



UOS ENERGY, LLC

176 IBLA 286

Decided January 9, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

UOS ENERGY, LLC

IBLA 2007-114 through 2007-119

Decided January 9, 2009

Appeals from decisions of the Utah State Office, Bureau of Land Management, vacating prior decisions; vacating prior successor-in-interest notices; granting suspensions; determining rentals due; and requiring additional information. UTU-60566 through UTU-60570 and UTU-67827.

Motion for reconsideration granted; motions to dismiss denied in part and the Board's Order of August 6, 2007, directing settlement discussions is in part taken under advisement; motions to dismiss granted in part and the Board's Order of August 6, 2007, is vacated in part; further briefing scheduled.

1. Rules of Practice: Appeals: Jurisdiction--Rules of Practice: Appeals: Reconsideration

The Board may reconsider a decision in extraordinary circumstances for sufficient reason. Where BLM moves for reconsideration of the Board's order to discuss settlement on the ground of lack of standing to appeal the decisions at issue, BLM's failure to object to standing when appellant petitioned for a stay is immaterial because standing is a jurisdictional issue which may be raised at any time in a proceeding.

2. Appeals--Rules of Practice: Appeals: Standing to Appeal--Oil and Gas Leases: Assignments or Transfers

Where appellant has filed unapproved assignments of oil and gas leases that are involved in conversion applications under the Combined Hydrocarbon Leasing Act, those pending assignments establish appellant's standing to appeal BLM decisions adversely affecting such leases.

3. Appeals--Rules of Practice: Appeals: Standing to Appeal--Oil and Gas Leases: Assignments or Transfers

When BLM's decision did not adjudicate applications to convert oil and gas leases into combined hydrocarbon leases, the fact that appellant succeeded to any post-conversion interest its predecessor had provides no independent basis for declaring appellant a party to the case when neither appellant nor its predecessor owns an interest in any lease included in the pending conversion applications.

APPEARANCES: Warren M. Dillard, Los Angeles, California, for UOS Energy, LLC; John S. Kirkham, Esq., and Richard R. Hall, Esq., Salt Lake City, Utah, and W. E. Rasmussen, Esq., Houston, Texas, for Exxon Mobil Corporation; Richard McNeer, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

UOS Energy, LLC (UOS) has filed individual appeals from six separate decisions of the Utah State Office, Bureau of Land Management (BLM), each addressing a different Combined Hydrocarbon Lease (CHL) Application filed with BLM in November 1983 by Enercor, UOS's predecessor-in-interest, on behalf of Exxon Corporation (Exxon), Pacific Transmission Supply Company (PTS), and Natural Gas Corporation of California (NGC). The CHL Applications Enercor filed sought to convert to CHLs various conventional Federal oil and gas leases within the P R Spring Special Tar Sands Area owned by Exxon, PTS, and NGC. At the time of filing, BLM assigned serial numbers to each of the Applications.¹

In its decisions, each of which was addressed to Questar Exploration & Production Company (Questar), Pioneer Natural Resources USA, Inc. (Pioneer), and ExxonMobil Corporation (ExxonMobil), the successors of Exxon, PTS, and NGC, BLM informed the recipients of the status of their applications.

¹ The IBLA docket numbers and the corresponding CHL Application serial numbers are as follows: IBLA 2007-114 (UTU-60566); IBLA 2007-115 (UTU-60567); IBLA 2007-116 (UTU-60568); IBLA 2007-117 (UTU-60569); IBLA 2007-118 (UTU-60570); and IBLA 2007-119 (UTU-67827). BLM issued the decisions in question on Feb. 2, 2007 (IBLA 2007-114), and Jan. 29, 2007 (IBLA 2007-115 through 2007-118). The decision involved in IBLA 2007-119 is undated, but apparently was also issued on Jan. 29, 2007.

