

SAM P. JONES

IBLA 79-480

Decided January 30, 1980

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer for acquired lands. ES 16030.

Reversed.

1. Acquired Lands -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Noncompetitive Leases

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands 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.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Description of Land

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

3. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Description of Land

A description of land applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is.

4. Acquired Lands -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Noncompetitive Leases

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

APPEARANCES: Jason R. Warran, Esq., McDade and Lee, Washington, D.C., for appellant; James C. Hunnicutt, Midland, Texas, for Union Oil Co. of California.

OPINION OF ADMINISTRATIVE JUDGE HENRIQUES

Sam P. Jones appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated May 18, 1979, which rejected his noncompetitive oil and gas lease offer, ES 16030, for certain acquired lands in Arkansas. This appeal is taken from that portion of the decision affecting the E 1/2 E 1/2 E 1/2 SE 1/4 sec. 5, T. 9 N., R. 14 W., fifth principal meridian, Arkansas. BLM rejected appellant's offer for this tract, because a 3.16 acre portion of the tract had not been acquired by the United States, and the remaining part of the tract was included in oil and gas lease ES 14439, issued February 1, 1979, to Union Oil Co. of California (Union). 1/

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1/ Offer ES 14439 was filed on November 25, 1974, for the 50 percent interest of the United States in oil and gas in the East 15 acres of the SE 1/4 SE 1/4, and the NE 1/4 SE 1/4 less 4 acres in a square in the northeast corner thereof, sec. 5, T. 9 N., R. 14 W., fifth principal meridian. The offeror, Union, stated it also had an oil and gas lease in the 1/2 interest not owned by the United States.

Offer ES 16030 was filed on February 12, 1976, for the 50 percent interest of the United States in oil and gas in the

Appellant argues that offer ES 14439 was defective in that it failed to describe the area sought by legal subdivision or by metes and bounds as required by 43 CFR 3101.2-3(a). <sup>2/</sup> He maintains, consequently, that lease ES 14439 must be cancelled and offer ES 16030 recognized as the first qualified offer for the described lands, pursuant to 30 U.S.C. § 226(c). <sup>3/</sup> In further support of his position, appellant cites Jacob N. Wasserman, 74 I.D. 392 (1967), and Arthur E. Meinhart, Irwin Rubenstein, Appellants, Bruce Anderson, Appellee, 6 IBLA 39 (1972).

Union Oil argues that the description of lands in its lease offer ES 14439 is legally sufficient, and if the descriptions are technically deficient, countervailing considerations exist to uphold Union's lease. Union further argues that in any event no portion of lease ES 14439 lying in the NE 1/4 SE 1/4 sec. 5 should be cancelled.

At the outset, we are moved to remark that the purported lease ES 14439 contains no description of lands included in the lease. Item 3 entitled "Lands included in lease" of Form 3110-3, "Offer to Lease and Lease for Oil and Gas Noncompetitive Acquired Lands Lease,"

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fn. 1 (continued)

E 1/2 E 1/2 E 1/2 SE 1/4, SE 1/4 NE 1/4, sec. 5, T. 9 N., R. 14 W., fifth principal meridian, Van Buren County, Arkansas. The offeror, appellant above, stated that he did not own any operating rights to the interest not owned by the United States. BLM's decision of May 18, 1979, rejected appellant's offer to lease the SE 1/4 NE 1/4 sec. 5, because BLM had no information showing that the SE 1/4 NE 1/4 sec. 5 had been acquired by the United States; absent evidence of such acquisition, the offer was rejected. <sup>2/</sup> This regulation states:

"(a) Surveyed lands. If the lands 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."

<sup>3/</sup> Section 226(c) of Title 30, U.S.C. is set forth as follows:

"(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease.

is devoid of any land description. It is thus questionable that lease ES 14439 actually exists. However, on the presumption by appellant, appellee, and BLM, that lease ES 14439 does exist, we will consider the merits of the case.

