

MAPCO PRODUCTION CO., INC.

IBLA 83-114

Decided February 2, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers NM-A 47194 (TX) and NM-A 47238 (TX).

Affirmed.

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

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

APPEARANCES: D. Stanley Tacker, Esq., Tulsa, Oklahoma, for appellant;
Robert Uram, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

MAPCO Production Company, Inc. (MAPCO), has appealed the September 20, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its two acquired lands oil and gas lease offers.

On August 28, 1981, MAPCO filed its offers, together covering 9,080 acres of acquired lands in Bowie County, Texas, within the Red River Army Depot. None of these lands have been surveyed under the rectangular

system of public land surveys, and they are not within the area of the public land surveys. The tracts that MAPCO applied for constituted only a part of the lands acquired by the United States.

On both applications, MAPCO described the desired lands by reference to a copy of a plat (apparently a local ownership plat) with the area sought blocked out in yellow ink. The desired lands in NM-A 47194 (TX) consisted of 10 subtracts totaling 4,684 acres. Each subtract was described by reference to the "headright" surveys 1/ and portions thereof that the subtract covered, as well as by reference to local features such as U.S. Highway 82 and the Missouri Pacific Railway. The desired lands in NM-A 47238 (TX) consisted of seven subtracts, each described in the same manner, totaling 4,396 acres. The following description of a subtract of the lands applied for in NM-A 47194 (TX) is representative: "A portion of the William F. Thompson Headright Survey, lying South of U.S. Highway 82 and Missouri Pacific Railroad and being bordered now or formerly on the West by the M. A. Hart Estate and A. C. Alford, containing 1,699.00 acres, more or less."

Although the details are not clear from the present record, we presume that BLM opened the Red River Army Depot to oil and gas leasing, accepting all offers filed before September 1, 1981, as though simultaneously filed at 10 a.m. on that date. Priorities among all the offers were then presumably, determined by drawing, with MAPCO's application NM-A 47194 (TX) drawn 8th and application NM-A 47238 (TX) drawn 52nd. We are unable to determine whether these priorities are low enough to place MAPCO in a position of receiving leases for its desired lands.

On January 28, 1982, A. B. Baker filed a protest against both of MAPCO's offers, asserting that they violated 43 CFR 3101.2-3(b). No copy of this protest was served on MAPCO, and BLM evidently never issued a decision expressly ruling on it.

On August 18, 1982, BLM issued a decision rejecting MAPCO's offers because they were not accompanied by a map as required by 43 CFR 3101.2-3(b)(2). BLM made no reference to Baker's protest in its decision. MAPCO filed a notice of appeal of this decision on September 20, 1982.

Also on September 20, 1982, BLM rescinded its decision of August 18, noting that maps were in fact filed with MAPCO's offers. However, in the same document, it rejected those offers because proper descriptions were not filed with them, citing 43 CFR 3101.2-3(b)(1). On September 22, BLM returned MAPCO's notice of appeal of the August 18 decision without action since this decision had been rescinded.

1/ We surmise that these "headright" surveys are surveys delineating the extent of property interests originally awarded by "headright certificate" to immigrants who settled in the Republic of Texas between Oct. 1, 1837, and Jan. 1, 1840.

MAPCO filed a timely appeal of BLM's amended decision of September 20, 1982. ^{2/} We affirm.

[1] Under 43 CFR 3101.2-3(b)(1), where, as here, the lands applied for are not surveyed under the rectangular system of public land surveys and not within the area of the public land surveys, they must be described as they were on the deed by which the United States acquired title to the land. Appellant admits that this deed contains a metes and bounds description. Since the description on appellant's application is not in metes and bounds, it has failed to meet this requirement. Additionally, since appellant applied for only part of the acquired tract, its descriptions were deficient because they did not describe the lands by courses and distances between successive angle points on its boundary, tying by course and distance into the description of the land in the deed mentioned above, as required by 43 CFR 3101.2-3(b)(1).

The requirements of 43 CFR 3102.1-3(b)(1) are clear. Where an application fails to describe applied for lands as this section requires, the application is properly rejected. Chevron, U.S.A., Inc., 67 IBLA 266 (1982).

In view of our holding that the written description of these lands was inadequate, it is unnecessary to consider whether the plat filed with appellant's offers is a satisfactory "map," as required by 43 CFR 3101.2-3(b)(2).

Appellant objects to BLM's failure to notify it of Baker's protests against its offers. While we agree that BLM should have notified appellant of these protests, its failure to do so did not prejudice appellant, since, by the time the protest was filed, it was too late to cure the deficiency, because other competing offers had evidently been filed. Appellant's due process right to rebut protestant's allegation of error is protected by this appeal.

Appellant also argues that BLM was without authority to rescind its decision of August 18, 1982, since, it asserts, it filed its notice of appeal of this decision on September 17, before the rescission. It correctly notes that, once a notice of appeal to this Board is filed, BLM loses jurisdiction over the matter and lacks authority even to rescind an erroneous decision until we remand it. Sierra Club, 57 IBLA 288 (1981), and cases cited.

However, the record shows that the notice of appeal was not filed until September 20, 1982, the same day BLM rescinded the decision from which the appeal had been filed. Although the timing is close, we will presume that BLM actually rescinded its decision prior to the filing of the notice of appeal. BLM retains authority to reconsider and revise its decisions up

^{2/} On Oct. 7, 1982, after BLM's decision rejecting MAPCO's offers, Baker filed a second protest, asserting the same grounds as in the first. He did not serve MAPCO with a copy of this protest. On Nov. 1, BLM acknowledged receipt of this protest.

until the filing of a notice of appeal. John J. Sexton (On Reconsideration), 20 IBLA 187, 192 (1975); Ruby E. Huffman, 64 I.D. 57 (1957). Even were we to hold otherwise, appellant's offers would not be revived, since BLM correctly ruled on the merits in its September 20 decision.

Accordingly, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