In each case, UOS filed a petition for stay with its Notice of Appeal. UOS requested that the requirement to pay rentals be stayed, which BLM did not oppose. By order dated August 6, 2007, the Board granted the petitions for stay filed by UOS in each of the appeals; granted intervenor status to ExxonMobil; and directed BLM to arrange a meeting with UOS, ExxonMobil, and other lessees to discuss and resolve the issues raised by these appeals.

Thereafter, BLM filed a timely Motion for Reconsideration of that part of the August 6, 2007, order that directed it to engage in settlement discussions with UOS and others. The basis for BLM's motion is set forth in its accompanying Motion to Dismiss each of the appeals. Therein, BLM asserts that UOS lacks standing to appeal the decisions issued by BLM. ExxonMobil has filed a separate Motion to Dismiss each of the appeals on the same basis. UOS has filed a Consolidated Response to Motion for Reconsideration and Motion to Dismiss (UOS Response) and a Response to ExxonMobil's Motion to Dismiss (Response to ExxonMobil's Motion) in opposition to dismissal.

Having reviewed the motions and UOS' opposition, we grant the Motion for Reconsideration; we find that UOS has standing in two of the appeals, and to that extent we deny the Motions to Dismiss in part; we find that UOS lacks standing to appeal in four of the appeals, and to that extent grant the Motions to Dismiss in part; and we establish a briefing schedule.

Statutory History

As originally enacted, the Mineral Leasing Act of 1920 provided for leasing "deposits of oil or gas" under section 17 and "oil shale" under section 21. Act of Feb. 25, 1920, ch. 85, §§ 17, 21, 41 Stat. 437, 443, 445; *cf.* 30 U.S.C. §§ 226(a), 241(a) (2000). There was some question whether either section authorized leasing what are known as "tar sands" (as well as various other types of deposits) and whether leases issued under those sections included such substances. *Cf. American Gilsonite Co.*, 111 IBLA 1, 14-21, 86 I.D. 408, 414-18 (1989) (history of gilsonite); *Cooper Petroleum, Inc.*, 73 IBLA 295, 299 (1983) (*quoting* I.M. 82-75 (Nov. 17, 1981); *Duncan Miller*, A-30547, 73 I.D. 211, 215-16 (1966) (discussing lease provisions). In 1960, Congress amended section 21 to include "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)" Pub. L. No. 86-705, § 7, 74 Stat. 781, 790 (Sept. 2, 1960). The same language was added to sections 1 and 34. *Id.*; *cf.* 30 U.S.C. §§ 181, 182 (2000).

In 1981, however, Congress removed the language it had added in 1960 and substituted "gilsonite (including all vein-type solid hydrocarbons)." Pub. L.

No. 97-78, § 1(1), 95 Stat. 1070 (1981). The legislation, known as the Combined Hydrocarbon Leasing Act (CHLA), redefined the term “oil” to “embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).” *Id.* § 1(4), *codified at* 30 U.S.C. § 181 (2000). In regard to tar sands, Congress specified that “[t]he term ‘combined hydrocarbon lease’ shall refer to a lease issued in a special tar sand area pursuant to section 17 after the date of enactment,” November 16, 1981. *Id.* A “special tar sand area” (STSA) is one of the areas that had been designated in two Secretarial orders previously published in the *Federal Register*. *Id.* There are 11 such areas, all within the State of Utah. 46 Fed. Reg. 6077-78 (Jan. 21, 1981), 45 Fed. Reg. 76800-801 (Nov. 20, 1980).² As a result of the enactment of the CHLA, the Department could issue leases covering both oil and gas and tar sand resources in STSAs.

