

JAMES M. CHUDNOW
THEO V. COUKOULIS
GEORGETTE M. COUKOULIS

IBLA 82-1298

Decided November 22, 1982

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting in part oil and gas lease offer, C 35806.

Affirmed.

1. Oil and Gas Leases: Applications: Description

When an oil and gas lease offer for lands within a section includes numbered fractional lot descriptions not found in the official survey plat and the specific description for that particular section is followed by an "all" in parenthesis, the description does not meet the requirements of 43 CFR 3101.1-4(a) where the acreage computation would be incorrect if the entire section was included. The offer is ambiguous and defective as to those fractional lots and subject to rejection to that extent.

APPEARANCES: James M. Chudnow, Theo V. Coukoulis, and Georgette M. Coukoulis pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is from a decision dated August 18, 1982, by the Colorado State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer, C 35806, because the approved survey did not contain the fractional lots as numbered by appellants in their offer.

On April 28, 1982, James M. Chudnow, Theo V. Coukoulis, and Georgette M. Coukoulis, co-offerors, filed an oil and gas lease offer, C 35806, for 803 acres described as "6th P. Meridian. TWP 7 N. RANGE 100 W.: SEC. 4: Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 (=ALL); SEC. 11: W 1/2 SE 1/4, NE 1/4 SE 1/4, SE 1/4 SW 1/4; TWP. 7 N., RANGE 99 W.: SEC. 6: E 1/2 SW 1/4." BLM rejected portions of the offer because "[t]he approved survey of Section 4

does not contain Lots 1, 2, 3, 4." After rejecting these lots, BLM issued a lease effective September 1, 1982, for the remaining 720 acres.

In their statement of reasons, appellants argue that the notation "ALL" "should take precedence over the inadvertent mistyping" of the lot number and request that their lease be revised to include all of sec. 4 as they had intended in their offer.

The irregular sec. 4 embraces four oversized lots on its northern boundary. According to the latest official survey plat, January 22, 1971, the smallest legal subdivisions along the northern edge of the section are numbered 5 (40.53 acres), 6 (40.59 acres), 7 (40.65 acres), and 8 (40.71 acres). The official plat does not show any lots numbered 1, 2, 3, or 4. ^{1/}

[1] The lands within sec. 4 are surveyed public domain. For lands of this nature, Departmental regulation, 43 CFR 3101.1, specifies the manner in which the land must be described in the lease offer as follows: "§ 3101.1-4 Description of lands in offer. (a) Surveyed lands. 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." The purpose of this regulation is to require the offeror to give a description which is at least sufficient on its face to delimit the land applied for. Milan S. Papulak, 63 IBLA 16, 17 (1982); Charles J. Babington, 71 I.D. 110, 113 (1964). Under the law and regulations pertaining to oil and gas leasing, the description is necessary, of course, to determine the land desired and also as a means of determining the acreage. Robert P. Kunkel, 74 I.D. 373, 378 (1967).

In Charles J. Babington, *supra*, the Assistant Solicitor held that if the description is not sufficient on its face, the offer is defective. "It is no answer * * * that it was obvious * * *. This is not within the contemplation of the regulation." *Id.* at 113. However, in Robert P. Kunkel, *supra*, the Assistant Solicitor addressing a situation where the offeror described fractional lots within a section by using regular subdivisions, remarked that, "we see no necessity for an offeror to describe all of the fractional and regular subdivisions within a section, half section, or quarter section when he applies for all the lands therein." *Id.* at 377.

Basically, appellants have supplied two descriptions for the same section: sec. 4, Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 and sec. 4, all. The

^{1/} There may be several explanations why the use of the numbers 1, 2, 3, or 4 is inadequate to describe the fractional lots in sec. 4. One explanation, found in Manual of Surveying Instructions, BLM, section 6-52 (1973), reads:

"Where there are new normal lottings in the sections along the north and west boundaries of the township, if those sections are not restorations of the corresponding sections of the prior survey (and same township and range), the lottings are given numbers beginning with the next higher number above those that were previously employed."

Thus, the use of the numbers 1, 2, 3, or 4 would be confusing as to which survey the offeror refers to. The use of a superseded survey would invalidate the offer.

latter description may be correct in appropriate circumstances, but the former is incorrect in this situation. It simply is not the legal subdivision as identified on the approved public survey plat. The issue of this appeal is whether BLM may accept appellants' parenthetical description where the specific description is erroneous.

In Mountain Fuel Supply, 13 IBLA 85 (1973), BLM accepted a parenthetical description that was different than the preceding specific description. This Board upheld BLM's decision to accept as part of the offer the lands described by the parenthetical notation despite the Board's agreement that the source of error was "fairly clear." The offer was rejected for deficient rental payment after the acreage amount was increased. This Board reasoned that, "if Bureau personnel undertook to 'correct' deficient oil and gas lease offers they would run the risk of doing so improperly * * *. Uniformity of administration would suffer if individual Bureau officials 'corrected' applications." Id. at 87. "[BLM] could not have stated with certainty what land was actually intended to be included in the offer. If that could have been determined with certainty, the description would have been adequate." Id. at 86.

This Board has previously considered a BLM decision to reject an oil and gas offer where an incorrect specific description was supplemented by a correct summation in parenthesis in David H. Yates, 33 IBLA 175 (1977). The requested lands were in an irregular section and the appellant's offer described the fractional lots as "Unnumbered lots 2, 3, 4" followed by a parenthetical summation by subdivision. BLM rejected the specific description for the fractional lots because the official survey plat did not designate them with numbers. Following the reasoning found in Kunkel, the Board reversed BLM's decision on the basis that the appellant attempted to describe the lands fully and clearly. "Appellant numbered the lots in a manner consistent with current correct survey methods, and it is clear that both descriptions refer to the same land. The lot designation may be disregarded as surplusage. The lack of ambiguity is also apparent from appellants' proper computation of acreage and rental." Id. at 177.

Appellants' offer is not as clear and unambiguous as that found in Yates. The most recent survey plat for sec. 4 was completed over 10 years ago when the fractional lots were numbered 5, 6, 7, and 8. Although it can be suggested that appellants intended to describe the fractional lots in sec. 4 by the use of the numbers 1, 2, 3, and 4, that conclusion is not supported by appellants' acreage computation. Appellants' offer was for 803 acres. If lots 5, 6, 7, and 8 are added to those portions of the offer sufficiently described and leased (720 acres), the total acreage computation would be 882.48 acres. Thus, the description in appellants' offer cannot be determined with absolute certainty. They very well might have based their offer on an earlier (incorrect) survey. The offer is ambiguous and subject to rejection as to those parcels insufficiently described. It is not for the Department to salvage from the description some land that may be considered properly described. Charles J. Babington, supra, at 113. BLM has no duty to guess which lands an offeror intended to include in his offer or authority to alter a lease offer to make it valid. Milan S. Papulak, supra, at 17.

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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

