

Editor's note: Appeal filed, *Rex Monahan v. U.S. Department of the Interior*, appeal filed, Civ. No. 04-CV-205 (D. Wyo. July 20, 2004), *aff'd* (May 17, 2005 - memo order & opinion), appeal filed No. 05-8068 (10th Cir. July 22, 2005)

PETROLEUM, INC.
FRANK H. GOWER TRUST
REX MONAHAN

IBLA 2002-58, 2002-73, 2002-449

Decided April 22, 2004

Appeals from three decisions of the Deputy State Director, Minerals and Lands Division, Wyoming State Office, Bureau of Land Management (BLM), affirming orders issued by the Buffalo Field Office, BLM, which directed record title holders of Federal oil and gas leases to submit plans for either production from or abandonment of wells located within the physical boundaries of onshore Federal oil and gas leases in Wyoming. SDR WY-2002-11, WY-2002-1, and WY-2002-13.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases:
Assignments and Transfers

BLM may properly look to record title holders of Federal oil and gas leases for performance of obligations to submit plans for production from or plugging and abandonment of wells.

APPEARANCES: Thomas F. Reese, Esq., Casper, Wyoming, for Petroleum, Inc.; Steve H. Ozawa, Esq., Denver, Colorado, for the Frank H. Gower Trust; Peter J. Wall, Esq., Denver, Colorado, for Rex Monahan; Lyle K. Rising, Esq., and Jennifer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Petroleum, Inc. (PI) appeals from a decision of the Deputy State Director, Minerals and Lands Division, Wyoming State Office, Bureau of Land Management (BLM), dated September 7, 2001, affirming an order issued by the Buffalo Field Office (BFO), BLM. The order directed PI to submit plans for either production from or abandonment of the Springen Ranch 37 well, located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 4,

T. 50 N., R. 71 W., 6th Principal Meridian, Campbell County, Wyoming, within the physical boundaries of Federal oil and gas lease W 8528. PI's appeal is docketed as IBLA 2002-58.

Wells Fargo Bank West, N.A. (Wells Fargo), as a co-trustee of the Frank H. Gower Trust, appeals from a decision of the Deputy State Director, Minerals and Lands Division, Wyoming State Office, BLM, dated October 11, 2001, affirming an order issued by the BFO. The order directed the Frank H. Gower Trust to submit plans for either production from or abandonment of the Springen Ranch 5, 14, and 20 wells. The three wells are located in sec. 28, T. 51 N., R. 71 W., 6th Principal Meridian, Campbell County, Wyoming, within the physical boundaries of Federal oil and gas lease W 3072. This appeal is docketed as IBLA 2002-73. On December 31, 2001, the Board denied Wells Fargo's petition for stay.

Rex Monahan appeals from a decision of the Deputy State Director, Minerals and Lands Division, Wyoming State Office, BLM, dated June 6, 2002, affirming an order issued by the BFO. The order directed Monahan to submit plans for either production from or abandonment of 41 wells located within the physical boundaries of Federal oil and gas leases W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928. This appeal is docketed as IBLA 2002-449.

On December 20, 2002, BLM's Wyoming State Office voluntarily implemented a stay of the various BFO orders "requiring the submittal of a plan to address the return to production, or plugging and abandonment and surface reclamation of wells located on various Federal oil and gas leases." The stay encompassed the three appeals, IBLA 2002-58, 2002-73, and 2002-449, before the Board.

Because these cases involve similar facts and raise a common question of law, we consolidate them for final disposition. Appellants raise a number of arguments and contentions regarding the best equitable manner of handling matters implicated here through entities which may own or may have owned operating rights to the relevant leases. Nonetheless, the simple legal issue presented in each appeal is the question of whether a record title holder of a Federal oil and gas lease may be ordered by BLM to submit plans for production from, or for plugging and abandonment of, lease wells.

BACKGROUND

1. Petroleum, Inc. On September 11, 1967, the Department issued Federal oil and gas lease W 8528 to PI, effective October 1, 1967. PI submitted and BLM approved applications for permits to drill wells 1, 2, and 3 in the Springen Ranch

field between October 1969 and June 1970. In its applications, PI asserted that all operations were to be conducted under a nationwide bond. Subsequent documents indicate that PI was operator of well 2.

In 1970, PI submitted a proposed assignment of a 90 percent undivided lease interest in lease W 8528 to other entities. On February 3, 1971, BLM approved, effective March 1, 1971, an "Assignment Affecting Record Title" of 90% of PI's lease interest to the following individuals or entities: Bruce G. Cochener (1%); Garvey Industries, Inc. (8%); Garvey Properties, Inc. (14%); JaGee Corporation (23%); Lincoln Industries, Inc. (19%); Mid-West Industries Corporation (21%); Caroline A. Cochener Trust Estate (1%); Diana O. Cochener Trust Estate (1%); and Salgo Associates, L.P. (2%). (Assignment Affecting Record Title to Oil and Gas Lease, date stamped Feb. 3, 1971.) In the document, PI, "as owner of record title," retained a 10% interest in lease W 8528. On February 3, 1971, BLM accepted a \$10,000 bond on behalf of the 90 percent interests being assigned for lease W 8528 effective March 1, 1971, and approved the assignment, also effective March 1, 1971.

On February 13, 1973, a portion of lease W 8528 was segregated from the original. (BLM Memorandum to PI, entitled "Lease Segregated," Feb. 13, 1973.) The portion of the lease retaining the serialization W 8528 had been committed to the Springen Ranch Muddy Formation Unit effective February 1, 1973. *Id.* The Springen Ranch 37 well was located on unitized lands within Federal oil and gas lease W 8528. BLM submits documents indicating that the Government Springen well number 2, drilled and completed by PI in 1970 pursuant to the approved application for permit to drill, is the Springen Ranch 37 well.

By document dated January 23, 1979, the lessees of record transferred to Rex Monahan 100% of the operating rights and working interest in lease W 8528 "from the surface to the base of the Muddy Formation only." (Transfer of Operating Rights and Working Interest, Jan. 23, 1979, at 1.) The record title holders retained all operating interest in "all other depths, zones and formations." *Id.* According to a Serial Register Page, BLM approved a transfer of "operating rights" effective April 1, 1979, by decision dated December 21, 1979. The record contains no assignment form, no evidence of a bond submitted by Monahan, and no BLM approval indicating the effective date of the assignment approval. The December 21, 1979, decision states that operating rights below the base of the Muddy Formation are "held the same as record title interest, which is" the same as listed in the assignment of record title for lease W 8528, dated February 3, 1971. *Id.* Thus, BLM's decision made clear its understanding that together PI and the various co-lessees to whom PI transferred 90 percent of the lease interest, retained 100 percent of the record title to the lease.

On March 5, 1998, Rex Monahan executed a transfer of 100% of the operating rights in lease W 8528 "from the surface to the base of the Muddy Formation" to

Emerald Restoration and Production Company (Emerald). (Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, Mar. 30, 1998.) On September 4, 1998, BLM approved this transfer effective April 1, 1998.

On March 31, 1998, Emerald executed a transfer of its operating rights in lease W 8528 “from the surface to the base of the Tertiary Age coal or to 2500 feet subsurface, whichever is deeper” to High Plains Associates, Inc. (High Plains). (Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, date stamped May 21, 1998.) On September 4, 1998, BLM approved this transfer effective June 1, 1998. For this and subsequent transfers the record contains no information or allegation regarding whether the transferee posted a bond.

The operating rights in lease W 8528 “from the surface to the base of the Tertiary Age coal or to 2500 feet subsurface, whichever is deeper[,]” were subsequently transferred on two separate occasions. On November 18, 1998, High Plains executed a transfer of 100% of its operating interest to Pennaco Energy, Inc. (Pennaco), retaining an overriding royalty. On March 9, 1999, Pennaco executed a transfer of 50% of its operating interest to CMS Oil and Gas Company. BLM approved these transfers effective December 1, 1998, and June 1, 1999, respectively.

The record indicates that on September 1, 1998, PI requested from BLM a termination of its lease bond for the portion of lease W 8528, above the Muddy formation. (Sept. 1, 1998, letter from PI to BLM.) PI sought a “liability termination letter,” and asked whether the lease is still a valid lease^{1/} On July 13, 1999, BLM terminated the “period of liability of the individual lease bond” effective October 23, 1998. (July 13, 1999, decision.) BLM did not terminate the lease, and made clear that outstanding liabilities may be assessed against the principal or surety, stating: “Termination of the period of liability does not relieve the principal or surety of any obligations of the lease terms, applicable law, or regulations. The principal and surety remain responsible for any liabilities that may have accrued prior to termination of the bond.” *Id.* (emphasis added).

