

OZARK-MAHONING CO.

IBLA 83-217

Decided October 18, 1983

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting in part hardrock prospecting permit application ES-24620.

Affirmed.

1. Mineral Lands: Prospecting Permits

BLM may properly reject a hardrock prospecting permit application where the land description by legal subdivision is inaccurate (as well as ambiguous) in that the applicant refers to the NW 1/2 SE 1/4 SE 1/4 and the SE 1/2 SE 1/4 and the land has been surveyed under the rectangular system of public land surveys and the description can be conformed thereto, as provided by 43 CFR 3501.2-4(a).

APPEARANCES: R. N. Diffenbach, Chief Geologist, Ozark-Mahoning Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ozark-Mahoning Company has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated November 18, 1982, rejecting in part hardrock prospecting permit application ES-24620.

On May 6, 1980, appellant filed a hardrock prospecting permit application for 2,327.48 acres of acquired land situated in Pope County, Illinois, within the Shawnee National Forest. The land was described as follows: "Part of Sections 25, 26, 35, and 36, T 12 S, R 5 E. Part of Sections 1, 2, 3, 4, 9, and 10, T 13 S, R 5 E. All in Pope County, Illinois. (See attached map and List of Tracts for complete legal description.)"

In its November 1982 decision, BLM rejected appellant's application in part because, with regard to 95.87 acres of land in sec. 2, T. 13 S., R. 5 E., third principal meridian, Pope County, Illinois, the mineral rights are not federally owned and, with regard to other land, because appellant had supplied an incorrect land description under 43 CFR 3501.2-4. This land is described as follows: "T. 12 S., R. 5 E., Section 36, NW 1/2 SE 1/4 SE 1/4, 20 acres; T. 13 S., R. 5 E., Section 4, SE 1/2 SE 1/4, 80 acres."

In its statement of reasons for appeal, appellant does not dispute the BLM decision with respect to the 95.87 acres of land in which the mineral rights are not federally owned but does dispute rejection of its application in part because of incorrect land descriptions. Appellant states:

The description of the 20 acre tract is an exact copy of the description which is given in records of the U.S. Forest Service, and accurately describes the land applied for. The Forest Service document giving this description is Status Map Tabular Record Sheet 5, which accompanies the Shawnee National Forest Title and Encumbrance Map for T 12 S, R 5 E, Pope County, Illinois.

* * * * *

The description of the 80 acre tract is also an accurate description of the land applied for, and follows the same type of description notation that was used by the U.S. Forest Service for the 20 acre tract discussed above.

All of the land which we applied for in Prospecting Permit Application ES-24620, including the tracts in question, is clearly shown on the map which accompanied the application. The map and the written description are more than adequate to clearly define the land under application.

In the attachment to appellant's prospecting permit application there appears the following land descriptions: Status Sheet

<u>Section</u>	<u>Description</u>	<u>Acres</u>	<u>Line No.</u>
			* * * * *
36	W 1/2 SE; NE SE; NW 1/2 SE SE	140.00	189
			* * * * *
	The above being in T. 12 S., R. 5 E., Third Principal Meridian, Pope County, Illinois.		
			* * * * *
4	SE 1/2 SE 1/4	80.00	Pt. of 17
			* * * * *

The above being in T. 13 S., R. 5 E., Third Principal Meridian, Pope County, Illinois.

The map which also accompanied appellant's application and is shaded to indicate "Prospecting Permit Land" shows, with respect to the SE 1/4 SE 1/4 sec. 36, that appellant sought the NW 1/4 SE 1/4 SE 1/4 and portions of the NE 1/4 SE 1/4 SE 1/4 and SW 1/4 SE 1/4 SE 1/4 and, with respect to the SE 1/4 sec. 4, that appellant sought the SE 1/4 SE 1/4 and portions of the NE 1/4 SE 1/4 and SW 1/4 SE 1/4. The portions of the quarter-quarter and quarter-quarter-quarter sections are contiguous diagonal halves of those subdivisions.

[1] The land description in applications for hardrock prospecting permits is required to conform to the provisions of 43 CFR 3501.2-4 in the case of acquired lands. 43 CFR 3511.1-7. 43 CFR 3501.2-4 provides in relevant part that: "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." 43 CFR 3501.2-4(a).

The land included in appellant's prospecting permit application has plainly been "surveyed under the rectangular system of public land surveys." Id. However, the reference in the land description in the attachment to appellant's application to the NW 1/2 SE 1/4 SE 1/4 sec. 36 and the SE 1/2 SE 1/4 sec. 4 is simply an inaccurate land description under that system in that it does not indicate a "legal subdivision." Id. The map which accompanied appellant's application indicates clearly what land is sought by appellant. The land description in the attachment, however, does not comply with the applicable regulation. Appellant was attempting to describe lands included in a diagonal 1/2 of SE 1/4 SE 1/4 of sec. 36, and a diagonal 1/2 of SE 1/4 of sec. 4. Under the regulations, the description for the lands in the shaded area of the map should conform to the rectangular system of the public land survey. The additional land which could not be so described would come within the purview of the provision in 43 CFR 3501.2-4(a) which states that: "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." Appellant's application did not supply such a description of the additional land.

1/ For purposes of oil and gas leasing, the smallest legal subdivision which may be encompassed in an offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section. Gary E. Strong, 57 IBLA 306 (1981). However, as we said in Elliot A. Riggs, 65 IBLA 22, 23 (1982), "[T]his rule should not preclude the issuance of a lease for smaller parcels." The subdivisions of quarter-quarter sections "must be designated in the same manner as that in which subdivisions are designated for larger subdivisions of a section, i.e., in terms of aliquot portions of the subdivisions." Jacob N. Wasserman, 74 I.D. 392, 394 (1967). These rules apply equally in the case of hardrock prospecting permit applications.

