

Editor's note: Reconsideration granted; decision vacated by order dated Nov. 16, 1982 -- See 65 IBLA 195A & B below.

MAX A. KREY ET AL.

IBLA 82-356

Decided June 29, 1982

Appeal from the decision of the Colorado State Office, Bureau of Land Management, redescribing the lands covered by competitive oil and gas lease C-0128309.

Affirmed.

1. Oil and Gas Leases: Description of Land -- Surveys of Public Lands: Generally

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed because no change has been made in the land actually covered by the lease.

APPEARANCES: James E. Bosik, Esq., Denver, Colorado, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Max A. Krey, Walter S. Fees, Jr., Robert S. Hawkins, and Garco, Inc., have appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 24, 1981, changing the description of the land covered by competitive oil and gas lease C-0128309, based on the dependent

and independent resurvey of T. 8 S., R. 101 W., sixth principal meridian, accepted by the Acting Chief, Cadastral Survey, Examination and Approval Staff, on May 28, 1981.

The lease as issued covered 640 acres of land described as follows:

T. 8 S., R. 101 W., sixth principal meridian

Sec. 13: S 1/2 SW 1/4, SW 1/4 SE 1/4

Sec. 14: SE 1/4 SE 1/4 Sec. 23: E 1/2 NE 1/4, NE 1/4 SE 1/4 Sec. 24: NW 1/4, W 1/2 NE 1/4, N 1/2 SW 1/4, NW 1/4 SE 1/4

BLM's description of the lands under the resurvey is as follows:

T. 8 S., R. 101 W., sixth principal meridian

Sec. 13: Lot 13, S 1/2 SW 1/4

Sec. 14: SE 1/4 SE 1/4

Sec. 23: E 1/2 NE 1/4, NE 1/4 SE 1/4

Sec. 24: Lots 4, 5, 12, NW 1/4, N 1/2 SW 1/4

It also covers 640 acres.

Appellants do not challenge the validity of the resurvey. Rather they argue that BLM, instead of redescribing the same lands as originally covered by lease C-0128309, has shifted the tract in a westerly direction, so that a portion of the lands originally included in the E 1/2 of sec. 13 and the E 1/2 of sec. 24 are no longer covered by the lease. They illustrate their argument as follows:

For example, the Lease is now described as including Lot 13 of Section 13, the Southeast corner of which is 3,612.18 feet west of the Southeast corner of Section 13 according to the resurvey, and the Lease is now described as including Lots 4, 5, and 12 of Section 24, the Northeast corner of Lot 4 being 3,612.18 feet west of the Northeast corner of Section 24 according to the resurvey. In contrast, for example, the Lease was originally described as including the SW/4SE/4 of Section 13, the Southeast corner of which, according to the Oil and Gas Plats on file in the BLM prior to resurvey, is 1,320 feet west of the Southeast corner of Section 13, and similarly, the Lease was originally described as including the W/2NE/4 and the NW/4SE/4 of Section 24, the Northeast corner of W/2NE/4 being 1,320 feet west of the Northeast corner of Section 24, according to the Oil and Gas Plats on file in the BLM prior to resurvey.

Appellants contend that the alleged shift in the lands covered by the lease results in less promising prospects and in decreased value. In a separate

motion dated January 21, 1982, appellants requested a hearing in order that they may present evidence on the issues in this case.

[1] Appellants suggest that under BLM's new description the location of its leasehold has shifted in relation to the southeast corner of sec. 13 (or the northeast corner of sec. 24). Therein lies the confusion. Examination of the new status plat reveals that one of the major purposes of the resurvey of T. 8 S., R. 101 W., sixth principal meridian, was an adjustment of the eastern boundary or range line of the township to restore the corners to their original location according to the best available evidence. Little or no change was made in the western boundary of the township or the internal section corners.

The most significant effect of the resurvey insofar as this appeal is concerned was that the restored northeast corner of sec. 13 was moved 38.19 chains to the east, the restored southeast corner of sec. 13 was moved 34.73 chains to the east, and the restored southeast corner of sec. 24 was moved 30.58 chains to the east. The section corners on the western line of secs. 13 and 24 stayed the same. So, instead of the two entirely regular 640-acre sections portrayed in the original survey, secs. 13 and 24 are now irregular sections of 934.82 acres and 901.09 acres, respectively. In effect, the E 1/2 of sec. 13 and the E 1/2 of sec. 24 have almost doubled in size, requiring BLM to divide them into 16 40-acre lots or fractions thereof. The W 1/2 of each section was not changed in size or description. The distance from the southeast corner of the SW 1/4 SE 1/4 of sec. 13 (now lot 13) ^{1/} to the southeast corner of sec. 13 has nearly tripled: from 20 chains (1,320 feet) to 54.73 chains (3,612.18 feet).