PI subsequently purported to transfer an 18 percent operating rights interest in the lease to Whiting Petroleum Corporation (Whiting). By separate document, PI attempted to assign an 18 percent record title interest in the lease, also to Whiting. BLM did not approve either transfer. See Transfer of Operating Rights in Lease W 8528 and Assignment of Record Title Interest, signed by PI on Dec. 19, 2000.

^{1/} The parties’ documents indicate considerable confusion as to the bond number, listing variously lease bond 400AD1693, 1965, and 1963. We cannot determine from this record what bonds have been terminated, and which bonds may remain in effect.

2. Frank H. Gower Trust. On December 7, 1966, the Department issued Federal oil and gas lease W 3072 to B.F. Hanly, Jr., effective January 1, 1967.^{2/} In December 1966, Hanly submitted a proposed assignment of 100% of its lease interest in lease W 3072 to Frank H. Gower. BLM approved the assignment effective February 1, 1967. On September 23, 1969, Gower executed an assignment of 50% of his lease interest to Prenalta Corporation (Prenalta). BLM approved the assignment effective January 1, 1970. Gower continued to hold 50% record title interest in lease W 3072. The record indicates that Gower's interest may have been transferred to the Trust sometime in 1989.

The parties agree that lease W 3072 was committed to the Springen Ranch (Muddy) Unit effective February 1, 1973. The record does not contain a copy of the document that purports to effectuate this purpose.

The record indicates that the operating rights in lease W 3072 were transferred on numerous occasions. For purposes of this appeal, in 1976, the operating rights holders in lease W 3072 included, for various zones and surface descriptions: Gower, Prenalta, Bluewater Oil and Gas Corp., James A. Masterson, and Clifford P. Hickok. In 1979 the above-described operating rights holders transferred to Rex Monahan 100% of operating rights and working interest in lease W 3072 "from the surface to the base of the Muddy Formation only." See, e.g., "Transfer of Operating Rights and Working Interest," dated Jan. 17, 1979, June 5, 1979, and June 15, 1979. The above-described operating rights holders retained all interest in "all other depths, zones, and formations." Id.

On March 5, 1998, Monahan executed a transfer of 100% of the operating rights in lease W 3072 "from the surface to the base of the Muddy formation" to Emerald. (Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, date stamped Mar. 30, 1998.) On September 1, 1998, BLM approved this transfer effective April 1, 1998.^{3/}

^{2/} The lease encompasses 280 acres located in W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 28 and S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 33, T. 51 N., R. 71 W., 6th P.M.

^{3/} In separate documents dated Oct. 15, 1996, Prenalta and Hickok Partners transferred 100% of their operating rights in lease W 3702 "in all depths, zones and formations below the base of the Muddy Formation" to Laramide L.L.C. (Laramide). (Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, date stamped Mar. 30, 1998; Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, date stamped June 26, 1998.) On Sept. 1, 1998, BLM approved these transfers effective July 1, 1998. Also, Prenalta assigned 100% of its record title to Laramide. (Document dated Oct. 15, 1998.)

On March 31, 1998, Emerald executed a transfer of 100% of the operating rights in lease W 3072 “from the surface to the base of the Tertiary Age coal or to 2500 feet subsurface, whichever is deeper” to High Plains. (Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources, date stamped May 21, 1998.) On September 25, 1998, BLM approved this transfer effective October 1, 1998.

The operating rights in the lease “from the surface to the base of the Tertiary Age coal or to 2500 feet subsurface, whichever is deeper[,]” were subsequently transferred on two separate occasions. On November 18, 1998, High Plains executed a transfer of 100% of its operating interest to Pennaco; and on March 9, 1999, Pennaco executed a transfer of 50% of its operating interest to CMS Oil and Gas Company (CMS). BLM approved both transfers effective December 1, 1998, and June 1, 1999, respectively. No bonding information is provided with respect to the transfers.

3. Rex Monahan. Rex Monahan is a record title holder in the following Federal oil and gas leases: W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928.^{4/} Leases W 8055, W 0319987A, W 0320851, and W 0032123 were committed to the Collums Unit, effective September 1, 1970. By decision dated May 4, 2001, BLM terminated the Collums Unit effective September 15, 2000. Leases W 043924, W 043925, and W 043928 were committed to the Sandbar Unit, effective December 5, 1967. By decision dated September 4, 2001, BLM terminated the Sandbar Unit Area, effective April 1, 2001. Lease W 0322854 was committed to the Springen Ranch (Muddy) Unit, effective February 1, 1973, and that unit was terminated effective August 2, 2001. Following the termination of these units, each lease was extended for 2 years. See 30 U.S.C. § 226(m) (2000) (leases committed to unit held by unit production and extended 2 years after unit is terminated for lack of production).^{5/}

The parties agree that Monahan was the operator of these units, and holder of operating rights, from no later than 1979 until 1996. On August 9, 1996, Monahan

^{4/} See Assignment Affecting Record Title to Lease W 0032123, approved eff. Feb. 1, 1979; Assignment Affecting Record Title to Lease W 8055, approved eff. Apr. 1, 1979; Assignment Affecting Record Title to Lease W 0319987A, approved eff. Aug. 1, 1979; Assignments Affecting Record Title to Leases W 043924 and W 043925, W 0322854, and W 043928, approved eff. Sept. 1, 1996; Assignment Affecting Record Title to Lease W 0320581, approved eff. Oct. 1, 1997.

^{5/} The Gower lease, also committed to the Springen (Muddy) Unit, was extended 2 years as well. (Leases Extended Due to Unit Termination; Rentals Due, dated Nov. 16, 2001.) We assume the same to be true with respect to PI’s lease.

entered into an agreement to transfer his working interest in the units to Emerald. Although the transfer was effective on August 1, 1996, Monahan and Emerald did not close the deal until March 5, 1998. According to Monahan, BLM approved Emerald as the operator for the Sandbar and Springen Ranch (Muddy) Units and the Collum Unit, in documents dated October 9, 1997, and June 3, 1999, respectively. The parties appear to agree that Emerald became unit operator for all units effective August 1, 1996.

In connection with the transfer of his interests to Emerald, Monahan transferred 100% of the operating rights in leases W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928 “from the surface to the base of the Muddy formation” to Emerald. See, e.g., documents entitled “Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources,” date stamped Mar. 30, 1998, and May 13, 1998. BLM approved each transfer effective on various dates in September 1998.

4. Emerald’s Bankruptcy. The case records indicate that in the course of investigating unit operations BLM discovered that Emerald had filed for bankruptcy. Also discovering non-producing wells and abandoned equipment, BLM determined to increase bonds on “Emerald operated units.” On September 5, 2000, the State Director issued a memorandum to the BFO Field Manager explaining the situation and stating that additional bonding must be sought.

This office recommends that additional bonding be obtained from the lessees or operating rights owners for the attached list of leases (Attachment 1). We have included the requested bond amount for each lease (and well) and the current LR2000 record title owners. Most leases will require adjudication to determine record title ownership for each well location.

* * * * *

Many lessees will question our authority to require full bonding. We believe that Emerald’s bankruptcy filing significantly raises the government’s exposure to an orphan well situation. Our estimate is that the federal liability exceeds \$1.5 million. * * * Current federal bonding amount by the operator or by a third party totals \$75k.

(Sept. 5, 2000, Memorandum from State Director to Buffalo Field Manager.) Attached to this memorandum is a list of wells, including the wells at issue in each case. Id., Attachment at 3.

BLM sent letters to the lessees of record demanding additional bonding, attaching by way of explanation the September 5, 2000, BLM State Director memorandum regarding Emerald's liability. On February 5, 2001, BLM sent decisions to all lessees of lease W 8528 (PI) and lessees of lease W 3072 (Gower Trust), stating that a bond was required for their leases. (Feb. 5, 2001, decisions.) Monahan contends that BLM sent a similar letter regarding his leases on February 2, 2001, though we do not find it in the record before us.