Congress provided that the owners of previously issued oil and gas leases (and owners of “a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926”) situated within a STSA could convert the lease or claim to a CHL, “upon the filing of an *application* within two years from the date of enactment . . . containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources” Pub. L. No. 97-78, § 1(8), 95 Stat. 1070, 1071 (1981), *now codified at* 30 U.S.C. § 226(n)(1)(A) (2000) (emphasis added). New leases for lands within STSAs are issued following competitive bidding procedures. 30 U.S.C. § 226(b)(2)(A)(i) (2000). In the Energy Policy Act of 2005, Congress further amended section 17 to allow the Department to issue separate tar sand and oil and gas leases. Pub. L. No. 109-58, § 350, 119 Stat. 594, 711 (Aug. 8, 2005).

Factual Background

On October 21, 1983, Exxon entered into an agreement with Enercor permitting Enercor to file CHL applications on behalf of Exxon for certain oil and gas leases Exxon held (1983 Agreement), including the leases underlying the CHL applications that are the subject of the present appeals. That Agreement provided that *upon issuance of the CHL leases*, “Exxon will assign to Enercor all of Exxon’s right, title, and interest in and to the tar sand deposits under said leases. . . .” 1983 Agreement, ¶ 3. Exxon was to continue paying “delay rentals on the Leases,”

² The Act also defined the term “tar sand” to mean “any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying.” *See* 30 U.S.C. § 209 (2000).

and after the CHLs were issued, and after Exxon executed the assignments provided for in the Agreement, Enercor was to reimburse Exxon for “delay rentals” under the new CHLs. *Id.* at 5. The 1983 Agreement further provided that it was binding on the parties and their successors and assigns and that

the rights to tar sand[s] which may be assigned by Exxon hereunder may not be assigned by Enercor, in whole or in part, *without first securing Exxon’s written consent*, and provided further that any assignment hereafter executed shall specifically refer to, and be made subject to, the terms and conditions of this Agreement.

Id. at ¶ 11 (emphasis added). In addition, the Agreement required Enercor to “obtain and maintain during the life of this Agreement” a performance bond in the amount of \$500,000, conditioned upon “the full and faithful performance by Enercor of its duties and obligations under this Agreement and under the [CHLs] which will be issued, to protect and indemnify Exxon” *Id.* at ¶ 13.

On November 14, 1983, Enercor filed CHL Applications with BLM, including the Applications involved in the present appeals. Thereafter, it filed the required plans of operations for the CHL Applications with BLM. BLM deemed the Applications complete as of May 22, 1984, and they have been inactive and pending before BLM since then. The case record shows that Enercor has been defunct for some years.³

Pursuant to a document styled an “Assignment and Bill of Sale” and dated May 25, 2006 (Enercor Assignment), M. Walker Wallace, identified as Enercor’s “surviving director and shareholder,” purported to sell to UOS, on behalf of Enercor and himself personally, “such assets as [Enercor] may have,” including rights or assets created under the 1983 Agreement. Enercor Assignment at 1.

ExxonMobil asserts that, notwithstanding the purported conveyance of Enercor’s rights or assets under the Enercor Assignment, “at no time has ExxonMobil consented, in writing or otherwise, to the assignment of rights under the 1983 Agreement from Enercor to UOS.” ExxonMobil Motion to Dismiss at 3.

³ The case file for CHL Application UTU-60566 contains copies of two online screens pertaining to Enercor’s status. According to one document, Enercor’s license to do business as a domestic for-profit corporation expired on May 1, 1989, as a result of “Invol. Diss/No Renewal.” The second document reflects involuntary dissolution on Sept. 30, 1985, for failure to pay taxes. Although we are unable to identify the source of the online documents in the record, we confirmed much of the information they contain by checking Utah’s Division of Corporations website at <http://Utah.Corporations.gov>.

Moreover, ExxonMobil points out that Enercor merely filed CHL Applications on its behalf and that CHL leases, when issued, are to be issued to ExxonMobil, not Enercor.

