

TIM R. SMITH

IBLA 84-66

Decided June 21, 1984

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting over-the-counter oil and gas lease offer ES 27624.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land

A description in an over-the-counter offer for the SE 1/4 SE 1/4 sec. 9, T. 3 N., R. 32 W., fifth principal meridian, less and except a 5-acre parcel that the applicant describes by a metes and bounds description tied to the nearest existing survey corner is sufficient to satisfy the regulation governing land descriptions of surveyed public domain.

APPEARANCES: Tim R. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Tim R. Smith appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated September 12, 1983, rejecting his noncompetitive over-the-counter offer to lease lands for oil and gas. Appellant's offer to lease was filed on form 3110-1, the standard form used by BLM to receive offers to lease lands in the public domain pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1982). The lands sought by appellant are located in T. 3 N., R. 32 W., fifth principal meridian, Scott County, Arkansas, and are described in his offer in this manner:

Section 9: SE/4 SE/4 Less and Except the following described tract:
Beginning at the SE corner of said SE/4 SE/4, thence North 466.69 feet, thence West 466.69 feet, thence South 466.69 feet, thence East 466.69 feet to the point of beginning, said exception containing 5 acres, more or less.

BLM rejected appellant's offer for these reasons:

Description of lands in offer as submitted constitutes an improper land description. If offeror intended to apply for less than the entire tract, a metes and bounds description showing only the portion being applied for must be shown as the land

description. Offeror also had the option of applying for the entire tract and submitting sufficient rental. 43 CFR 3101.1-4

Insufficient rental. Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. 43 CFR 3103.3-1

There is now a prior offer (ES 28547) covering the same tract filed July 14, 1981, by Fred R. Nichols, 1008 N.W. 24th, Oklahoma City, Oklahoma 73106.

Appellant takes exception to BLM's decision and contends that the description in his offer was that on the deed conveying the land into the United States. He argues also that his rental payment was proper because the total acreage in his offer was known, and, therefore, a payment on the basis of 40 acres for each smallest legal subdivision was unnecessary.

Regulation 43 CFR 3101.1-4 (1982), cited by BLM, requires that descriptions of public domain lands provide the following data: 1/

(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.

(b) Unsurveyed lands. If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by the courses and distances to an official corner of the public land surveys.

The lands sought by appellant have been surveyed, and, accordingly, the provisions of subsection (a) apply.

Had appellant simply described the desired parcel as SE 1/4 SE 1/4 sec. 9, BLM's decision suggests that the regulation would have been satisfied. This is correct. Such a course would, however, have required appellant to submit advance rental for 5 acres that he could not use. James M. Chudnow, 77 IBLA 77 (1983). Appellant, however, elected to exclude those 5 acres that, presumably, are unavailable for leasing. His method of describing the excluded lands was by metes and bounds. BLM rejected this method because appellant failed to describe the 35-acre parcel sought by him by metes and bounds. We find no support for this conclusion in the regulations or the case law.

Although regulation 43 CFR 3101.1-4(a) is silent as to how an exclusion from a surveyed parcel is to be described, the regulation shows a clear preference for a description based on the rectangular system of survey over a

1/ This regulation appears in slightly amended form at 43 CFR 3111.2-1 (1983).

metes and bounds description when surveyed lands must be described. The regulations reveal a policy to use a metes and bounds description where a description cannot be conformed to the public land surveys. See, e.g., 43 CFR 3101.1-4(b) and 43 CFR 3101.2-3(b).

In James M. Chudnow, 69 IBLA 157 (1982), the Board held that an offeror, seeking to avoid paying rental on patented lands within an entire section or subdivision, may specifically identify the land to be excluded by its legal description or patent number. Prior thereto, in Leon Jeffcoat, 66 IBLA 80 (1982), a description reading "Sec. 5: All except patent 51163" was found to be sufficiently precise and unambiguous to satisfy 43 CFR 3101.1-4(a).

Assuming that appellant's 5-acre exclusion could not have been described by the rectangular system, appellant's method of description, blending a metes and bounds description with the rectangular system, is more consistent with 43 CFR 3101.1-4 than the method suggested by BLM. Having in our view properly excluded the 5-acre parcel at issue, we find no error in the submission by appellant of \$35 as rent for the desired parcel.

As noted above, appellant states that the description contained in his offer was that on the deed conveying the land into the United States. His statement of reasons also mentions that the lands applied for had been earlier patented out into the private sector and were later reacquired by the United States. Apparently, it was at the request of the Forest Service, appellant maintains, that these acquired lands were designated public domain for BLM's records. 2/

If appellant is correct that the lands sought are acquired lands, his offer must be rejected because it was submitted pursuant to the Mineral Leasing Act. If the lands sought are acquired, an offer pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 (1982), is required. 3/ On remand,

2/ The file contains a report from the Forest Service recommending leasing. This report states that the lands sought by appellant are public domain lands within the Ouachita National Forest.

3/ If the lands at issue are acquired, regulation 43 CFR 3111.2-2(a) (1983) supports appellant's method of description:

"(a) If the lands have been surveyed under the rectangular system of public land surveys, the lands shall be described by legal subdivision, section, township, range and meridian. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform shall 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 but within the area of the public land surveys, the lands shall 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 these surveys by courses and distances." In Sam P. Jones, 45 IBLA 208, 213 (1980), we noted that BLM could accept an offer for E 1/2 E 1/2 E 1/2 SE 1/4 sec. 5, T. 9 N., R. 14 W., fifth principal meridian, Van Buren County, Arkansas, after excluding from the aliquot subdivisions, by a metes and bounds description, the non-Federal land. See also Charles J. Babington, A-30992, 76 I.D. 30 (1969).

BLM should determine whether the lands at issue are acquired and, if so, when, and for what purpose.

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 State Office is vacated and remanded for action consistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Edward W. Stuebing
Administrative Judge