On August 8, 2001, and August 16, 2001, the BFO Field Manager sent new letters to the record title holders. In the roughly identical letters, BFO informed the record title owners that the wells on the relevant leases were "in a non producing status" with "several significant environmental concerns, i.e., leaking storage tanks, chemical drums, and abandoned electrical transformers." (Aug. 8, 2001, Letters from BFO to record title holders of Lease W 8538 and Lease W 3072; and Aug. 16, 2001, Letter from BFO referencing Sandbar, Collums and Springen Ranch (Muddy) Units.) In these letters, BFO explained its 2-year attempt to assist Emerald, "the operator of record for [the units] since August, 1, 1996," in restoring its properties to production. BLM stated that these efforts had not been successful because of Emerald's financial difficulties and its inability to operate in the State of Wyoming. BFO further noted that although Emerald and other entities had posted \$75,000 in bonds, BFO's "estimate for plugging and surface restoration liability for all Emerald operated lands in the BFO exceeds \$1.5 million." Therefore, BFO requested the record title owners, as the responsible parties "for all activities on this lease" to submit "one consolidated response" for each lease, or set of leases in Monahan's case, by September 2001, addressing the following:

1. Nomination of a valid operator.
2. Evaluation of lease property for surface restoration needs.
3. Submit plans for returning the lease to production or well abandonment.

(Aug. 8, 2001, Letters from BFO to record title holders of Lease W 8538 and Lease W 3072; and Aug. 16, 2001, Letter from BFO referencing Sandbar, Collums and Springen Ranch (Muddy) Units.)

5. State Director Review. On September 14, 2001, Monahan requested "an informal review of the technical and procedural aspects of [BFO's August 16, 2001,] order prior to initiating a formal administrative review." (Sept. 14, 2001, Letter from Monahan to BFO.) On December 17, 2001, BFO reiterated its position that Monahan, as record title holder of the relevant leases, is "responsible and liable for the costs associated with any operations on the lease." (Dec. 17, 2001, decision at 1.) BFO granted Monahan an extension until February 15, 2002, to respond to BFO's

August 16, 2001, order requiring submission of plans. On February 6, 2002, Monahan sent another letter to BLM requesting “an informal meeting on the technical and procedural aspects of [BFO’s August 16, 2001, order] prior to pursuing a formal administrative review * * *.” (Feb. 6, 2002, Letter from Monahan to BLM.) The record indicates that BFO met with Monahan on February 14, 2002, “to discuss oil and gas leases which were formally committed to units operated by Emerald.” (Mar. 11, 2002, Letter from BFO to Peter J. Wall, Esq., Monahan’s counsel.) The March 11, 2002, letter extended the period of time for the record title holders to respond to BFO’s August 16, 2001, order until May 13, 2002, and referred to the following Federal oil and gas leases, each of which is a subject of Monahan’s appeal: W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928. Id.

Ultimately, all three appellants requested State Director Review of the August 8, 2001, and August 16, 2001, BFO Field Manager letters to record title holders. PI requested State Director Review in a letter dated August 17, 2001. PI contended that the record title owners of lease W 8528 were not “liable for any portion of the costs associated with the operation and/or plugging of the property known as the Springen Ranch Unit” because:

Effective 12/1/78 Petroleum, Inc. and the participants in our exploration program sold all of their right, title and interest in and to the property known as the Springen Ranch Unit and all wells located thereon to Rex Monahan. The conveyance of the interest to Mr. Monahan * * * covered all rights from the surface to the Base of the Muddy formation. Petroleum, Inc., et al retained their interest in the non-producing/undeveloped rights below the Base of the Muddy formation.

(Aug. 17, 2001, Letter from PI to State Director, Wyoming State Office, BLM, at 2.) PI also cited the following reasons for not holding the record title owners liable: (1) Emerald, as operator of the well, “should have been required [under applicable Federal regulations] to secure appropriate bond coverage relative to the costs associated with the operation of the property and the ultimate plugging of all wells located thereon”; (2) “[r]esponsible operators/owners [such as PI] should not be penalized by the actions (or lack thereof) of irresponsible operators”; and (3) it is the operator that “received revenue derived from the production of oil/gas from the property.” Id. at 2.

The State Director issued the September 7, 2001, decision upholding BFO’s August 8, 2001, order requiring the record title owners of lease W 8528 to submit plans. The September 7, 2001, decision found that:

Although PI contends they sold (on December 1, 1978) all of their right, title and interest in the subject property (WYW8528), BLM records show only the operating rights were transferred, and not the record title interest. * * * The ultimate liability for lease operations remains with the record title interests and is not severed upon transfer of operating rights. An operating rights transfer is a sublease that is a private subsidiary arrangement between the lessee of record (sublessor) and sublessee that does not alter the contractual agreement between the lessee of record and the United States (lessor). * * * Such transfers, as long as they did not convey “record title” interests, are deemed to convey a lesser interest than the lease interest obtained from the Federal Government by the original lessee. A party owning the operating rights interest in a lease may authorize the actual conduct of operations on its behalf by designating as the operator another party who presently holds no recognized operating rights or legal or equitable title in the lease. Holders of operating rights cannot relinquish leases.

(Sept. 7, 2001, decision at 2-3.) The Deputy State Director concluded that “PI, as a record title holder in WYW8528, is ultimately bound to fulfill the terms of the lease,” id. at 3, which include the obligations to comply with all Federal regulations relating to Federal oil and gas leases and “to plug properly and effectively all wells drilled in accordance with the provisions of [the] lease” and to permit the lessor to perform lease functions “at the lessee’s cost.” (Lease for Oil and Gas [W 8528], Section 2(j), dated October 1, 1967.)

The Deputy State Director made clear that his decision, however, was to require the submittal of a plan for the lease:

In consideration of all available information, we find the BFO has acted appropriately in exercising their options by pursuing the requirement for a plan submittal for WYW8528. The action taken by the BFO * * * does not imply that PI or their participants have not abided by the various Federal rules or regulations, or has defaulted on their responsibilities and obligations. The BFO has attempted to secure appropriate bond coverage with the previous operator and reduce the liability of ultimate well plugging and/or surface reclamation. We do believe, however, that the record title holders in WYW8528 share the responsibilities and ultimate liability for the costs associated with the operation of the property. Therefore, in view of the foregoing, we affirm the BFO decision letter of August 8, 2001, to require a plan submittal for WYW8528.

Id. at 3.

The Trust requested State Director Review in a letter dated September 12, 2001. The Trust contended that it is not responsible for submitting the plans because

Mr. Gower assigned all of his operating rights from the surface down to the base of the muddy formation in Federal Oil and Gas Lease WYW-3072 to Rex Monahan in 1979. The wells * * * were unit wells that produced unitized substances to which Mr. Gower was not entitled. Since the wells were a part of a unit, the working interest owners [are] responsible for operating the wells.

(Sept. 12, 2001, Letter from Wells Fargo to State Director, Wyoming State Office, BLM, at 1.)

The Deputy State Director issued the October 11, 2001, decision upholding BFO's August 8, 2001, order requiring Gower, as record title owner of lease W 3072, to submit plans. The October 11, 2001, decision found that:

The ultimate liability for lease operations remains with the record title interests and is not severed upon transfer of operating rights. An operating rights transfer is a sublease that is a private subsidiary arrangement between the lessee of record (sublessor) and sublessee that does not alter the contractual agreement between the lessee of record and the United States (lessor). * * * Such transfers as long as they did not convey "record title" interests, are deemed to convey a lesser interest than the lease interest obtained from the Federal Government by the original lessee. A party owning the operating rights interest in a lease may authorize the actual conduct of operations on its behalf by designating as the operator another party who presently holds no recognized operating rights or legal or equitable title in the lease. Holders of operating rights cannot relinquish leases.

(Oct. 11, 2001, decision, at 2.) The Deputy State Director concluded that "F.H. Gower, as record title holder in WYW3072, is ultimately bound to fulfill the terms of the lease" which includes the obligations to comply with all federal regulations relating to Federal oil and gas leases and "to plug properly and effectively all wells drilled in accordance with the provisions of [the] lease" and to permit the lessor to perform lease functions "at the lessee's cost." Id. at 3 (quoting Offer to Lease and Lease for Oil and Gas [W 3072], Section 2(j), dated December 7, 1966.)

In language identical to that in PI's order, the DSD made clear that the obligation of the record title holder was to submit a plan for well abandonment or operation.

In consideration of all available information, we find the BFO has acted appropriately in exercising their options by pursuing the requirement for a plan submittal for WYW3072. The action taken by the BFO * * * does not imply that F.H. Gower has not abided by the various Federal rules or regulations, or has defaulted on his responsibilities and obligations. The BFO has attempted to secure appropriate bond coverage with the previous operator and reduce the liability of ultimate well plugging and/or surface reclamation. We do believe, however, that the record title holders in WYW3072 share the responsibilities and ultimate liability for the costs associated with the operation of the property. Therefore, in view of the foregoing, we affirm the BFO decision letter of August 8, 2001, to require a plan submittal for WYW3072.