The BLM decisions in question took no action on the pending conversions; BLM did not issue or deny any CHL as a result of adjudicating the merits of the Applications. Instead, each decision vacated notices of successors-in-interest (not involving UOS) for which no assignments, instruments, or other documentation had been provided to establish ownership of the underlying oil and gas leases; demanded payment of accrued annual rentals for certain oil and gas leases; and requested additional information to establish either that record title interest in all of the lands in the leases being converted is in the same percentage, or that the owners of record intended to relinquish their Applications. Such information was to be submitted within 60 days of receipt of the decisions.⁴ None of the decisions was issued to Enercor or to UOS. Nevertheless, UOS filed an appeal in each case for itself and purportedly on behalf of the oil and gas lessees.

Motion for Reconsideration

[1] The regulation governing the filing of requests for reconsideration provides that “[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason.” 43 C.F.R. § 4.403. UOS asserts that BLM’s Motion for Reconsideration should be denied because it fails to show extraordinary circumstances. UOS argues that BLM should have raised its standing argument in opposition to the petitions for stay, but that BLM did not oppose the petitions for stay. UOS further states that the Board proceeded to adjudicate the petitions for stay, and in granting them necessarily determined that UOS had standing to appeal.

While there is a certain logic to UOS’ argument, it must be rejected. Lack of opposition to the stay petitions and the substantial rental payments BLM required as a condition to continue processing the Applications prompted our determination to grant those petitions and direct the parties to meet to discuss the issues raised by the appeals. The point of BLM’s Motions is that the Board should reexamine its settlement order in light of the fact that UOS does not meet the necessary criteria to appeal the decisions in issue. Clearly, BLM’s objection to standing would have been better raised in an objection to the petition for stay. However, we cannot ignore the question, because it raises a jurisdictional issue, which may be raised at any time in a proceeding and cannot be waived by a party’s failure to object. *See Hopi Tribe v. OSM*, 103 IBLA 44, 47 (1988), and cases cited. Accordingly, we grant the Motion for Reconsideration.

⁴ The required payments ranged from \$76,480 (IBLA 2007-119) to \$229,174 (IBLA 2007-116).

Standing

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal from a BLM decision, an appellant must demonstrate that it is both a “party to a case” and “adversely affected” by the decision within the meaning of 43 C.F.R. § 4.410(b) and (d). *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-86 (2005), and cases cited. An appeal must be dismissed if either element is lacking. *Southern Utah Wilderness Alliance*, 140 IBLA 341, 346 (1997); *Mark S. Altman*, 93 IBLA 265, 266 (1986). We have long held that it is the responsibility of the appellant to demonstrate the requisite elements of standing. *Concerned Citizens for Nuclear Safety*, 175 IBLA 142, 146 (2008), *Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

Under 43 C.F.R. § 4.410(b), a “party to a case” is

one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, e.g., by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

The regulation at 43 C.F.R. § 4.410(d) provides that a party to a case is adversely affected by a decision when that decision has caused or is substantially likely to cause injury to a legally cognizable interest. *See, e.g., The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 81-82.

BLM argues that UOS is not a “party to a case” because UOS did not participate in the decisions it appeals, it was not an applicant for a CHL, neither it nor Enercor holds any oil and gas lease contained in a conversion application, and UOS’ first involvement occurred when it filed the appeal. Motion to Dismiss at 2. BLM notes, in addition, that UOS “never filed with BLM any document to substitute itself for Enercor as an applicant in the CHL conversion proceeding. [Footnote omitted.]” *Id.*

ExxonMobil does not take a position on whether UOS is a “party to a case,” arguing instead that UOS has no “legally sustainable interest in the CHL Applications or the Leases and, therefore, has no standing to pursue an appeal of the BLM Decision denying the CHL Applications.”⁵ ExxonMobil Motion to Dismiss at 4.

⁵ It is premature to assert that BLM denied the CHL Applications. As stated, BLM only vacated decisions and successor-in-interest notices, demanded accrued lease rentals, requested additional information to continue processing the Applications,

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UOS claims standing based on the pending lease assignments in two appeals, discussed *infra*, and a status derived from the Enercor Assignment with respect to the leases involved in the remaining four appeals.

