

PAT REED

IBLA 89-619

Decided June 18, 1991

Appeal of a decision of the Colorado State Office, Bureau of Land Management, denying approval of assignments of oil and gas lease COC46839.

Affirmed with instructions.

1. Oil and Gas Leases: Assignments and Transfers

A lease may not be assigned except with the consent of the Secretary of the Interior and an assignment does not become effective until after it has been filed in the proper BLM office and other requirements have been met. The requirement to file three original executed copies of an assignment was established by Congress and cannot be waived by the Department. A lease assignment not executed using a proper lease transfer form may not be approved.

2. Oil and Gas Leases: Assignments and Transfers

An oil and gas lease assignment filed with BLM is properly denied where the assignee fails to file three original executed copies of the assignment on an approved form. However, where BLM is aware of a controversy concerning assignment of the lease, Department policy requires withholding action on any other assignment until the dispute is resolved through settlement or litigation. And if BLM has approved another assignment, it will be directed to take no further action concerning the land for a period of time in order to allow the parties to undertake settlement or initiate court action to otherwise resolve the dispute. Failure to take appropriate action within the time allowed will result in confirmation of the approved assignment.

APPEARANCES: Pat Reed, Dallas, Texas, pro se; Lindsey V. Maness, Jr., Golden, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Pat Reed has appealed a decision of the Colorado State Office, Bureau of Land Management (BLM), dated July 18, 1989, denying approval of assignments to him of oil and gas lease COC46839. The lease was issued on June 28, 1989, to Walter W. Long and Richard W. Munn effective July 1, 1989.

On November 24, 1987, Long and Munn had filed an offer to lease various portions of secs. 10, 14, 15, 22, 23, and 27, T. 10 N., R. 101 W., sixth principal meridian. By decision dated June 22, 1988, amended July 14, 1988, BLM rejected the lease application in part as to certain described lands in sec. 10 because the United States did not own the oil and gas rights. In the decision BLM also informed the offerors that it was suspending consideration as to the remaining lands in the offer because they were within the Irish Canyon Area of Critical Environmental Concern and Limestone Ridge Research Natural Area (Irish Canyon/Limestone Ridge), which was not open to oil and gas leasing. However, BLM stated that it was completing a Resource Management Plan that would implement a new decision for the Irish Canyon/Limestone Ridge area allowing oil and gas leasing with certain conditions.

On February 13, 1989, while the offer to lease was pending, Pat Reed, appellant herein, filed several documents with BLM. One, styled "ASSIGNMENT OF OIL AND GAS LEASE PENDING ISSUANCE" and dated December 6, 1987, contained the original signature of Munn. Another with the same caption, dated December 9, 1987, bears Long's xeroxed, rather than original, signature. Attached to each document, and referenced therein as Exhibit A, was a copy of the Munn/Long lease offer. Each document purported to assign all the assignor's "right, title and interest in the leases and leases described on the attached Exhibit A" to Reed. Reed's signature does not appear on either document.

The case record indicates that on February 22, 1989, BLM called Reed, explained that the referenced assignments were not acceptable, and returned the assignments to him with a copy of the applicable regulations governing assignments, and the proper assignment forms. 1/

On March 6, 1989, Reed refiled the documents along with one \$25 filing fee. The accompanying cover letter alleged that the assignments originally had been filed with BLM more than a year previously and were being resubmitted because Reed was unable to use the forms sent to him by BLM "as I do not know how to get in touch with the parties who gave me the assignments in

1/ In a letter from BLM to Reed dated June 5, 1989, BLM explained that it had returned the documents to him in February 1989 because the assignments had not been executed in triplicate using the current approved lease transfer form (Form 3000-3 (June 1988)), as required by 43 CFR 3106.4-1; had not been accompanied by the \$25 filing fee required by 43 CFR 3106.3; and had not been filed within 90 days of execution as required by 43 CFR 3106.1(b).

order to have new assignments redrawn and reissued." The letter also quoted a portion of 43 CFR 3106.4-1 providing that a transfer filed on a form not currently in use is acceptable unless it has been declared obsolete by the Director, BLM, prior to the filing. Reed requested that the assignments be approved as soon as the lease was issued.