Id. at 3.

Monahan requested State Director Review in a letter dated April 12, 2002. Monahan contended that "he is not responsible for plugging and abandoning the wells and reclaiming the well sites" because he transferred 100% of the operating rights in leases W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928 "from the surface to the base of the Muddy formation" to Emerald. (Apr. 12, 2002, Letter from Monahan to State Director, Wyoming State Office, BLM, at 4.) Monahan cited the following reasons for not holding him liable: (1) "[s]ince Mr. Monahan does not own the Wells or the operating rights in question, simple property law concepts preclude his assumption of dominion and control over these properties in any manner whatsoever. The BLM is without power to order Mr. Monahan to take, use or interfere with Emerald's property"; (2) as the recognized unit operator, Emerald "is solely responsible for the Wells and their entire operation, including plugging, abandonment and reclamation"; (3) BLM failed to request a larger bond amount from Emerald when BLM approved Emerald as the unit operator and further failed to supervise and monitor Emerald's operations of the Units; (4) "Emerald was allowed to operate the Units without appropriate supervision and oversight, or notice to Mr. Monahan for a period of several years, resulting in the serious degradation of the value of the Wells and Units." Id. at 4-5.

On June 6, 2002, the State Director issued a decision upholding BFO's March 11, 2002, order requiring the record title owners of leases W 8055,

W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928 to submit production or other plans for the wells on those leases. The June 6, 2002, decision found:

The BLM has always held the record title owner ultimately responsible for compliance under the lease terms, because the lease instrument represents a contract between the United States (lessor) and the owner(s) of record title (lessee). When the owner of record title severs the operating rights by transfer, it creates a sublease, that is a contract between the lessee (sublessor) and the operating rights owner (sublessee). A sublease does not affect the relationship imposed by the lease contract between the lessee and the United States. In practice, since the operating rights owner is responsible under the terms and conditions of the lease for the operations conducted on the lease, the BLM will first look to the owner of the operating rights for compliance with the lease terms. However, the record title owner always remains jointly liable and ultimately responsible.

(June 6, 2002, decision at 2.) Consistent with the language of the decisions in the PI and Trust cases, the DSD made clear that the obligation of the record title holder was to submit a plan for well abandonment or operation. “The decision of the Buffalo FO requiring the submittal of a plan to restore the leases to production or plug and abandon and reclaim the surface is * * * affirmed. Therefore, Mr. Monahan is required to submit the plan requested by the [BFO].” *Id.* at 3.

6. The appeals. PI, Gower, and Monahan each timely appealed. Relying on the pre-2001 version of 43 CFR 3106.7-2 and this Board’s decisions in Devon Energy Corp., 145 IBLA 136 (1998), and Merrion Oil & Gas Corp., 151 IBLA 184 (1999), PI raises two arguments in its Statement of Reasons (SOR). First, PI contends that it was absolved from its obligations under lease W 8528 when it transferred 100% of its operating rights to Rex Monahan. Second, PI asserts that “BLM has no authority to compel a former operator to continue to act as operator after approval of an assignment.” (SOR at 2.)

In its answer, BLM maintains that as a record title holder of lease W 8528, PI is ultimately responsible for complying with BFO’s August 8, 2001, order to submit the necessary plans. BLM contends that the two IBLA decisions relied on by PI were cases in which neither appellant owned any record title interest, unlike PI in this case. BLM also points out that the regulation PI cites contains a portion, not quoted by PI, which makes clear that the record title holder remains liable for lease obligations. (Answer at 1, citing 43 CFR 3106.7-2 (2000).)

In its SOR, the Trust argues that the operating rights holders or working interest owners, not the record title holders, are responsible for submitting the plans for lease W 3072. The Trust also cited the following reasons for not holding the record title owner liable: (1) “[t]he Wells produced unitized substances to which the Trust was not entitled. Moreover, since the Wells are unit wells the Trust has no authority to appoint an operator”; (2) “[t]he Trust was not aware that Emerald * * * was operating the Wells until the receipt of the BFO Decision in August, 2001”; (3) “BLM’s failure to timely notify the record title owners [of Emerald’s financial and operational problems] has severely prejudiced their ability to take any viable action against Emerald”; and (4) BLM failed to notify the Trust, as record title holder of lease W 3072, of BLM’s discussions with Geotec Thermal Generators, Inc., or provide an opportunity for the Trust to “participate in the discussions with Geotec.”^{6/} (SOR at 1-2.) Apparently, BLM did not submit a separate answer to the Trust’s SOR.

In his SOR, Monahan argues that (1) under the pre-2001 version of 43 CFR 3106.7-2 (2000), “[a]ssignees of the operating rights, like Emerald, are responsible for the leases and the Wells, including plugging, abandonment and reclamation obligations, to the exclusion of all others. No residual liabilities are imposed upon one owning a record title interest”; (2) under Devon Energy Corp., 145 IBLA 136, and Merrion Oil & Gas Corp. 151 IBLA 184, “BLM cannot require someone who is not the current BLM approved or recognized operator to conduct operations on a well even where, as in the case of Devon, the company owns a small operating rights interest”; (3) Monahan is subject to either civil or criminal trespass if he trespasses on Emerald’s property;^{7/} (4) under 43 CFR 3162.3-4, 3162.5-1(b), and 3163.1 to 3163.5, Emerald as unit operator “is the one who must submit plans and plug and abandon [and] is also * * * *solely* liable for the failure to do so”; (5) under 30 U.S.C. § 187a and 43 CFR 3162.3(a), “BLM is not expected simply to require a minimum bond, but a ‘sufficient bond’”; (6) BLM’s “failure * * * to properly exercise oversight even after Emerald became operator magnified the potential loss” to Monahan. (SOR at 5-13.)

^{6/} The record indicates that on Sept. 5, 2001, Geotec announced that it was in the process of foreclosing on eight wells owned by Emerald on which Geotec had liens. Moreover, the record indicates that BLM and Geotec had discussed the remaining wells owned by Emerald. On Sept. 10, 2001, the Trust sent a letter to BLM seeking an additional 30 days in which to request State Director Review, raising its concern regarding Geotec.

^{7/} We note, however, that the record indicates that by letter dated May 10, 2002, Monahan submitted a proposal to BLM to study enhanced oil recovery on the subject properties, in partial response to BLM’s Aug. 16, 2001, letter.

In its answer, relying on the Board's decisions in Ralph G. Abbott, 115 IBLA 343 (1990), and Cross Creek Corp., 131 IBLA 32 (1994), and BLM regulations, BLM maintains that although it will initially look to an operator to perform reclamation of well sites, as a record title holder of leases W 8055, W 0319987A, W 0320851, W 0032123, W 0322854, W 043924, W 043925, and W 043928, Monahan is ultimately responsible for complying with BFO's March 11, 2002, order to submit the necessary plans. BLM contends that the two IBLA decisions relied on by Monahan were cases in which neither appellant owned any record title interest, unlike Monahan in this case. BLM also points out that it does not generally supervise well operations, but that it did "perform[] all required inspections and oversight during Emerald's operations of the wells." (Answer at 6). With respect to Monahan's argument concerning the sufficiency of Emerald's bond, BLM asserts that pursuant to 43 CFR 3104.3, Emerald posted the necessary \$25,000 bond. Moreover, in May 2000, BLM required outside investors to post an additional \$50,000 bond. However, BLM asserts that it is not precluded from holding a record title holder liable for reclamation costs just because the bonding later proves to be insufficient.

In a reply to BLM's answer, Monahan argues that the Board's decisions in Abbott and Cross Creek cannot be read as broadly as BLM espouses because neither case dealt with a situation where the record title holder had transferred his operating rights to a third party. Moreover, Monahan asserts that under the pre-2001 version of 43 CFR 3106.7-2 (2000), it was the Department's intent to abandon the application of the sublease theory to Federal oil and gas leases. Instead, according to Monahan, when a lessee of record transfers its operating rights to a third party, the transferee "is to be regarded as a full substitute for the original lessee" as to those lease rights and obligations transferred. (Reply, at 4 (quoting Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases §§ 10.02[1]-10.02[2]).)

ANALYSIS

BLM is obligated by the terms of the Mineral Leasing Act, as amended, 30 U.S.C. §§ 187 and 187a (2000), to approve assignments of record title interests in Federal leases. BLM also accepts relinquishments of leases, subject to the continued obligation of the lessee to comply with lease terms regarding well abandonment. 30 U.S.C. § 187b (2000).

Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations * * *.

Id. See Law of Federal Oil and Gas Leases, § 9.05[17], 9-24-25; 43 CFR 3108.1.

[1] The question presented by the three appeals is whether a record title holder of a Federal oil and gas lease which has transferred 100% of its operating rights to a third party may still be required to submit plans to BLM for either production from or abandonment of a well that is located within the physical boundaries of the lease. While appellants present arguments based on equity and appropriate placement of financial and operational burdens, the simple answer to the legal question presented is that record title holders of Federal oil and gas leases retain the obligation to perform, and bear ultimate responsibility for adherence to, lease terms, including requirements relating to well operations and abandonment. In considering the question, we look to lease terms, relevant treatises on Federal oil and gas leases, BLM regulations, and Board precedent. Without exception, they require this result.

Gower and Monahan concede that they are record title owners of the leases at issue in their cases. PI is the only appellant to suggest that, as a factual matter, it is not a record title holder of lease W 8538. As reflected in the factual section of this decision, however, the record does not support such a finding, nor does PI demonstrate with evidence that it transferred its record title interest in lease W 8538. Indeed, in 2000, PI attempted unsuccessfully to transfer to Whiting a portion of its record title to the lease, thus indicating full awareness of its record title status. Thus, our analysis proceeds under admissions and factual findings that all appellants are record title holders.

1. Lease Terms. Beginning with the terms of Federal leases, it is clear from their plain language that lessees of record bear lease responsibilities that remain with the lessee until the lease is terminated or the lessee transfers all right and title to the lease outside its ownership. PI's lease W 8538, for example, specifies that the "lessee agrees * * * to plug properly and effectively all wells drilled in accordance with the provisions of this lease * * *; to carry out at expense of the lessee all reasonable orders of the lessor relative to the matters in this paragraph, and that on failure of the lessee so to do the lessor shall * * * have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost * * *." (Lease W 8538 at section 2(j); see also Lease W 3072 (same).) Any question that this and other lease obligations persist until the lease is terminated or surrendered is answered in lease section 5. It specifies that the lessee

may surrender this lease or any legal subdivision thereof by filing in the proper land office a written relinquishment, in triplicate, which shall be effective as of the date of filing subject to the continued obligation of the lessee and his surety to * * * place all wells on the land to be

relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations.

(Lease W 8538 section 5; Lease W 3072 section 5.) This provision is consistent with and required by 30 U.S.C. § 187a (2000). While the lease permits the lessee to assign “any lease interest therein, including assignments of record title, operating agreements and subleases, working or royalty interests,” *id.* at section 4(m), absent from the lease is any release from the lease obligations prior to assignment of record title.

The lease is straightforward and founded in statute. When it signs a Federal lease, the United States enters into a contract with a lessee. The lessee may enter into a sublease or contract with others to exercise operating rights but until the lessee extricates itself from the contract by an approved transfer of record title, or by relinquishment or cancellation, the lessee is in privity with the United States. The issue presented here is whether the United States ultimately may call on the lessee to perform the lease obligation to plug and abandon or produce from the wells. The lease commits the lessee to that result and the transfer of a sublease or lesser interest than the lease cannot divest the lessor of the right to enforce the lease terms against the lessee.

2. Oil and gas treatise. Monahan in particular relies on the Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases (2002), to support his position that operators or operating rights holders are responsible for the leases and wells, to the exclusion of record title holders. While BLM regulations control these issues, we find the treatise to be useful in explaining the logic of BLM’s approach to lease interest transfers. It also refutes Monahan’s contentions.

The treatise explains the import of record title to the leasing system, and to the Department’s approval of subsidiary lease interests.

The Department’s administration of federal leases revolves around the concept of record title, a term used to identify the persons who are contractually linked with the government/lessor either as the original lessee or its successor, vested with the lease rights and burdened with the lease obligations. Other incidents of the leasehold can be severed from this record title interest, such as operating rights and overriding royalties.

See Law of Federal Oil and Gas Leases, § 10.01, 10-3. The “Department regards an assignment of record title as effecting a kind of novation, whereby the assignor’s contractual relationship with the lessor is extinguished and the approved assignee is

substituted fully for the assignor, becoming the new lessee, or record title holder of the lease.” Id. at § 10.02[4], 10-8.

In explaining the distinctions between record title holders and the holders of operating rights, the treatise states that if a lessee transfers operating rights, the transfer is “in the nature of a sublease, leaving intact the relationship between the government as lessor and the assignor, who retains record title, as lessee.” Law of Federal Oil and Gas Leases, § 10.06[2], 10-98. “[A]n assignment of operating rights can never fully substitute for a transfer of record title.” Id. at 10-99.

The treatise notes that the critical relationship between the lessor and lessee was the impetus for BLM policy effectuated in 1985 by BLM Instruction Memorandum (IM), and later by regulation, to discontinue abstracting operating rights in leases.

BLM justified its new policy on grounds that Congress did not intend assignment approval to be an elaborate process and that the Department need not be concerned with title to operating rights severed from record title, because assignments of such rights did not affect the record title lessee’s liability to the government for rent, royalty, and other lease obligations.

Law of Federal Oil and Gas Leases, § 10.04[1], 10-50, citing IM No. 86-175 (Dec. 30, 1985). As the treatise examines, BLM later disclaimed warranting title in approving operating rights transfers, and subsequently adopted regulations that ensure that such transfers “are approved for administrative purposes only.” 43 CFR 3106.7-1; see Law of Federal Oil and Gas Leases, § 10.04[1], 10-51, citing 43 CFR 3106.7-1 (1990); BLM Oil and Gas Adjudication Handbook, H-3106-1 at 39 (BLM no longer abstracts operating rights; operating rights transfer does not affect relationship between lessee of record and United States).

3. Regulations. BLM leasing and operations regulations are the foundation for the explanation of lease transfers provided in the treatise. A “lessee” is the “entity holding record title in a lease issued by the United States.” 43 CFR 3100.0-5(i). “*Record title* means a lessee’s interest in a lease * * *.” 43 CFR 3100.0-5(c). This interest “includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.” Id. An operating right is “the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations * * * in accordance with the terms of the lease.” Id. at 3100.0-5(d). Thus, as do the leases, the regulations expressly provide that operating rights are an interest subordinate to and created from the lease interest. An “operator” is an

“entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof.” 43 CFR 3100.0-5(a).^{8/}

The regulations generally distinguish “assignments” of all or a portion of record title interests from “subleases,” which refer to a “transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease * * *.” 43 CFR 3100.0-5(e). As to the latter, a transfer of operating rights “is a subsidiary arrangement between the lessee (lessor) and the sublessee * * * [and] does not * * * affect the relationship imposed by a lease between the lessee(s) and the United States.” *Id.* (emphasis added).

Thus, whatever arrangements are made for the performance of lease obligations between the lessee and operating rights holders or operators does not affect the lessor/lessee relationship or the United States’ ability to require compliance with lease terms by the lessee.^{2/} This conclusion is verified unequivocally by the following rule, implemented in “plain English” question and answer format in 2001:

§ 3106.7-2 If I transfer my lease, what is my continuing obligation?

(a) You are responsible for performing all obligations under the lease until the date BLM approves an assignment of your record title interest or transfer of your operating rights.

(b) After BLM approves the assignment or transfer, you will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. * * * This includes * * * responsibility for plugging wells and abandoning facilities you drilled, installed, or used before the effective date of the assignment or transfer.

^{8/} BLM onshore operating regulations contain differing definitions of “lessee,” “operator,” and “operating rights owner.” 43 CFR 3160.0-5. A “lessee” is “any person holding record title or owning operating rights in a lease * * *.” A “record title holder” is the person “to whom BLM * * * issued a lease or approved the assignment of record title in a lease.” *Id.* These definitions were added in a 2001 rulemaking which is addressed further *infra*. These alternative definitions do not affect the outcome here.

^{2/} BLM has authority to require that wells on Federal oil and gas leases be plugged and abandoned. 43 CFR Subpart 3160.

43 CFR 3106.7-2. Likewise, 43 CFR 3106.7-6(a) (2002) states: “If you acquire record title interest in a Federal lease, you agree to comply with the terms of the original lease during your lease tenure” and “[y]ou assume the responsibility to plug and abandon all wells which are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence * * *.”

