

WALTER R. WILSON, JR.

IBLA 80-850

Decided June 1, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offers, ES 13458, et al.

Set aside and remanded.

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

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

2. 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: Thomas J. Eastment, Esq., John P. Mathis, Esq., Washington, D.C., for appellant.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated June 26, 1980, by the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive acquired land oil and gas lease offers ES 13458, et al. 1/

Appellant's offers were filed in February, March, and April 1974 for lands acquired by the United States Army Corps of Engineers (COE), in Cleburne and Van Buren Counties, Arkansas. In the offers, the lands sought were described by reference to the tract numbers assigned by COE.

By decision dated November 1, 1974, BLM advised appellant that COE had consented to lease the lands described in the offers but that issuance of the leases was dependent on the execution of special stipulations. The decision further advised that no further action could be taken until an analysis had been made to determine if an Environmental Impact Statement (EIS) were required. Appellant completed and returned the stipulations to BLM.

By letter dated October 25, 1979, BLM advised appellant that an Environmental Assessment Report (EAR) had yet to be compiled for the lands included in his offers, and that when this issue was resolved adjudication of the offers could proceed.

By letter dated February 26, 1980, Wesco Resources, Inc. (Wesco), filed a protest against many of appellant's offers on the ground that the land descriptions therein failed to comply with 43 CFR 3101.2-3(a), and that its own offers properly described the same lands. On June 26, 1980, BLM rejected appellant's offers citing that regulation. By letter dated June 2, BLM advised Wesco that its protest would be held in abeyance pending a decision by the Board in the instant appeal.

Appellant's major thesis on appeal is that land description by acquisition tract number is sufficient and fully comports with longstanding Departmental interpretation of the regulation involved. He points out that in the several years he has awaited BLM processing of his offers he never received the slightest indication that his land descriptions were in any way deficient.

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1/ The remaining offers are numbered as follows:

ES 13459 ES 13496 ES 13497 ES 13498 ES 13528 ES 13573 ES 13574  
 ES 13575 ES 13584 ES 13585 ES 13590 ES 13591 ES 13653 ES 13654  
 ES 13655 ES 13656 ES 13657 ES 13658 ES 13666 ES 13667 ES 13668  
 ES 13669

The predecessor of 43 CFR 3101.2-3 was 43 CFR 3212.1. That regulation, which is listed as governing on the lease forms before us, was first published in 1964, and, until revised in 1970, provided:

Subpart 3212 -- Lease Requirements

§ 3212.1 Supplemental information required in offers and applications for leases and permits; place of filing.

(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.

(ii) 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.

(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.

(iv) 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.

\* \* \* \* \*

[29 FR 4548, Mar. 31, 1964, as amended by Circ. 2168, 29 FR 14368, Oct. 17, 1964.]

In the preamble to the June 1970 revision the Secretary of the Interior stated: "It is the Department's intent in this revision to make no substantive changes in the regulation" (35 FR 9502, June 13, 1970).

The 1970 revision, presently operative, reads 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 paragraph (b)(2) of this section.

(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.

A comparison of the two versions reveals that 3102.2-3(a) carries forward the text of 3212.1(i); new subparagraph (b)(1) is identical to former (ii); and new (b)(3) carries forward the text of former (iii). In his statement of reasons appellant analyzes these changes as follows:

A possible reading of the revised text is that a map is only required for, and acquisition tract numbers are only acceptable for, unsurveyed lands. This construction, apparently adopted by BLM here, is based upon reading

subsections (b)(2) and (3) as only pertaining to unsurveyed lands. However, this interpretation places the revised provisions at complete odds with the plain meaning of Section 3212.1 that was applicable prior to the 1970 revision. Under this prior section, maps were required for offers to lease both surveyed and unsurveyed land (except where the land was surveyed and the land description could be conformed to the system) and acquisition tract numbers could be used to describe both types of land. The Secretary of Interior's unequivocal statement that no substantive amendments had been intended in the 1970 revisions thus clearly contradicts BLM's reading.

In order to be consistent with the Secretary's disavowal of an intent to make substantive changes, Subsections (b)(2) and (b)(3) must be read to apply to both surveyed and unsurveyed lands as plainly set forth in the regulation in effect prior to the 1970 revisions. This position is not only required by the Secretary's statement, but it is the only construction that gives meaning to all parts of those subsections. In order to adopt BLM's new construction, significant portions of those subsections would need to be ignored. For this reason, BLM's reading is contrary to the fundamental rule of construction that a statute or regulation should be read so as to give meaning to all of its parts. Jarecki v. G. D. Searle & Co., 367 U.S. 303, 307-308 (1961). As there stated, regulations, such as the one at issue here, should not be interpreted so as to render "one part a mere redundancy." \* \* \*