On June 28, 1989, oil and gas lease COC46839 was issued to the offerors with an effective date of July 1, 1989. On July 7, 1989, BLM received copies of Form 3000-3 (June 1988) assigning half of lessee Munn's 50-percent interest in the lease to Lindsey Vance Maness, Jr., and Pin-Ching Chen Maness. On July 10, 1989, Lindsey Maness and Munn submitted to BLM a joint letter explaining Reed's claim of title to oil and gas lease COC46839. The letter indicated that Reed had failed to honor their agreement and defaulted on payments and was not entitled to claim any interest in the lease.

On July 18, 1989, BLM approved the assignment from Munn to the Manesses, effective August 1, 1989. No copy of an assignment approval decision is contained in the case file. However, the signature of the authorized officer approving the assignment and the effective date appear on the assignment form. The record does not reflect that BLM notified Reed of that approval.

On the same day, BLM issued the decision on appeal denying approval of Reed's assignments. In its decision, BLM addressed Reed's contention that the assignments should be accepted under 43 CFR 3106.4, stating that "[t]he documents are not on any Bureau of Land Management form, obsolete or otherwise" and noted that by notice published in the Federal Register the Director of BLM had declared prior editions of lease transfer forms obsolete effective October 1, 1988. 53 FR 27404 (July 20, 1988). BLM noted that only one filing fee had been paid. Further, it explained that there was no evidence that the assignments had been filed at any time prior to February 13, 1989, and that, therefore, the documents had not been filed within 90 days of execution by the assignor. 2/

On appeal, Reed contends that the assignment documents he filed show that he is entitled to have the lease transferred to him. He also argues

2/ Although Long and Munn were named as adverse parties in the decision, it does not appear that a copy of the notice of appeal or the statement of reasons was served on either one, as required by 43 CFR 4.413(a). In addition, there is no evidence that Reed served the Solicitor, as required by 43 CFR 4.413(b)(2)(iv). However, the record shows that BLM mailed a copy of its letter of acknowledgement of the filing of the Reed appeal to Long, Munn, and the Manesses. Only Lindsey Maness made an appearance in this appeal. Failure to serve opposing parties with a copy of the notice of appeal or statement of reasons subjects an appeal to summary dismissal. 43 CFR 4.402; 43 CFR 4.413(b). However, considering the facts of this case, and the lack of prejudice to any party stemming from appellant's lack of compliance with the regulations, we are not persuaded that dis-missal is appropriate.

that BLM's decision should be reversed because the assignments were made using an approved Departmental form, the filing fees were paid previously, and the assignments were properly filed with BLM prior to their resubmission on February 13, 1989 (Statement of Reasons (SOR) at 4-5; Exh. 13 at 2-3). ^{3/} Lindsey Maness has filed with the Board a copy of a letter dated August 24, 1989, addressed to James D. Crisp, Chief of the Branch of Adjudication, Colorado State Office. In brief, the letter asserts that Reed has no right to have the assignments approved due to his default on agreements on which the assignments were based. ^{4/}

The ultimate issue for resolution in this appeal is whether BLM properly denied approval of Reed's assignment documents. Based on our review of the record, applicable regulations, and Board precedent, we find that the decision was proper.

[1] The requirement to file three original executed copies of an assignment was established by Congress and cannot be waived by the Department. 30 U.S.C. § 187a (1988); see 43 CFR 3102.4(b). The unapproved assignments in the case file are those returned to appellant by BLM on February 22, 1989, and refiled on March 6, 1989. BLM correctly determined that the assignments could not be approved because they had not been filed using the current lease transfer form as required by 43 CFR 3106.4-1, prior versions of the form having been declared obsolete by the Director of BLM. 53 FR 27404 (July 20, 1988).