Thus, the Department’s conclusions with respect to record title are clear. A lessee may not escape the obligations established by the terms of the lease by transferring operating rights. Neither the regulations nor the lease permits a lessee an escape hatch from the terms of the lease by way of third party arrangements. The status of an operator is derivative of the lease itself. We are not persuaded by the appellants’ argument that this changes because the record title holder has assigned the operating rights. A record title holder is apprised of its lease obligations by the plain language of its lease. Departmental regulations do not authorize lessees to pass unilaterally the ultimate lease obligation to a third party short of transferring record title to the lease, and thereby substituting a lessee with whom the United States is in privity and to whom the lessor may look for compliance with ultimate lease obligations. See 43 CFR 3106.7-6 (2000) and (2001) (“If you acquire record title interest in a federal lease, you agree to comply with the terms of the original lease during your lease tenure.”)

The theory espoused by PI and Monahan is dependent, however, on the predecessor to 43 CFR 3106.7-2, which was promulgated in 1988 and in effect until amendments made in 2001. They attempt to avoid the clear import of the lease and regulations by asserting that the regulation in effect during the period in which Monahan and Emerald were the operators demonstrates that, for the period from 1988-2001, BLM intended the opposite outcome. They assert that under 43 CFR 3106.7-2 (2000) (the 1988 rule) BLM intended to ensure that the record title holder bore no obligations after transferring operating rights. In particular, Monahan argues that 43 CFR 3106.7-2 (2000) applies to him and unambiguously divested record title holders of lease responsibilities. He argues that the 2001 rules do not apply to him because they postdated his transfer of operating rights to Emerald, and that the 2001 “amendment changed the rule applicable to Mr. Monahan at the time he transferred his operating rights to Emerald and, if found to be applicable to Mr. Monahan, raises other serious constitutional issues in the form of ex post facto and like due process and associated ultra vires issues.” (SOR at 9-10.)^{10/}

^{10/} In his SOR, Monahan asserts that he “reserves the right to address such issues more directly at a later time if it is determined that the new regulation applies to him and carries with it an adverse result.” Id. Monahan has not explained his apparent desire to preserve for the future a relevant appeal issue before this Board. An appeal
(continued...)

We do not find appellants' construction of the 1988 rule to be tenable. The 1988 version of the rule stated:

The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. *When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.*

43 CFR 3106.7-2 (2000) (underlined emphasis ours; italicized emphasis appellants'). Emphasizing the portion of the regulation italicized above, appellants argue that upon transfer of operating rights, the transferor is no longer responsible to the Department for lease obligations that correspond to the transferred lease rights.

The italicized portion does not support appellants' inference that, while a sublessee acquires responsibilities, the record title holder divests itself of those obligations. As is clear from the italicized portion of the rule, the sublessee is responsible for obligations transferred by the sublease. Unless the "sublease" purports to make the transferee the lessee by transferring record title, 43 CFR 3100.0-5(i), the transferor remains the lessee. By definition, the sublease does not transfer record title. 43 CFR 3100.0-5(e). As shown in the underlined portion of 43 CFR 3106.7-2 (2000), only "after approval of the transfer of record title, [is] the transferee * * * responsible for the performance of all lease obligations." Further, the remainder of 43 CFR Subpart 3106 (2000) makes clear that elsewhere BLM reinforced this distinction between the sublease and the transfer of record title. See, e.g., 3106.1(a) (2000); 3106.7-6; 3106.7-1 (2000).^{11/}

^{10/} (...continued)

is not a two-part process. He raised the issue of the 2001 regulations squarely in his pleading and we address it here.

^{11/} See 43 CFR 3106.7-5 (2000), "Effect of Transfer." That rule states that a "transfer of record title to 100% of a portion of the lease segregates the transferred portion and the retained portion into separate leases." In other words, should a lessee transfer all record title to a particular portion of a lease, it creates a new lease in that portion with a new lessee. At all times, however, there is a lessee.

An examination of the regulatory changes made in 2001 and 1988 makes clear that our construction of the rules as consistent is the only plausible one. In the 2001 rulemaking, BLM stated that it was not changing the responsibility of record title holders clearly identified in the leases and then in effect in the 1988 rules. To the contrary, the rulemaking was a clarification of pre-existing rules. “While the rule does provide greater detail than existing regulations with respect to both drainage and the duties of parties holding various interests in a lease, the substantive obligations remain those established in the lease and existing regulations.” 66 FR 1883, 1884 (Jan. 10, 2001). The express purposes of the 2001 regulatory changes were to

[c]larify the responsibilities of oil and gas lessees and operating rights owners for protecting Federal and Indian oil and gas resources from drainage; specify when the obligations [with respect to drainage] begin and end; clarify what steps to take to determine if drainage is occurring; and specify the responsibilities of assignors and assignees for reclamation and other lease obligations.

66 FR at 1883. With respect to assignees and assignors of record title and operating rights, the purpose of the rule was to clarify that the assignors of both interests continued “to be responsible for satisfying those obligations that accrued prior to the approval of the assignment” and that transferees “have responsibilities for certain plugging and abandonment, reclamation and environmental liabilities that arose prior to the assignment and which were evident to a purchaser exercising due diligence.” *Id.* While the rule therefore clarified the timing of accrual of obligations before or after lease transfers, nothing in the rulemaking plausibly suggested an understanding, under the previous 1988 rules, that the record title holder bears no further responsibility for lease obligations when it transfers operating rights.

The analysis of the statements set forth by the Department when explaining the 1988 rule entirely confirms BLM’s subsequent explanation in 2001. In the final 1988 rule, BLM explained that the record title holder retains lease obligations after transfer of operating rights. “[T]he transfer of operating rights is a sublease or a private subsidiary arrangement between the lessee of record and the operator. * * * [S]uch an arrangement is in addition to, rather than in place of, the contractual agreement between the lessee of record and the United States.” 53 FR 17346 (May 16, 1988).

Appellants are correct that the 1988 rulemaking and 43 CFR 3106.7-2 (2000) established that the holder of operating rights may be liable for lease obligations. But BLM did not espouse the implication appellants read into this clarification. Rather, BLM confirmed that the holder of record title to the lease, *i.e.*, the lessee, also retains

obligations to perform the lease terms and cannot escape responsibility for those obligations. This explanation appears in the rule first proposed in 1987, in the context of explaining changes to subpart 3106.7-2 and BLM's adoption of the IM discussed above, in which BLM disclaimed further abstraction of operating rights.

Section 3106.7-2 would be amended by the proposed rulemaking to confirm that both the approved sublessee and the lessee of record are responsible for all lease obligations. This amendment is not a change in existing liabilities among such parties, but is merely a clarification of existing law. In order to be relieved of obligations under a lease, a lessee must assign all of the record title interest in the lease. Retention of any portion of the record title to a lease retains the liabilities of the lease. * * *

[BLM's] review of transfers of operating rights (subleases) is extremely time consuming and creates delays in the processing of all transfers. The Department of the Interior has determined that this existing approach and the time consumed are unnecessary and there is no need to continue the practice of closely scrutinizing transfers of operating rights (subleases) unless there is an independent concern about a transferee's qualifications. (See [BLM IM] No. 86-175, dated December 30, 1985). * * * Submission of the actual operating agreements, however, shall not be made since most of the information in such documents involves specific terms and agreements between the sublessor and the sublessee, and does not affect the contractual agreement between the lessee of record and the United States under the terms and conditions of the lease. * * *

[BLM] will continue to closely monitor the status of the record title to all leases, which is sufficient for lease management purposes because the lessee of record is fully responsible for all lease obligations.

52 FR 22591, 22596 (June 12, 1987) (emphasis added). The rulemaking went on to explain consistent changes in the rulemaking which would extricate BLM from approving relationships among operators and other private party disputes for which the "United States will incur no liability." *Id.*

This explanation of the proposed rule which led to the 1988 final changes in the operating rules reaffirms that BLM's consistent approach toward record title holders is that they are the lessees to whom BLM ultimately looks for performance of lease responsibilities. The 1988 rules effectuated no change in this long-standing

practice.^{12/} Monahan's construction of the 1988 rules as creating a hiatus between the previous rules and the 2001 rules during which the record title holder sustained no further lease obligations once operating rights are created is repudiated by BLM's explanation for the rule.

Monahan nonetheless relies on the final rule's preamble which adopted changes in 43 CFR 3106.7-2 from the proposed rule in response to objections submitted by commenters. BLM received comments objecting to BLM's holding a record title holder fully liable "when it is not the operator on the lease." 53 FR 17347 (May 16, 1988). BLM explained that it "adopted a change which makes the sublessee responsible for all obligations under the rights transferred to the sublease." *Id.* Monahan's inference, however, that this language meant to adopt his position that the record title holder no longer bears responsibility when an operator is in default goes far beyond the quoted language and is repudiated in the final rule preamble.