Motions to Dismiss: IBLA 2007-116 and -118

[2] UOS first claims that it has filed for approval assignments of two oil and gas leases included in the CHL Applications. It has provided copies of two assignments, dated prior to the decisions under appeal in these cases. One assignment transfers NGC's ownership interest in lease U-27413 to UOS. The other assignment transfers Pacific Gas & Electric Resources Company's (PGE's) ownership interest in lease U-38076 to UOS. Although neither assignment bears a BLM date stamp, UOS avers that it filed them for approval and argues that the pendency of those assignments makes it both a party to a case and the holder of a legally cognizable interest that is adversely affected by the decisions appealed in IBLA 2007-116 and 2007-118 because the assigned leases are involved in the CHL Applications underlying those appeals.⁶ UOS Response at 4. UOS is correct. Those assignments establish that UOS has acquired a legally cognizable interest in those leases that is adversely affected by BLM's decisions.⁷ 43 C.F.R. § 4.410(b). UOS may

⁵ (...continued)

and invited the lessees of record to advise BLM in writing whether they wished to relinquish their Applications instead of maintaining them.

⁶ Those CHL Applications are UTU-60568 and UTU-60570, respectively. The assignors executed the assignments on Nov. 29, 2006, and UOS executed them on Jan. 10, 2007. UOS does not state when the assignments were filed for approval, but based on BLM's statements in its Motion to Dismiss, we assume that they were filed after BLM had issued its decisions.

⁷ The assignee of a Federal oil and gas lease, upon approval of an assignment, becomes the Government's lessee and is responsible for compliance with all lease terms and conditions and applicable law and regulations affecting the lease. See 43 C.F.R. § 4.410(d); *Marlin Oil Corporation*, 158 IBLA 362, 367 (2003); *Goss Ventures, Inc.*, 143 IBLA 83, 84 (1998); *Ralph G. Abbott*, 115 IBLA 343, 346 (1990); *Nyle Edwards*, 109 IBLA 72, 74 (1989); *Diamond Shamrock Exploration Co.*, 83 IBLA 318, 320 (1984); *Dale Carr*, 45 IBLA 183, 184 (1980).

therefore maintain the appeals in IBLA 2007-116 and 2007-118 on its own behalf.⁸ Accordingly, we deny the Motions to Dismiss as they relate to these two appeals.

Motions to Dismiss: IBLA 2007-114, -115, -117 and -119

UOS is not a party to the case in the remaining four appeals because it does not own or claim an interest in any of the oil and gas leases involved. Nevertheless, UOS asserts that it has standing to appeal as Enercor's successor.⁹ Citing *Firstland Offshore Exploration Co. (Firstland)*, 149 IBLA 117 (1999), UOS argues that "decisions of the Board establish that the Enercor Contract committing to assign such rights provides sufficient standing. This Board has found standing based entirely on private contractual agreements where the appellant's interest was contingent on a favorable outcome in the appeal." Response to ExxonMobil's Motion at 6 (emphasis in original omitted).¹⁰

⁸ However, UOS has no authority to represent Exxon, Questar, or Pioneer, the other lessees affected by the two decisions. See 43 C.F.R. § 1.3. The regulation does not authorize practice by an "agent" or an individual performing a service for a client other than as an attorney. *Helmut Rohrl*, 132 IBLA 279, 281 (1995); *Leonard J. Olheiser*, 106 IBLA 214, 215-16 (1988); *Robert G. Young*, 87 IBLA 249, 250 (1985). An appeal brought by a person who does not fall within one of the categories of persons authorized to practice before the Department is subject to dismissal. *Resource Associates of Alaska*, 114 IBLA 216, 218 (1990).

