 CFR 3101.2-3(a) (1973).

The lands applied for are within the area of public land surveys. However, the boundaries of the streams have not been surveyed, and the areas covered by the streams are included within the legal surveyed subdivisions and sections traversed by the streams. The offers are unacceptable as appellant failed to furnish metes and bounds descriptions of the stream boundaries in conformity with the mandatory requirements of the regulation.

The Department has consistently enforced the regulation by rejecting lease offers which do not comply with its explicit requirements. See J. W. McTieman, A-30645 (February 14, 1967), where one of the calls in a metes and bounds description followed the meanders of a river bank but the offeror failed to give courses and distances

between successive angle points of that boundary; Hugo H. Pyes, A-30541 (June 9, 1966), involved portions of two legal subdivisions without a proper metes and bounds description; Charles D. Lee, A-30535 (May 19, 1966), canceled leases which described the lands by tract numbers given them by the acquiring agency; Jack J. Spielberg, A-29203 (March 18, 1963), involved a description in which one of the boundaries was a railroad line. See also Arthur E. Meinhart, 11 IBLA 129 (1973); Arthur E. Meinhart, 6 IBLA 39 (1972).

Appellant alleges that the State of Florida has leased to Louisiana Land and Exploration Company 330.5 acres of Escambia River bottom land; that the State has also leased to Exxon Company its twenty-five percent of the oil and gas rights in Big Coldwater Creek bottom, which is the same river bottom that is covered in part by ES 10437 and 10438, of which the United States owns the remaining seventy-five percent; and that these leases contain general descriptions similar to the subject offers. He questions why the United States cannot accept such descriptions while the State of Florida can.

Although appellant's allegations concerning the State leases may be true, the answer to his question is that Federal leases are issued in accordance with the laws of Congress and the regulations of the Department of the Interior, and not in accordance with state laws or regulations. The Secretary is bound by his own regulation so long as it remains in effect. McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

Appellant requests that he be notified if he can be of assistance in locating additional information, and that he is receptive if minor changes are needed to make the descriptions of the lease offers acceptable. Even though Bureau of Land Management engineers could ascertain proper metes and bounds descriptions, the Bureau does not accept this responsibility, leaving it to the lease offerors to comply with the regulation. J. W. McTieman, *supra*. If metes and bounds descriptions sufficient to meet the requirements of the regulation are not in existence, it was incumbent upon the appellant to produce the descriptions, even by an actual survey of these boundaries. Jack J. Spielberg, *supra*. 1/

1/ In this connection, although appellant is at liberty to file a proper offer, his priority of filing would take effect only at the time of filing the new offer, and a further note of caution is expressed. Mineral Leasing Status Reports in the case files indicate that all of some of the sections and legal subdivisions of some of the sections designated in the three offers are embraced in existing oil and gas leases, which leases include the portions of the creek beds traversing those sections or legal subdivisions.

For the reasons given, the offers are unacceptable and must be rejected.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