To the contrary, BLM also considered other suggested changes submitted by commenters which encouraged BLM to continue its close examination of subleases because of fears that "holding the record title holder liable is insufficient to prevent environmental degradation." 53 FR 17346 (May 16, 1988). BLM expressly refused to adopt changes to conform to those comments. BLM instead reiterated the same conclusions quoted above:

The final rulemaking has not adopted these general suggestions for change to Subpart 3106 of the proposed rulemaking. [BLM] cannot, and should not, undertake the role of attempting to validate privately arranged agreements between any lessee and its sublessee, or of protecting a lessee's rights under a private agreement to which the Federal government is not a party. The Bureau does not have the power or authority to warrant title [in] such circumstances regardless of whatever administrative examinations may be conducted. The Bureau's policy for over two years has been not to adjudicate transfers of operating rights * * *. The comment regarding eliminating the distinction between the holder of a record title and the holder of operating rights in an oil and gas lease has not been adopted in the final rulemaking because the transfer of operating rights is a sublease or

^{12/} The June 12, 1987, proposed rule was the first of two rulemaking proposals. The second contained additional changes necessitated by the enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. 53 FR 9214 (Mar. 21, 1988). The second proposal removed in their entirety changes proposed in the 1987 notice concerning noncompetitive and competitive leasing in Subparts 3110, 3111, 3112, and 3120.

a private subsidiary arrangement between the lessee of record and the operator. As recognized in the statutory language, such an arrangement is in addition to, rather than in place of, the contractual agreement between the lessee of record and the United States.

53 FR 17346 (May 16, 1988) (emphasis added). This analysis puts to rest any construction of the 1988 rule as an exception to the longstanding rule that record title holders bear lease responsibilities.

We have examined carefully the rule on which appellants rely and the rulemaking history leading to previous and current regulations. We find a clear and consistent regulatory approach toward record title holders that has been in effect for decades. We find no plausible support for the view that the 1988 rules had the express purpose of ensuring that the record title holder no longer bore lease obligations once operating rights were transferred, or that the 2001 rules effectuated a change in this framework. We find nothing in the regulations in effect from 1983-2001, or after the 2001 amendments, to suggest that a record title holder divests itself of the obligation to submit plans for either production from or abandonment of the wells located within the physical boundaries of the relevant Federal oil and gas leases when the record title holder transfers its operating rights to a third party.

It is also important to address Monahan's argument that the 2001 rules do not apply to him. A Federal oil and gas lessee has no option to pick among versions of regulatory provisions. As lessee, Monahan must comply with applicable regulations, even as amended. Federal oil and gas leases provide in relevant part:

This oil and gas lease is issued * * * to the above-named lessee pursuant and subject to the provisions of the Mineral Leasing Act and subject to all rules and regulations of the Secretary of the Interior now or hereafter in force, when not inconsistent with any express and specific provisions herein, which are made a part hereof.

(Lease for Oil and Gas [W 8528], dated Oct. 1, 1967; see also Offer to Lease and Lease for Oil and Gas [W 3072], dated Dec. 7, 1966.) ^{13/}

^{13/} The record does not contain a copy of the Federal oil and gas leases on which Monahan is the lessee of record. However, Federal oil and gas leases contain standard language incorporating agency regulations. See Law of Federal Oil and Gas Leases, § 9.04[1], 9-13 and n.8, and § 9.06. The 2001 rulemaking explained its application to existing leases. "[A]ll Federal oil and gas leases are subject to future regulations except to the extent such regulations are inconsistent with express lease

(continued...)

The Department has long held that the intent of the language “now or hereafter in force” is to incorporate future regulations into existing permits or leases.

Appellant’s claim that it is not bound by any Federal regulations that did not exist at the time ASARCO entered into the lease agreements in 1959 is without merit. This Department has long held that the intent of the language “now or hereafter in force,” which is included in section 4(h) of ASARCO’s 1959 mining leases, is to incorporate future regulations into existing lease terms, even though such regulations may be inconsistent with those in effect at the time the leases were issued, and even though the future regulations may place additional obligations or burdens on a lessee. AMCA Coal Leasing, Inc. (On Reconsideration), 114 IBLA 246 (1990); Veola and Aaron Rasmussen, 109 IBLA 106 (1989); Coastal Oil & Gas Corp., 108 IBLA 62 (1989); Gilbert V. Levin, 64 Interior Dec. 1 (1957).

Asarco, Inc., 141 IBLA 269, 273 (1997); see also Arizona Silica Sand Co., 148 IBLA 236, 238 (1999) (applying “now or hereafter” terms of a permit “even though such future regulations may place additional obligations or burdens on a permittee”).^{14/}

4. Precedent. Board precedent, notably construing rules in effect prior to 2001, confirms that this Department has consistently imposed lease obligations on record title holders. In Ralph G. Abbott, 115 IBLA at 346, citing 43 CFR 3106.7-2 (2000), the Board held that “ultimate responsibility [to plug and abandon] remains with the record owner of the lease.” In Cross Creek Corp., 131 IBLA at 35, the Board held that the record title holder “remained ultimately liable for compliance with the terms of the lease,” citing 43 CFR 3106.7-2 (2000). The Board held that “regardless of whether the lessee of record drilled or reworked the wells or produced from them, it is still ultimately responsible for plugging and abandoning them as the lessee of record, even if it did not profit from the earlier production.” 131 IBLA at 37.

The Board followed those cases in Marlin Oil Corp., 158 IBLA 362, 367-68 (2003). Moreover, the Board relied expressly on the language of 43 CFR 3106.7-2 (2000), which the Board has underscored above:

^{13/} (...continued)

provision or the rights granted in the lease.” 66 FR 1884 (2001).

^{14/} In Nexen Petroleum U.S.A. Inc., 157 IBLA 286, 300 (2002), appeal filed, Civ. No. 02-3543 (E.D. LA), the Board rejected the argument that the Minerals Management Service could not apply amended royalty regulations to Federal leases issued pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(a) (2000).

After approval to the transfer of record title to a lease by the authorized officer, an assignee is responsible for all lease obligations. “After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary.” 43 CFR 3106.7-2. The assignee of a Federal oil and gas lease, upon approval of an assignment to him, becomes the lessee of the government and is responsible for compliance with the lease terms and any regulations affecting the lease. Ralph G. Abbott, 115 IBLA 343, 346 (1990).

Furthermore, while the well operator has primary responsibility for plugging wells, the ultimate responsibility remains with the record title owner of the lease. Id.; see also Stanco Petroleum, Inc., 143 IBLA 86, 88 (1998).

Id. at 367. In Stanco Petroleum Inc., we held that the “assignee of a Federal oil and gas lease, upon approval of an assignment to him, becomes the lessee of the Government and is responsible for compliance with the lease terms which include the obligation to pay rentals and royalties until termination. The lessee is obliged to acquaint himself with the terms of the lease and regulations affecting the lease.” 143 IBLA at 88. In R. E. Puckett, 124 IBLA 288, 292 (1992), we held that once a lessee transferred record title, the assignee and its surety “became responsible for the performance of all obligations.” See also The Travelers Indemnity Co., 111 IBLA 300, 308 (1989) (coal lease).

PI’s and Monahan’s reliance on Devon Energy Corp., 145 IBLA 136, and Merrion Oil & Gas Corp., 151 IBLA 184, does not alter this conclusion. Both of those cases addressed questions regarding the liability of an operator of a Federal lease. In Devon, the Board addressed whether and to what extent an operator that has terminated its status as such may continue to act as operator, even if it may have continuing liabilities for its past actions as operator. Devon Energy Corp., 145 IBLA at 147-48. Merrion argued that it had resigned as an operator and could no longer be compelled to perform lease operations. Merrion Oil & Gas Corp., 151 IBLA at 188. Both cases discussed the complex results on oil and gas operations resulting from third party designations of operators, and BLM’s approvals thereof. These questions are not directly presented to us in these appeals.^{15/} While it is true that, like the

^{15/} Admittedly, all three appeals raise this tangential question in that Monahan was operator of all units at issue in all cases from 1979 until 1998. This issue is presented to BLM in the record in letters and memoranda from other record title holders. E.g., letter from Tipperary to BLM, dated Apr. 8, 2002, at 2 (requesting BLM to appoint, (continued...))

appellants in those cases, Monahan and PI were operators who transferred operating rights to a third party, unlike the appellants in those cases, PI and Monahan retained record title in the leases at issue. It is only in that capacity that BLM has ordered them to comply with lease terms.