The land descriptions in appellant's prospecting permit application plainly do not comply with 43 CFR 3501.2-4 in that they do not refer to a "legal subdivision." It is well established that BLM is without authority to alter, modify or correct erroneous land descriptions in offers and applications or to construe ambiguities therein in such a way as to make them acceptable. Thomas Connell, 70 IBLA 292 (1983); Bob G. Howell, 63 IBLA 156 (1982), and cases cited therein. BLM may properly reject a hardrock prospecting permit application which does not adequately describe the land applied for. Thomas Connell, *supra*. Connell involved an oil and gas lease offer for acquired lands. However, the requirements for land descriptions in such offers (43 CFR 3101.2-3) are virtually identical to the requirements for land descriptions in prospecting permit applications for acquired lands (43 CFR 3501.2-4).

It seems quite clear that the land descriptions in appellant's prospecting permit application were taken from the status map tabular record sheets of the Forest Service, without any reference to the Departmental requirements for land descriptions. Nevertheless, we do not regard the land descriptions as complying with 43 CFR 3501.2-4.

In Walter R. Wilson, Jr., 55 IBLA 96, 97 (1981), we held that land descriptions in oil and gas lease offers for acquired lands were sufficient where they referred to the land by "acquisition tract number" and were accompanied by a corresponding map, even though the land had been surveyed and the land description could be conformed to the rectangular system of public land surveys. We concluded that a prior regulation (43 CFR 3212.1 (1969)) had indicated that reference to the land by acquisition tract number was an alternative to description by legal subdivision and that, when the regulation was revised in 1970, the Department had stated that it intended to make "no substantive changes." 35 FR 9502 (June 13, 1970). The regulation was renumbered 43 CFR 3101.2-3.

In the case of prospecting permit applications, however, prior to the 1970 revision, the applicable regulation, 43 CFR 3221.1(a)(4) (1969), did not provide for reference by acquisition tract number. This provision was added in the 1970 revision and included under subsection (b) of the renumbered 43 CFR 3501.2-4 entitled "Lands not surveyed under rectangular survey." See 35 FR 9703 (June 13, 1970). Thus, it seems quite clear that the provision for reference by acquisition tract number was intended to apply only in the case of unsurveyed lands. Even if we permit reference by acquisition tract number in the case of surveyed lands, we cannot construe the inaccurate land description by legal subdivision in appellant's application to be an acquisition tract number. See Arthur E. Meinhardt, 5 IBLA 345 (1972).

The Departmental regulations do not provide for any other form of land description for prospecting permit applications. Accordingly, we conclude that BLM properly rejected appellant's hardrock prospecting permit application to the extent it included inaccurate land descriptions.

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.

Gail M. Frazier
Administrative Judge

I concur:

Douglas B. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE MULLEN CONCURRING:

While I concur with the results reached by the majority, I cannot bring myself to fully agree with their reasoning. Specifically, I disagree with their finding that the legal description on the application was either "inaccurate" or "ambiguous."

Websters New Collegiate Dictionary (ed. 1979) gives the following definitions for the terms "inaccurate," "accurate," and "ambiguous":

Inaccurate -- Not accurate; faulty.

Accurate -- 1. Free from error, especially as the result of care.
2. Conforming exactly to a truth or a standard;
exact.

Ambiguous -- 1. (a) Doubtful or uncertain, especially from obscurity or indistinctness; (b) Inexplicable.

2. Capable of being understood in two or more possible senses.

The application for a mineral lease filed by the appellant contained two descriptions. With respect to the land sought in sec. 4 appellant described the tract as "SE 1/2 SE 1/4." With respect to the land sought in sec. 36 appellant described the tract as "NW 1/2 SE 1/4 SE 1/4." On the basis of the legal descriptions given by appellant, I am unable to draw a plat of either tract sought by the appellant that does not conform with the land the appellant did, in fact, seek. The accuracy of the determination is reinforced by the map submitted by appellant with its application. This map also shows that: (a) With respect to the lands in sec. 4 the appellant wanted that land which lies southeast of a line drawn from the south quarter corner to the east quarter corner; and (b) with respect to the lands sought in sec. 36 the appellant wanted that portion of the southeast quarter of the southeast quarter lying northwest of a similarly drawn diagonal line. Neither of these descriptions was ambiguous or vague. They were the most concise descriptions that could be given.

As stated before, I agree that the result reached by the majority was proper. The description used by the appellant was not in conformance with the rectangular system of public land surveys as required by 43 CFR 3501.2. The descriptions did not describe a rectangle, as contemplated by the rectangular system of surveys but described a triangle. The regulation allows an application by lot number or by acquisition tract number when one has been assigned. When the land is not assigned a lot number or acquisition tract number and cannot be described in conformance with the rectangular system of land surveys, the provisions of 43 CFR 3501.2-4(a) clearly require a metes and bounds description on the application. Appellant failed to furnish a metes and bounds description and, for this reason, the application must be rejected with respect to those tracts improperly described. To allow a variation and accept triangular tracts would render the interpretation of legal

descriptions even more complex than it is now. The determination of the location of the NE 1/4 SW 1/4 NW 1/4 SE 1/4 is hard enough. To expect a filing clerk to determine the meaning of "SE 9/32" of a section is unduly complicating the system. The SE 9/32 is midway between the SE 1/2 and the SE 1/2 of the SE 1/4.

R. W. Mullen
Administrative Judge