The Department has consistently held that an oil and gas lease offer for lands surveyed under the public land rectangular system must describe the land by legal subdivision, section, township, and range in accordance with 43 CFR 3101.2-3, *supra*. Susan K. Hankins, 18 IBLA 240 (1974); J. Harry Henderson, A-28583 (February 10, 1961); Doris E. Ervin, 66 I.D. 393 (1959). In Jacob N. Wasserman, *supra* at 392, the syllabus recites:

A description in an acquired lands oil and gas lease offer of a parcel of land smaller than a quarter-quarter section embraced within a public land survey and purportedly in conformity with it must describe the subdivisions of the quarter-quarter section in the same manner as larger subdivisions of a section and quarter-section would be described, and cannot merely give a proportionate ratio, such as the "E 3/4" of the quarter-quarter section, unrelated to the quadrant method upon which the public land surveys are based and understood.

The description in an acquired lands oil and gas lease offer of a parcel of land in a surveyed section as the "E 3/4 of SE 1/4 NW 1/4" of the section is defective, and a lease issued pursuant to the offer must be cancelled as to that parcel where a junior offer properly describes the land in conformity with the rules of the public land survey system as the E 1/2 SE 1/4 NW 1/4 and E 1/2 W 1/2 SE 1/4 NW 1/4.

Thus, Union's description of the "East 15 acres of the SE/4 SE/4" in sec. 5, T. 9 N., R. 14 W., in offer ES 14439 was defective under the regulations and case law. It was error for BLM to have purportedly accepted the offer for such land.

We look now at the remaining land in Union's offer ES 14439: "Section 5: \* \* \* NE/4 SE/4, less 4 acres in a square in the Northeast corner thereof." This description suffers from the same defect as the one above and further does not delineate exactly the excluded 4 acres. Similar defects in describing an excluded area have been before this Department before. For example in James P. Witmer, A-30227 (July 10, 1964), the subject offers included a description of the "S 1/2 SW 1/4 except West 25 acres of SW 1/4 SW 1/4" or "S 1/2 of SW 1/4, less and except twenty-five acres across West side of SW 1/4 of SW 1/4." Following the regulation (then 43 CFR 3212.1 (1964)), requiring a description by metes and bounds where a description to lease acquired lands for oil and gas cannot be conformed to the public land surveys, the Assistant Solicitor held:

Where an oil and gas lease offer for land described as the "S 1/2 SW 1/4" of a section, excepting a certain part of the "SW 1/4 SW 1/4" is deficient because it improperly describes land in the SW 1/4 SW 1/4 which is to be excluded from the offer, the offer is acceptable for the SE 1/4 SW 1/4 since it is ascertainable from the description that the improperly described land lies only in the SW 1/4 SW 1/4 of the section and the description of the land in the SE 1/4 SW 1/4 meets the regulatory requirements.

Witmer distinguished Charles J. Babington, 71 I.D. 110 (1964), wherein the Assistant Solicitor, some four months earlier, had held:

Where an oil and gas offer for land described as the S 1/2 S 1/2 of a section is deficient because it improperly describes land in the S 1/2 S 1/2 which is to be excluded from the offer, the offer cannot be accepted for the S 1/2 SE 1/4 because it is ascertained that the excluded land lies in the S 1/2 SW 1/4 of the section.

And in Finlay MacLennan, A-31068 (Jan. 16, 1970), the Assistant Solicitor discussed both Witmer and Babington and concluded in the spirit of these holdings: "Where an area sought to be excluded from a larger parcel of land in an oil and gas lease offer is described by metes and bounds in terms which do not satisfy the pertinent regulation, it makes the offer defective as to the parcel and subject to rejection to that extent."

A fortiori, an offer which does not include a metes and bounds description of the excluded area or a description by the quadrant method is defective. Thus it was error for BLM to have purportedly accepted offer ES 14439 for the NE 1/4 SE 1/4 sec. 5. The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described. Charles H. Fingerhood, A-30461 (Mar. 17, 1966).

Union argues that lease ES 14439 should not be cancelled for its description of the "NE 1/4 SE 1/4 less 4 acres in a square in the Northeast corner thereof", because Jones' offer ES 16030, describing the E 1/2 E 1/2 E 1/2 SE 1/4 sec. 5 in conflict therewith, fails to delete the 3.16 or 4.0 acres not owned by the United States.

