

BILL J. MADDOX

IBLA 78-41      Decided April 17, 1978

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer I-10402.

Reversed.

1.      Oil and Gas Leases: Applications: Generally--Regulations: Interpretation

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease.

2.      Mining Claims: Mineral Surveys--Oil and Gas Leases: Applications:  
Description--Regulations: Interpretation

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On January 30, 1976, Bill J. Maddox filed an over-the-counter noncompetitive oil and gas lease offer for lands which he described as follows: "Sec. 11 - SW1/4NW1/4," "and Sec. 16 - N1/2, N1/2SW1/4, SE1/4SW1/4, SE1/4" in T. 3 S., R. 45 E., Boise meridian, Idaho. His

offer indicated that he had applied for a total area of 640 acres, and he submitted with the offer \$320 in advance rental and a \$10 filing fee. On September 26, 1977, the Idaho State Office, Bureau of Land Management (BLM), issued a decision rejecting Maddox's lease offer because it was for a total of only approximately 528 acres of land and did not fall within an exception of the requirement, set out in 43 CFR 3110.1-3(a), that it contain at least 640 acres. Maddox has appealed from this decision.

Mineral Survey 3554 (MS 3554) is an irregularly shaped "band" of unpatented land approximately 600 feet across, running through secs. 1, 10, 11, 12, 15, 16, and 17, T. 3 S., R. 45 E., Boise meridian, Idaho. Of the lands applied for by appellant, portions of MS 3554 are located in SW 1/4 NW 1/4 sec. 11, as well as in N 1/2 SW 1/4, SE 1/4 SW 1/4, and SE 1/4 sec. 16.

In its decision, BLM held that "Mineral Survey No. 3554 is not a part of either section 11 or [section] 16, T. 3 S., R. 45 E., B. M., Idaho. Mineral [s]urveys are separate subdivisions." BLM held, in effect, that although appellant had properly described some of the lands located within sections 11 and 16, he had not properly described the lands in those sections inside MS 3554. Since he did not specifically describe MS 3554 in his offer, BLM held, he had not formally requested a lease of oil and gas rights to the lands inside MS 3554, but had only requested any other lands outside MS 3554 which are within the partial sections listed in his offer. Approximately 112 acres of land in the portions of sections 11 and 16 for which appellant applied are within MS 3554. Thus, according to BLM, appellant applied for only the balance outside MS 3554, approximately 528 acres, in violation of the 640-acre minimum required by 43 CFR 3110.1-3(a).

The issue presented here, one of first impression, is whether an offeror for an oil and gas lease is required to describe desired lands which are within a mineral survey as such, or whether he may instead simply refer to these lands by their locations within the rectangular survey system, without specifying that they fall within the mineral survey. We conclude that it was sufficient here for appellant to describe oil and gas lands by the rectangular system alone and accordingly reverse BLM's decision rejecting his offer.

[1] The requirements for describing lands in oil and gas lease offers are set out in 43 CFR 3101.1-4(a), which provides as follows: "If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range." Where a mineral survey exists, BLM apparently regards it as the sole "legal subdivision" by which lands within it may be described. The term "legal subdivision" is not

defined in the regulations, <sup>1/</sup> and there is nothing in 43 CFR 3101.1-4(a) to put an offeror on notice that what is required is a description other than the rectangular description. However, earlier editions of Title 43, Code of Federal Regulations did contain language which strongly suggests that it is proper for an applicant to use the rectangular survey system to describe lands in which an approved mineral survey was situated if the lands within the mineral survey are unpatented and the residual lands outside the survey have not been lotted. For example, the 1938 edition contains the following:

185.96 Report of approval of mineral survey. Promptly upon the approval of a mineral survey the office cadastral engineer will advise both the General Land Office and the appropriate district land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by the General Land Office.\* [Par. 37(a), Circ. 430, Apr. 11, 1922, 49 L.D. 66]

This regulation is carried in the 1949 edition, but is not found in the 1954 and subsequent editions.

The former regulation makes practical good sense. The purpose of a survey is to facilitate the identification and description of land. Where a mineral survey has been superimposed on a rectangular survey, but the mining claims which it describes have not been approved for patent, the mineral survey is subject to being canceled. For this reason it is not the practice to lot the residual lands outside the mineral survey until patent approval is granted for the lands within the survey. Moreover, the presence of a mining claim on the land has less significance than it used to. Under the Multiple mineral Development Act of August 13, 1954, 30 U.S.C. § 521 et seq. (1970), mineral leasing of lands occupied by unpatented mining claims may be permitted. Also, pursuant to the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612 (1970), the United States has gained the right to manage the surface of a great many unpatented claims.

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<sup>1/</sup> However, a discussion of the term "legal subdivision" may be found in Robert P. Kunkel, 74 I.D. 373 (1967).

Under these circumstances, to compel Federal land managers and applicants for allowable uses to resort to metes and bounds descriptions to describe lands which are already within a rectangular survey would be to deny them the practicality and feasibility which the survey was intended to afford. No purpose would be served thereby.

We note that where a forest homestead was surveyed and subsequently relinquished, the First Assistant Secretary held that the tract could be entered by reference to the regular township plat. See Talitha A. Foran, 50 L.D. 686 (1924), where the headnote reads:

A survey which sets apart as a unit a tract of land for a forest homestead entry, does not supercede the township survey if the land thereafter becomes subject to appropriation, but it may be subsequently entered by legal subdivisions in accordance with the township plat.

We see no distinction between an approved, numbered homestead survey and an approved, numbered mineral survey, in this context.

The regulations do not mandate that oil and gas lease offers describe lands inside mineral surveys separately, and a prospective offeror could have no notice of BLM's requirement that he do so. Regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease. Murphy Oil Corporation, 13 IBLA 160 (1973); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); Georgette B. Lee, 3 IBLA 272 (1971).

[2] There is no doubt that appellant intended to apply for a total of 640 acres, as his offer expressly so states, and it is equally clear that he intended this 640 acres to be made up of all lands in the partial sections listed in his offer, including those lands falling inside MS 3554. Appellant's description thus indicates clearly which land he has applied for and does not violate the letter or spirit of 43 CFR 3101.1-4(a). In such a case, any doubt as to the interpretation of the regulation should be resolved in the applicant's favor, and he should not be penalized for failing to comply with provisions of a regulation where its meaning is far from certain. A. M. Shaffer, 73 I.D. 293 (1966). Accordingly, we hold that BLM erred by regarding appellant's offer as not including the lands in sections 11 and 16 which are within MS 3554.

We note that in cases where the mineral survey extends across several section lines, as this one does, and the oil and gas lease applicant desires to lease the Federal land in only one or two of those sections, the rule propounded in the decision below would compel him to resort to a metes and bounds description which would, in effect, re-trace the section lines across the mineral survey – a

pointless exercise in this instance which would only add to the administrative burden.

On remand, BLM should regard appellant's offer as including those portions of the partial sections listed therein which are located within MS 3554 and should process the offer as being for 640 acres.

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 remanded for further action consistent with this decision.

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Edward W. Stuebing  
Administrative Judge

I concur:

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Frederick Fishman  
Administrative Judge

I concur in the result:

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Martin Ritvo  
Administrative Judge