⁹ We assume, *arguendo*, that the assignment from Enercor to UOS fully complies with Utah law regarding the timing, activities, and transactions an involuntarily dissolved corporation may lawfully engage in, and that the assignment constitutes a transaction to wind up the affairs of the former corporation, notwithstanding that 16 years have passed since Enercor was dissolved. See Utah Code Ann. §§ 16-10a-1405, 1420-21 (1992).

¹⁰ In *Firstland*, the leases had terminated on Sept. 22, 1994, when MMS lifted a suspension of production (SOP) after Unocal, the operator, stated that it did not intend to bring the leases back into production. 149 IBLA at 121, *citing* MMS Decision at 1-6. Firstland appealed as the owner of a 10 per cent working interest in the leases and, as such, filed its response to the Answer submitted by the Minerals Management Service (MMS).

Three months later, Gravlee and Associates (Gravlee) appeared and filed a response to MMS' Answer. MMS moved to strike the response, arguing that Gravlee was not adversely affected by the decision, also objecting to Gravlee's participation as an intervenor. In opposing MMS' motion to strike, Gravlee asserted that "because Firstland has authorized Gravlee to prosecute its appeal, Gravlee has every right to file Firstland's response to MMS' Answer and any other pleading that Firstland

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[3] ExxonMobil and others and their oil and gas leases are the objects and subjects of BLM's decisions. See 43 C.F.R. § 4.410(b). Absent an interest in those leases, neither UOS nor its predecessor-in-interest, Enercor, are parties to the appeal. At most, UOS has a potential future interest under the 1983 Agreement that does not materialize until several contingencies have been met, the most essential of which is issuance of a CHL, which in turn wholly depends on whether the oil and gas lessees intend to maintain their conversion Applications. Until the new CHL is issued, UOS has only what Enercor had, which was ExxonMobil's authorization to file the Applications and other documents necessary to effect the conversion and, upon issuance of new CHLs, ExxonMobil's promise to convey its title in and to the tar sand deposits under the new CHLs, subject to ExxonMobil's overriding royalty on production from such tar sands and Enercor's agreement to reimburse ExxonMobil for any "delay rentals" it had paid. 1983 Agreement, ¶¶ 1, 2, 3, and 5. Because BLM's decisions did not adjudicate the Applications, however, the fact that UOS may have succeeded to any post-conversion interest Enercor had under the 1983 Agreement provides no independent basis for declaring it a party to the case when Enercor did

¹⁰ (...continued)

could file in this appeal." *Firstland*, 149 IBLA at 125. Gravlee also argued that it had a legally cognizable interest as a result of valuable rights acquired from interest owners under a June 1, 1997, agreement that would be adversely affected by the outcome of the appeal and, "as a result, Gravlee is entitled to appear in this case on its own behalf as it is the real party in interest in this case, even if *Firstland's* appeal is granted." *Id.* The Board stated:

While it is clear that Gravlee was neither a party to the case nor adversely affected by the MMS decision at the time it issued (since it had no interest in the leases at the time), this is not dispositive of its standing to appear as a successor-in-interest to the lessees. It is well established in Board precedent that an assignee pursuant to an unapproved assignment has standing to appeal a decision adverse to its interests. *Uno Broadcasting Corp.*, 120 IBLA 380, 382 (1991); *Tenneco Oil Co.*, 63 IBLA 339, 341 (1982). . . . Although the interest of Gravlee is a contingent one, Gravlee's interest would nevertheless be adversely affected if the Board were to uphold the MMS decision. . . . Gravlee has standing to appear in its own right as successor-in-interest to Appellant.

Id. at 126-27. The Board's decision suggests that no assignment had actually been executed and/or filed with MMS. See *Firstland*, 149 IBLA at 126. The Board reached its conclusion without further addressing MMS' assertions, apparently undisputed, that the agreement to assign the leases had expired by its own terms and, moreover, had expressly provided that Gravlee could not prosecute the appeal after Nov. 30, 1997. *Id.* It appears that in the 9 years since it was decided, this Board has not cited *Firstland* for its ruling on standing.

not own any interest in any lease included in the conversion Applications and UOS has not subsequently acquired such an interest.