As to this argument, the Department consistently has held:

A description of lands applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is \* \* \*. Charles J. Babington, *supra* at 110.

An oil and gas lease offer does not contain a defective description because it does not exclude a right-of-way within the land applied for, since the Department has never required the rejection of a lease offer merely because it described land that was not available for leasing so long as rental has been remitted for all the land described without any diminution for the land in the right-of-way. L. B. Smith, A-30447 (Oct. 29, 1965).

An acquired lands oil and gas lease offer is not defective merely because it fails to describe all the land in a tract available for leasing. Arthur E. Meinhart, *supra*.

Offer ES 16030 properly described a 20-acre tract as the E 1/2 E 1/2 E 1/2 SE 1/4 sec. 5 and was accompanied by payment of rental for the 20 acres. BLM may accept such an offer and issue a lease for the actual area owned by the United States, excluding from the aliquot subdivisions, by a metes and bounds description, the non-Federal land.

The final question, assuming that ES 14439 is a valid lease, is whether the lease must be cancelled in its entirety because of the defective descriptions in the offer to lease ES 14439, or only so far as there is a conflict with offer ES 16030. Union argues that if it be determined that lease ES 14439 is invalid, it should be cancelled only to the extent of the actual conflict with offer ES 16030, *i.e.*, only to the extent of the East 10 acres in SE 1/4 SE 1/4 sec. 5 leaving the West 5 acres of the East 15 acres of SE 1/4 SE 1/4 or E 1/2 W 1/2 E 1/2 E 1/2 SE 1/4 SE 1/4 [sic] intact in lease ES 14439. <sup>4/</sup> While it is true that sections 27 and 31 of the Mineral Leasing Act, 30 U.S.C. §§ 184(h) and 188(b), provide for cancellation of oil and gas leases for a violation of the statute, or lease terms, and 43 CFR 3108.2-3 provides for cancellation of noncompetitive oil and gas leases for violation of any provision of the act, the regulations, or the lease terms, action to effect such cancellation is discretionary, not mandatory. Estate of John P. Wagner, 26 IBLA 119 (1976).

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<sup>4/</sup> Union correctly identifies the East 10 acres of the SE 1/4 SE 1/4 sec. 5 as an area of conflict with offer ES 16030. ES 16030 does not conflict with the West 5 acres of the East 15 acres, SE 1/4 SE 1/4 sec. 5. Union incorrectly describes this 5-acre parcel as the E 1/2 W 1/2 E 1/2 E 1/2 SE 1/4 SE 1/4 sec. 5. Properly, the parcel is described E 1/2 W 1/2 E 1/2 SE 1/4 SE 1/4. The area of conflict also includes, however, the East 10 acres of the NE 1/4 SE 1/4 sec. 5, less that 3.16-acre portion of the tract included therein not belonging to The United States.

Although the Department has developed a policy in some circumstances of not cancelling oil and gas leases issued in violation of the regulatory requirements and in the absence of intervening qualified applicants, Claude C. Kennedy, 12 IBLA 183 (1973), such discretion may not be exercised when a qualified offeror files an acceptable offer for the same land prior to issuance of a lease in response to a defective offer. In that circumstance, the Department must cancel the lease arising from the defective offer. Boesche v. Udall, 373 U.S. 472 (1963); Hugh E. Pipkin, 71 I.D. 89 (1964). However, in this case, notwithstanding the defective descriptions in offer ES 14439, it is deemed reasonable not to cancel lease ES 14439 in its entirety, because Union is the lessee of the undivided oil and gas interest not owned by the United States, and it would seem most reasonable not to fractionate the oil and gas interest owned by the United States beyond the extent of the statutory preference vested in appellant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, noncompetitive oil and gas lease ES 14439 is cancelled to the extent of its conflict with offer ES 16030, and the cases are remanded to the Eastern States office, Bureau of Land Management, for further appropriate action consistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

James L. Burski  
Administrative Judge

