

ROBERT N. AND MONA ENFIELD
ROBERT G. HANAGAN

IBLA 70-377

Decided February 10, 1972

Appeal from decision (NM 041063) by Santa Fe land office, denying partial assignment of record title of lease.

Affirmed.

Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bonds

A request for approval of a partial assignment of an oil and gas lease is incomplete until all items required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when it is too late to complete the application in time to permit its approval.

Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Extensions

For a lease to become segregated through partial assignment and entitled to the extension authorized for segregated leases a partial assignment affecting the lease must be filed while there is one month remaining to the lease term; where the requirements for filing a partial assignment of a noncompetitive lease are not met before the end of the next to the last month of the lease term the assignment cannot be approved.

APPEARANCES: Paul W. Eaton, Jr., for appellants.

OPINION BY MR. RITVO

This is an appeal by Robert N. and Mona Enfield and Robert G. Hanagan from that part of an August 28, 1969, decision of the Santa Fe land office which rejected an application for approval of a partial assignment of record title under lease NM 141063 of the SE 1/4 NE 1/4, sec. 3, T. 19 S., R. 32 E., N.M.P.M., from Robert N. and Mona Enfield to Robert G. Hanagan. In the same decision the land office approved an assignment of the entire record title from Shell Oil Company to Robert N.

and Mona Enfield, effective August 1, 1969, to oil and gas lease NM 041063, covering the E 1/2 NE 1/4 of sec. 3. It also approved an assignment of the operating rights, dated July 29, 1969, conveying all the right, title and interest of Tenneco Oil Company to Jack L. McClellan, which is 7/8 of the oil and gas operating rights down to 5,000 feet under all the lands in the lease.

Lease NM 041063 was issued September 1, 1959, and subsequently extended to September 1, 1969. On April 19, 1965, Shell, then record title holder, was notified that all or part of the lease was within the known geologic structure of a producing oil and gas field and that it would be required to furnish a bond if one was not then being maintained. On July 24, 1969, Shell Oil Company assigned the record title to the lease to the Enfields. At such time the oil and gas operating rights under the lease to a depth of 5,000 feet were owned by Tenneco Oil Company and/or Jack L. McClellan.

The pertinent regulation, now 43 CFR 3104.1-1(a), requires that a bond of not less than \$1,000 nor more than \$10,000 conditioned on compliance with all the terms of the lease be filed when any part of the lands is included within the limits of the known geologic structure of a producing oil or gas field.

Enfield, Tenneco and McClellan maintained either nationwide or statewide bonds under 43 CFR 3104.5 or 3104.6. Hanagan did not file the required \$1,000 bond as to the 40 acres in the partial assignment.

The partial assignment, if approved, would have segregated and extended the lease for not less than two years under the provisions of § 30(a) of the Mineral Leasing Act, as amended 30 U.S.C. § 187a (1970). It was denied approval because all data pertinent to the assignment was not filed prior to the commencement of the last month of the term of the lease.

A request for approval of a partial assignment cannot be approved until all things required by the statute, including any required bond, have been filed. Since an assignment becomes effective on the first day of the lease month following the date on which the required documents are filed, all the necessary papers must be filed prior to the beginning of the last month of the lease lest the lease expire before the assignment becomes effective. Similarly, to extend a lease, a completed partial assignment must be filed in the proper land office prior to the last month of the lease term. Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962), cert. denied, 371 U.S. 901 (1962); Sherrill Sue Robert, A-30783 (August 21, 1967); Joe T. Juhan, A-28667 (May 17, 1962); Texaco, Inc. and Nancy Leigh Grant, A-30143 (November 11, 1960).

The last day that the bond could have been filed by the assignee, Robert G. Hanagan, was July 31, 1969. No bond was filed as of that date or any other date. Therefore, the partial assignment was properly denied.

Appellants contend that 43 CFR 3104.5 and 3104.6 provide that in lieu of bonds required under the regulation the holders of leases or of operating agreements may furnish nationwide or statewide coverage bonds. Therefore, they say that since the holder of the oil and gas operating rights down to 5,000 feet was maintaining a bond, the condition of the regulations had been met. The appellants also argue that it makes no difference whether the bond is furnished by the lessee or the holder of the operating rights under the lease, even though the operating rights extend only to a certain depth.

This contention is without merit. Since the regulation requires a bond covering all of the lease it is not satisfied by one covering only the first 5,000 feet.

The appellants also argue that if the regulation is construed to require a bond by Hanagan then it is arbitrary, capricious and unlawful. They note that the Mineral Leasing Act does not require such a bond and that the historic reason for a bond was to secure payment of rental. Since the regulation now provides for the automatic termination of a lease for nonpayment of rent, they contend that a bond should not be required.

It is true that bonds are no longer required to protect the rental of a lease. However, § 30, supra, provides that an assignment shall take effect only after, among other things, "any required bond" is filed and the regulation does require a bond if a lease is within a known geologic structure of a producing oil or gas field. Therefore, the bond is one that is required by statute. Texaco, Inc. and Nancy Leigh Grant, supra; Joe T. Juhan, supra.

The appellants cannot be relieved of the obligation of the regulation by contending that it is unnecessary.

Until a bond is filed a partial assignment is not complete and cannot be approved. Thus, since a proper application for a partial assignment was not filed prior to the last month of the lease it could not serve as a basis for extending the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the land office is affirmed.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Frederick Fishman, Member