Appellant's argument that the assignment was made using an approved Departmental form is based on a mistake. The form he refers to is the lease offer, Exhibit "A" attached to the assignment statements (SOR, Exhs. 4 and 6). A lease offer form, however, is not the proper Departmental form for assignment of record title. A lease may not be assigned except with the consent of the Secretary of the Interior and an assignment does not become effective until after it has been filed in the proper BLM office and other requirements have been met. 30 U.S.C. §§ 187, 187a (1988). Moreover, until countersigned by the proper Departmental official, the lease offer form does not represent a lease which might be assigned but is merely an offer to lease. 43 CFR 3110.7(c); see Shaw Resources, Inc., 98 IBLA 96, 98 (1987); Hrubetz Oil Co., 93 IBLA 343, 345 (1986).

^{3/} Exhibit 13 is an unsigned letter, dated June 13, 1989, from appellant to Janet M. Budzilek, Chief of the Fluid Minerals Adjudication Section of the Colorado State Office, who was signatory to the decision on appeal. The letter responds to five statements made in the decision. A copy of the letter does not appear in the case file and it is unclear whether it was in fact mailed to BLM.

^{4/} Maness also filed a copy of a letter dated Nov. 15, 1989, addressed to Katherine C. Reed, wife of appellant which proposes to settle the dispute. In addition, on May 13, 1991, Maness requested expedited consideration of this appeal. No action was taken on that request because the appeal was under active review. On May 18, 1991, Maness submitted a copy of a settlement offer forwarded to Reed in an effort to resolve their dispute.

Appellant's arguments that the assignments had previously been filed and the filing fees paid appear to derive from the same mistake (SOR, Exh. 13 at 2-3). Long and Munn paid a filing fee of \$75 when they filed their offer to lease. The fee for filing an offer is different from the fee for filing an assignment of record title. See 43 CFR 3106.3, 3110.4(a). Appellant's argument that he did not know how to contact Long and Munn in order to have them complete the proper forms is without merit. It is the responsibility of the assignee to file assignment forms in compliance with the regulations. Where that is not done, denial is assured. In order to obtain BLM approval of the assignments, Reed's only recourse was to cure the defects by submitting properly completed lease transfer forms as directed by BLM in its earlier letters. See North Central Oil Corp., 62 IBLA 38 (1982). 5/

[2] The picture that surfaces from an examination of the record, is that a dispute exists between the lease owners and appellant. Appellant is attempting to obtain title to the lease based on a private agreement, which the lease owners obviously do not honor. Apparently this is the reason appellant has been unable to get the lease owners to complete the proper forms. It is obvious that Munn is aware of the proper procedure for lease assignment as he completed the forms submitted by Maness transferring half of Munn's 50-percent interest in the lease.

The dispute between appellant, Long, Munn, and Maness results from private dealings, agreements, and payments which occurred prior to issuance of the lease. Dealings and contracts between private parties in a Federal oil and gas lease are governed by state law. Wallis v. Pan American Petroleum Corp., 384 U.S. 63 (1966). There is no basis for BLM to intercede in the private affairs of these parties to decide this question. See July Corp., 66 IBLA 20 (1982). However, whatever rights the documents submitted by appellant may affect, they are totally inadequate to secure approval for assignment of record title interest from BLM.

If appellant intends to establish his entitlement to the lease based on these private agreements with Munn and Long, he will have to pursue his remedy in state court. BLM is not the forum to resolve this controversy. The policy of the Department has been that it will not adjudicate private

5/ Although BLM correctly concluded that it could not approve the assignments because three executed copies of the current Departmental form had not been filed, rejection was not required due to the fact they were filed more than 90 days after execution. The provision of 43 CFR 3106.1 that lease transfers be filed within 90 days is not mandatory and failure to do so does not require rejection of an assignment. James V. O'Kane, 19 IBLA 171, 175 (1975), and decisions cited therein. An assignee who does not promptly file an assignment, however, runs a risk that the assignor's interest will be transferred to another and no record title will remain to be transferred. Id.; see Alminex USA, Inc., 55 IBLA 315 (1981). The regulations allow BLM to inquire as to the continuing validity of a tardy filing. 43 CFR 3106.1(b).