Neither of the cases purported to remark on, or reduce, the continuing obligations of the record title holder. In Devon, the Board noted that the current record title holders were Gasco, Inc., and RIM Nominee Partnership. Devon Energy Corp., 145 IBLA at 139-40 and n.7. Nothing in that decision conceivably can be construed to address the lease obligations of those entities.^{15/} In Merrion, the Board did not identify the record title holder or state what such an entity's responsibilities would be. To the contrary, Merrion's arguments focused upon its operator status and its contention that "it is no longer responsible for performance of lease obligations as operator, because it does not have either record title or operating rights." Merrion Oil & Gas Corp., 151 IBLA at 187 (emphasis added). Thus, appellants cannot rely on Devon and Merrion as commentary on record title holder obligations, nor did the Board in either case purport to change the law on the subject of record title holders established in its previously issued decisions in Ralph G. Abbott, 115 IBLA at 346, and Cross Creek Corp., 131 IBLA at 32.

Considering the above analysis of the leases, the regulations and Board precedent, we affirm BLM's decisions in each case. We also reject Monahan's argument that the 2001 rules do not apply to himself as a record title holder of Federal oil and gas leases. A lessee is not free, by unilateral action or by choice, to

^{15/} (continued...)

inter alia, Monahan as operator to carry out well plugging and abandonment, on basis of Monahan's prior status as operator). We do not have a sufficient record before us, or a question presented, on which to decide any part of that issue in the first instance, nor do we wish to affect what may be third party disputes.

^{16/} In Devon, the Board distinguished the question of "continuing operator liability from that which arises with respect to the continuing liability of either record title or operating rights owners. The Board noted that under 43 CFR 3106.7-2 (2000), liability of the assignor of record title or working interests and its surety terminates upon approval of the assignment." Devon Energy Corp., 145 IBLA at 147, citing R. E. Puckett, 124 IBLA at 292, and Karis Oil Co., 58 IBLA 123 (1981). Notably, the Board concluded, that "inasmuch as BLM no longer approves operator designations, the mere fact that a new operator has been designated does not necessarily discharge an operator or its surety of its past obligations." 145 IBLA at 147. In Puckett, 124 IBLA at 292, and Karis, 58 IBLA at 124, the Board found that a lessee which had assigned away all record title was no longer responsible for the lease after BLM approved the assignment.

pick among hats he may wear as a means of avoiding regulations clearly applicable to his lease. BLM has requested the record title holders of the lease to comply with lease terms; Monahan may not escape his obligations as lessee by pointing out that he is no longer an operator.

5. Additional arguments. Monahan also argues that BLM may not enforce lease rights against record title holders because BLM did not require a sufficient bond from Emerald in approving Monahan's transfer of operating rights to Emerald. Monahan effectively alleges that BLM was careless and neglectful in approving a transfer of rights effectuated by Monahan. According to Monahan, a careful scrutiny of the transfer would have revealed the underfunded nature of Emerald, or the conditions of the wells, operating rights to which Monahan was transferring. Monahan supplies no basis for his claim of BLM's obligations of care in overseeing subleases to which the Federal government is not a party. In fact, as explained above, BLM expressly eschewed such consideration of third party transfers in IM, the BLM Manual, and regulations, as a result of the United States' relationship in privity with the lessee. The situation created by Monahan's transfer, as operating rights holder, of operating rights in wells covered by three units to Emerald displays the value of BLM's fundamental privity relationship with the lessee, as opposed to a transferee that is the choice of a string of third party relationships to which the government is not a party. Further, Monahan's attempt to exploit the government's failure to oversee his own choice of third party dealings, by extricating himself from the leases, undermines Monahan's allegedly equitable position. ^{17/}

As a legal matter, however, we find no support for Monahan's contention that BLM's failure to require adequate posting of bond, over and above that required by BLM regulation, from Emerald would release record title holders from their obligations as lessees. BLM regulations specify that "a lessee, owner of operating rights (sublessee), or operator" may furnish a lease bond of not less than \$10,000 and a Statewide bond of not less than \$25,000. 43 CFR 3104.2 and 3104.3; see also Law of Federal Oil and Gas Leases, § 17.04. The parties agree that BLM required a bond of \$25,000 from Emerald when it approved Monahan's transfer of operating rights to Emerald, though we can find no such bond in the record. BLM regulations permit BLM to require increased amounts for bonding in particular circumstances, including when BLM has found the bond amount is insufficient to cover plugging and abandonment of wells. 43 CFR 3104.5(b); see also 43 CFR 3106.6-2 (BLM may

^{17/} To the extent Monahan suggests we find that BLM erred in approving the transfer to Emerald for inadequate bonding, it is unclear whether Monahan would have had standing to bring a challenge to BLM for approving a transfer it instigated. To the extent Monahan purports to appeal BLM's approval of the transfer, such appeal would have been required at the time of the 1998 approval.

require additional bond for transferee operating under Statewide bond pursuant to 43 CFR 3104.5). The Board has infrequently affirmed or reversed BLM for attempting to increase bonds under 43 CFR 3104.5. Great Western Petroleum and Refining Co., 124 IBLA 16, 27 (1992) (increased bond reversed where inconsistent with Bankruptcy Court order); Marathon Oil Co., 102 IBLA 285, 289 (\$500,000 bond order reversed); Forest Gray, 88 IBLA 64 (1985) (requirement of \$80,000 lease bond affirmed).

Moreover, 43 CFR 3106.7-1 prohibits approval of a transfer of record title or of operating rights (sublease) if * * * the bond, should one be required, is insufficient.” Under this regulation, the Board has held that BLM could not approve a transfer in the absence of the posting of a bond by the transferee. Merrion Oil, 151 IBLA at 189. Likewise, we have held that absent a bond, a transferee of operator status has no authority to enter a lease to conduct operations. Devon Energy Corp., 145 IBLA at 146. We have not, however, construed the regulations to prohibit BLM from approving a transfer after the transferee posts a valid Statewide bond under 43 CFR 3104.3. To the contrary, the regulations explicitly contemplate the situation where a bond is insufficient, requiring the principal on a bond to make full payment to the United States on default where the “obligation incurred exceeds the face amount of the bond(s).” 43 CFR 3104.7; see also 52 FR 22595 (June 12, 1987) (proposed rule). Nor have we construed the regulations to require BLM to make a particular sufficiency finding before accepting a bond that meets BLM regulatory requirements, as Monahan’s argument implies.

We will not consider that question on this record. Here, the parties agree that BLM accepted a Statewide bond in approving the Monahan’s transfer of operating rights to Emerald. In subsequently investigating whether Emerald’s lease operations justified continued operation of the units, BLM discovered both that Emerald’s total bonding on the leases was insufficient and that Emerald was bankrupt. BLM attempted to increase the bond coverage, unable to obtain increased coverage from a bankrupt entity. We will not opine further on this record regarding any error in BLM’s investigation of this third party transfer. More to the point, we find nothing in precedent or these facts to plausibly support Monahan’s suggestion that BLM’s acceptance of a bond limits the obligations for lease compliance of the record title holders.

Having affirmed BLM’s decisions requiring record title holders to submit the plans in question, however, we stress that this is the extent of our decision. BLM’s sua sponte stay order issued December 20, 2002, states “we expect the IBLA to decide on the issues at hand including * * * what the status of operating rights are when the owner(s) of those rights abandon them.” (Dec. 20, 2002, BLM decision.) To the contrary, this issue was not raised in the decisions before us. Even were the Board

inclined to opine in an advisory manner on the relationships among the dozens of entities reflected in the records of these leases, the records of transfers, approvals, and bond information are far too sparse upon which to guess at the proper status of any particular entity. Moreover, to the extent sublessees exist, or companies have liens against them, they reflect private debates among the various legal entities in which we take no part.

Likewise, we do not respond to appellants', and in particular Monahan's, various arguments regarding the obligations of Emerald as unit operator. (Monahan SOR at 10, 11-12.) There is no dispute that the units have terminated by operation of law in these cases for lack of production.^{18/} Monahan's arguments stem from his assertions that he is no longer operator, without acknowledgment of his role as record title holder. To the extent Monahan's argument is dependent on his claim that BLM is compelling him to "trespass" on his own leases, we remind appellants that all the decisions in question required "submittal of a plan" involving the leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Lisa Hemmer
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

^{18/} To the extent Monahan argues that BLM increased his liability by not properly monitoring Emerald's actions on the site, Monahan has provided no factual or legal support for this argument.