Subsection (b)(2) retained the parenthetical exception contained in the old Section 3212.1 that a map need not be submitted where the lands sought to be leased have been surveyed under the rectangular system of public lands surveys and the land description can be conformed to the system. Under BLM's asserted reading of the regulation, this parenthetical provision would be completely redundant because according to BLM the map requirement in Subsection (b)(2) does not apply to any surveyed lands. Similarly, the second sentence of Subsection (b)(3), also retained from the old Section 3212.1, states that where an acquisition tract number is used the offer must be accompanied by the map required by Subsection (b)(2). Again, the second sentence of this Subsection is completely redundant under BLM's construction, it being already clear under that reading that Subsection (b)(2) and (b)(3) only apply to unsurveyed lands and that maps are required for all offers for such lands. The second sentence only becomes meaningful if the regulation is read to mean that maps are normally required for offers to lease surveyed lands except, according to the parenthetical clause of Subsection (b)(2), when

the land description can be conformed. Only then would the second sentence of Subsection (b)(3) become meaningful, requiring maps in all offers for surveyed lands, including when the land description can be conformed, and unsurveyed lands when acquisition tract numbers are used.

Under the Secretary of Interior's contemporaneous construction, the parenthetical clause in Subsection (b)(2) and the second sentence of Subsection (b)(3) are both given meaning. Under this interpretation, both of these Subsections apply to both surveyed and unsurveyed lands, as provided by Section 3212.1 prior to the 1970 revisions. Under this intended construction, the parenthetical phrase of Subsection (b)(2) becomes meaningful to limit the applicability of the map requirement to surveyed lands that cannot be conformed to the public land survey system. Similarly, the second sentence of Subsection (b)(3) becomes meaningful by requiring a map in all cases where an acquisition tract number is used, even for surveyed lands which can be conformed to the public lands survey system and for which a map is otherwise not applicable under the parenthetical clause of Subsection (b)(2). [Emphasis in original.]

Statement of Reasons at 13-16.

Appellant asserts that the intent of the 1970 revision was to reorganize, not substantively change the regulation. However, BLM's rejection of his offers based on improper land description is premised on an interpretation of the regulation which would render the revision as substantive in nature. Appellant contends that if substantive changes had been intended, they would have to have been preceded by notice and an opportunity for public comment in accordance with the Administrative Procedure Act, 5 U.S.C. § 552(a)(1)(D) and (E) (1976).

Finally, appellant argues that BLM is estopped to reject his offer. He also requests an opportunity for oral argument.

Two Board decisions, Murphy Oil Corporation, 13 IBLA 160 (1973), and Arthur E. Meinhart, 5 IBLA 345 (1972), lend considerable support to appellant's position. In Murphy, the Board sought to ascertain whether an offeror was required to file a map where the lands applied for were surveyed. Having reference to the metamorphosis of 43 CFR 3212.1 into 3101.2-3, the Board stated at 164:

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.

In Meinhart, similarly, the Board found the language of the regulation "less than a paradigm of clarity." There, the offerors described the lands sought, giving the total acreage, the township, range and meridian, and the tract numbers assigned to each parcel by the acquiring agency. The offers were accompanied by maps prepared by the acquiring agency and showing the identical tracts desired by the offerors as designated by their respective tract numbers. A party who had filed offers junior to those of Meinhart protested the latter's offers on the ground that the land description failed to comply with 43 CFR 3212.1. The protestant's offer described each parcel by metes and bounds according to 43 CFR 3212.1(i). BLM dismissed the protest against the Meinhart offers, holding that the land descriptions therein fully satisfied the requirements of 43 CFR 3212.1(iii), and were therefore entitled to priority as of the date of their filing. When the case reached the Board, the issue was not whether "acquisition tract numbers" were properly used to describe the lands sought, but whether the numbers used in the offers were in fact intended as acquisition tract numbers (as that term is used in the regulation) by the acquiring agency. In discussing this issue the Board stated in part as follows:

In the absence of any precise definition of the term [acquisition tract number] 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 \*

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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.

Meinhart, *supra* at 348-49.

[1, 2] In the case before us appellant's offers are accompanied by COE maps which delineate precisely the boundaries of the parcels sought within their respective townships. If the descriptions are adequate for their intended purpose, we see no reason why appellant's offers should not enjoy priority as of the dates they were filed. We note that the decision appealed from is a form decision which does not discuss the sufficiency of the descriptions in appellant's offers. <sup>2/</sup> In any event, the considerations we have elucidated herein militate strongly against the rejection of appellant's offers for improper description. These considerations are: BLM's past practice of accepting descriptions by acquisition tract number; the Secretary's disavowal of any intent to substantively change the regulation; and the dearth of clarity of that regulation. As has often been held, 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. Andrew Miscovich, 6 IBLA 100, 79 I.D. 410 (1972); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); Georgette B. Lee, 3 IBLA 272 (1971). For these reasons we will remand the case to BLM for further adjudication of appellant's offers. In view of our disposition, appellant's estoppel argument need not be discussed and the request for oral argument is denied.

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 set aside and the case is remanded to BLM for further processing consistent with the views expressed herein.

Gail M. Frazier  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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<sup>2/</sup> The decision does cite Charles D. Lee, A-30535 (May 19, 1966), however, that case is not authority for the rejection of this offer considering the Secretary's statement that no substantive changes were intended when 43 CFR 3212.1(a)(3)(iii) was redesignated 3101.2-3(b)(1).