disputes regarding the validity and effect of oil and gas lease assignments and contracts pertaining to them until the parties have had an opportunity to resolve them privately or in court. Herbert P. Kenney, Jr., 96 IBLA 84, 85 (1987); Fimple Enterprises, 70 IBLA 180 (1983); Joseph Alstad, 19 IBLA 104, 113 (1975); David A. Mills, A-26949 (Sept. 27, 1954). Thus, when the Department receives notice of a controversy, it will act to maintain the status quo in order to allow the parties time to reach a resolution. Roger Walli, 99 IBLA 128, 130 (1987); William B. Brice, 53 IBLA 174, 177, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981).

In this case appellant filed two documents, "Assignment of Oil and Gas Interest Pending Issuance," containing the terms of agreement for assignment of interests of each of the lease offerors to him, requesting BLM to issue the lease to him pursuant thereto. When advised that these documents were not sufficient to accomplish an assignment of the lease, and provided with the proper forms, Reed refiled the unacceptable documents noting that the lease owners could not be located. After issuance of the lease and while appellant's assignments were pending, Maness filed an assignment whereby Munn assigned half of his 50-percent interest in the lease to Maness and his wife. At that point, BLM was on notice that a dispute to entitlement to the lease was at issue. Thus, even though BLM could not approve transfer of the lease to Reed, the assignment of the lease to the Manesses should not have been acted upon. The parties should have been notified of the dispute, directed to resolve the matter, and the Maness assignment held pending resolution of the controversy. In acting as it did, BLM took sides in a private dispute. Further, it failed to advise all the parties of its actions. As an adverse party, Reed was entitled to notice of the approval of the Maness assignment. By failing to inform Reed of the action, BLM effectively denied him the opportunity to challenge that action, although as a consequence of BLM's June 5, 1989, letter Reed should have known that his request for assignment could not and would not be approved.

The two pending assignments by Munn were inconsistent as to the rights assigned because approval of both would not have been possible. The conflicting assignments signaled controversy. Roger Walli, supra at 130; Herbert P. Kenney, Jr., supra at 85. The documents filed by Munn and Maness on July 7, 1989, also indicated that a conflict existed. The proper course of action for BLM was to have maintained the status quo by holding the Maness assignment in suspension and provide the parties the opportunity to settle the conflict either by agreement or in court. See Roger Walli, supra at 130; Herbert P. Kenney, Jr., supra at 85.

With respect to the Maness assignment, we do not deem it necessary to direct BLM to rescind approval of that assignment. 6/ BLM has sufficient

6/ This case is distinguishable from Petrol Resources Corp., 65 IBLA 104 (1982), where the Board set aside the approval of an assignment where BLM had notice of a dispute. Unlike the conflicting assignments in this case, the conflicting assignment pending in Petro Resources Corp., supra, were

authority to do so if necessary once entitlement is resolved. In order to allow the parties an opportunity to resolve their differences, BLM is instructed not to take any action with respect to future assignments of the lease or requests for exploration or development of the leased land for a period of 60 days from the date of this decision. In addition, the Minerals Management Service is instructed not to approve any drilling request during the 60-day period. See Roger Walli, supra at 130; Herbert P. Kenney, Jr., supra at 86; Utah Gas & Oil Corp., 64 IBLA 254, 256 (1982); James V. O'Kane, supra.

If after 60 days from the date of this decision appellant does not provide BLM with written notice of settlement of this controversy or a certified copy of a complaint filed in a court of competent jurisdiction initiating a action to resolve the dispute, the assignment to the Manesses will be allowed to stand. At that time, BLM may consider any action requested by the lessees of record to pursue full enjoyment of their rights under the lease.

Accordingly, 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, and the case file is returned to that office with instructions to take action consistent with this decision.

Gail M. Frazier

Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

fn. 6 (continued)

both properly filed in compliance with the regulations and were subject to approval but for the action of BLM in returning the first assignment without approval to the assignor at his request.