Thus, appellants' leasehold has not shifted to the west; rather, the southeast corner of sec. 13 (northeast corner of sec. 24) has been relocated farther to the east. Appellants' leasehold remains in exactly the same location in relation to the western range line of the township as before. Lot 13 of sec. 13 under the resurvey is the same land as the SW 1/4 SE 1/4 of sec. 13 under the original survey. Lots 4, 5, and 12 of sec. 24 under the resurvey are the same lands as the W 1/2 NE 1/4 and the NW 1/4 SE 1/4 of sec. 24 under the original survey. Only the designation of subdivisions in the E 1/2 has been changed because the E 1/2 of secs. 13 and 24 are no longer regular 320-acre tracts.

Under 43 CFR 4.415, this Board has the discretion to grant a request for a hearing on issues of fact. Since appellants' complaint appears to have arisen from a misinterpretation of the May 28, 1981, status plat reflecting the resurvey of T. 8 S., R. 101 W., sixth principal meridian, and from a failure to accurately identify the location of the changed section corner, and inasmuch as we have concluded that the change in description has not resulted

^{1/} This is the same point as the northeast corner of W 1/2 NE 1/4 of sec. 24 (now lots 4 and 5), and it has the same relationship to the southeast corner of sec. 13 (northeast corner of sec. 24).

in any change in the location of appellants' leasehold, we find no basis on which to order a hearing. Accordingly, we deny appellant's motion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

November 16, 1982

IBLA 82-356	:	C 0128309
65 IBLA 192	:	
	:	
MAX A. KREY ET AL.	:	Oil and Gas Lease
	:	
	:	65 IBLA 192 Vacated, Case
	:	Remanded

ORDER

On August 30, 1982, the Board received a request from appellants for reconsideration of the above-captioned decision. Appellants alleged error in that decision because no significance had been given to the fact that the lease in question, C-0128309, is a competitive lease issued to conform to a known geologic structure (KGS) that was based on that because of a 1981 resurvey of T. 8 S., R. 101 W., sixth principal meridian, the well can no longer be described as being located in the SE 1/4 NW 1/4 NW 1/4 of sec. 24, as indicated on an attached Geological Survey memorandum dated July 16, 1958, but rather is actually located in the SE 1/4 NE 1/4 NW 1/4, as shown by appellants' survey of August 10, 1982. Appellants argued that because the description of the well's location has changed, so must the description of the KGS and of the lands encompassed by the lease. Appellants urged that the Board remand the case to the Colorado State Office, Bureau of Land Management (BLM), for reconsideration and that the Board stay the effectiveness of its decision during BLM's reconsideration. The Office of the Regional Solicitor joined in appellants' request.

On September 24, 1982, pursuant to 43 CFR 4.21(c), we granted appellants' request for reconsideration, stayed the effectiveness of our decision, and ordered BLM to submit a report from the Chief, Cadastral Survey, as to the proper description of the lands in lease C-0128309 and the reasons supporting the description.

By memorandum dated October 21, 1982, BLM submitted the requested report and attached a resurvey plat with the actual location of the leased lands plotted on the plat. BLM reported that the actual location of the leased lands in the ground no longer conformed to legal

65 IBLA 195A

subdivisions and that appellants' attorney has verbally indicated that the appellants are willing to accept the following lease description:

T. 8 S., R. 101 W., Sixth principal meridian

Sec. 13: Lots 13 and 14, S 1/2 SW 1/4

Sec. 24: Lots 3 through 6, 11 and 12, NW 1/4, N 1/2 SW 1/4

This description covers approximately the land plotted as the original actual leased land and places the Pure well musts nearly in the center of the KGS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in Max A. Krey, 65 IBLA 192 (1982), is vacated, and the case is remanded to the Colorado State Office for appropriate action to conform the lease description to the independent resurvey. 1/

Bernard V. Parette
Administrative Judge
Alternate Member

We concur:

James L. Burski Douglas E. Henriques
Administrative Judge

Administrative Judge

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1/ The description issues raised in this appeal give rise to the need for Minerals Management Service to redefine the KGS and to have it properly noted on the oil and gals plat. Further before taking any action on lease C-0128309 BLM should consider the impact of the description change on leases which adjoin appellant's lease and ensure that such change does not adversely impact other lessees.