In the alternative, to demonstrate that it is properly deemed a party to the case, UOS also asserts that in failing to oppose the stay petition, “BLM has not contested the standing of Enercor, the original applicant for all the CHL applications,” and that BLM in its Motion to Dismiss “acknowledges that Enercor has standing as the entity that ‘exercises the rights.’” UOS Response at 4 n.6. This is not an accurate characterization. Despite references to Enercor as an “applicant in the CHL proceeding,” the Motion makes it clear that BLM contends, as a substantive matter, that the lessees of record are the true applicants, because they own the oil and gas leases to be converted. *Id.* Any doubt is removed by BLM’s citation of 43 C.F.R. § 3140.2-3(a), (b), (g)(2), and 43 C.F.R. § 3140.4-2(b).¹¹

BLM is correct. The “applicant” for a combined hydrocarbon lease conversion application is the record title holder of an oil and gas lease included in that application.¹² An entity that performed the service of assembling and submitting the conversion Application on behalf of the lessees does not by providing that service acquire any right in the Application sufficient to render it a party to the case, because there is no intrinsic value or substance in the Application that can be severed from, and asserted independent of, ownership of an interest in the underlying oil and gas leases.

Moreover, even if we could be persuaded to conclude that UOS is a party to the case, UOS’ potential future interest in Exxon’s CHL is not adversely affected by BLM’s decisions. Those decisions did not invalidate oil and gas leases and did not determine whether CHLs will or will not be issued, so that the status of UOS’ potential future interest in the tar sand deposits if and when CHLs are issued is

¹¹ We note as well that nothing in the record demonstrates or suggests that the oil and gas lessees in these four appeals have in any way surrendered or limited their right to abandon their Applications altogether or to withdraw specific leases from such Applications without consulting UOS or obtaining its consent. Clearly such actions could materially alter, if not defeat, UOS’ contingent interest in the tar sand deposits following the conversion to CHLs.

¹² Recently, in *William C. Kirkwood*, 175 IBLA 292 (2008), the Board considered and ruled on several issues arising under the CHLA. We did not expressly hold that the record title holder is the “applicant” in a CHLA conversion, because in that case both applications had been filed by persons who owned oil and gas leases included in those applications and because the other record title holders had filed statements explicitly indicating their intention and agreement to participate in the lease conversion and proposed CHL units.

exactly what it has been since Enercor and Exxon executed their agreement in 1983. Nor can UOS claim any right or interest in the additional information regarding transfers by and between other lessees BLM has requested to continue processing the Applications. Although at some unspecified date in the future UOS may be obligated to reimburse Exxon for “delay rental” payments Exxon has paid, *see* 1983 Agreement, ¶ 5, no CHL applicant is liable for “accrued” annual or “delay” rentals that should have been collected for the underlying leases during the suspension of operations that followed the filing of complete plans of operation, because the Government is estopped from collecting them. *William C. Kirkwood*, 175 IBLA at 313.¹³ Accordingly, UOS’ potential future interest in the tar sand deposits is not affected, adversely or otherwise, by BLM’s decision, and indeed may simply vanish if the lessees relinquish the Applications in whole or in part.¹⁴

In the absence of record title to an oil and gas lease or an interest therein, or a pending assignment of such an interest, UOS is just not in the same position as the lessees on whose behalf the CHL Applications were filed. Accordingly, it is not a party to the case, and we decline to extend *Firstland’s* reasoning to embrace these circumstances to determine otherwise.¹⁵ Therefore, BLM’s and ExxonMobil’s Motions

¹³ Assuming it elects to maintain its leases and/or the CHL Applications, ExxonMobil likely will be required to timely pay annual rentals in the future. *See William C. Kirkwood*, 175 IBLA at 313 n.31. That eventuality ostensibly would trigger ¶ 5 of the 1983 Agreement with Enercor. UOS may fear that ExxonMobil will not pay lease rentals, whereupon BLM could terminate the oil and gas leases, frustrating the objectives of the 1983 Agreement. This may explain UOS’ actions, but that possibility does not confer standing on UOS in these appeals, because the decisions before us plainly did not determine or demand any future rentals.

¹⁴ UOS may have a right to enforce the terms of the agreement with ExxonMobil if the CHLs are issued, and it may have a claim if ExxonMobil fails to maintain the CHL application or pursue its right to appeal BLM’s decisions to protect UOS’ future interest, just as ExxonMobil may well have a defense under the 1983 Agreement’s requirement that Enercor obtain ExxonMobil’s written consent before assigning Enercor’s rights to the tar sand deposits. 1983 Agreement, ¶ 11. However, those possibilities, which ultimately must be litigated in court, do not confer standing to appeal decisions affecting oil and gas leases UOS does not own.

¹⁵ Because there is no pending assignment to UOS of any lease at issue in IBLA 2007-114, -115, -117, or -119, the rule that BLM generally will maintain the status quo and not approve a pending assignment of an *interest in oil and gas leases* after it has received notice of a controversy between the assignor and assignee as to its effect or validity is not applicable. *See, e.g., Devon Energy Corp.*, 145 IBLA 136, 144 (1998), and cases cited. Here, the interest assigned to UOS will not mature, if at
(continued...)

to Dismiss are granted with respect to the CHL Applications in IBLA 2007-114, -115, -117, and -119. As a result, the Board's order of August 6, 2007, is vacated to the extent it directed settlement discussions with UOS in those cases.

Further Briefing in IBLA 2007-116 and 2007-118

The briefing in these appeals has gone no further than the filing of the notice of appeal accompanied by UOS' petition for stay and BLM's and ExxonMobil's motions in response. The validity of BLM's demand for accrued rentals due in past years was the primary basis for UOS' petition for a stay and, as noted, that question has been settled. Because of the pendency of the procedural issues raised by the Motions, UOS has not filed its Statement of Reasons (SOR); thus, it is not certain whether UOS intends to challenge any other aspect of the decisions.¹⁶

If UOS concludes that there are outstanding issues in IBLA 2007-116 and 2007-118 to be resolved, it shall file its SOR with the Board not later than 30 days from service of this decision. BLM and ExxonMobil shall have 30 days following service of the SOR to respond.¹⁷ If no SOR is filed, the Board shall promptly decide those appeals on the basis of the record as it now stands.

¹⁵ (...continued)

all, until the oil and gas leases are converted into new CHLs.

¹⁶ As noted, BLM's decisions did not adjudicate the CHL Applications. At such time as BLM ultimately decides whether and under what circumstances it will issue or deny the requested conversions, ExxonMobil, Questar, Pioneer, and UOS (as to the two leases in IBLA 2007-116 and -118) will have an opportunity to appeal BLM's decisions to this Board.

¹⁷ The Board expects to have *received* the parties' pleadings by the close of business on the 30th day of each deadline.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's motion for reconsideration is granted and the Board's order of August 6, 2007, is vacated to the extent it directed settlement discussions with UOS in IBLA 2007-114, IBLA 2007-115, IBLA 2007-117, and IBLA 2007-119; BLM's and ExxonMobil's motions to dismiss are granted in part with respect to the CHL Applications in IBLA 2007-114, IBLA 2007-115, IBLA 2007-117, and IBLA 2007-119, and those appeals are dismissed; BLM's and ExxonMobil's motions to dismiss are denied in part with respect to the CHL Applications in IBLA 2007-116 and IBLA 2007-118; and further briefing in IBLA 2007-116 and IBLA 2007-118 as set forth above is ordered.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
R. Bryan M^cDaniel
Administrative Judge