

JAMES V. O'KANE
F. KENNETH MILLHOLLEN

IBLA 75-121

Decided March 18, 1975

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying assignment approval for oil and gas lease NM 3620 to appellants' predecessor in interest, and dismissing appellants' protest against assignment approval for oil and gas lease NM 3620 to a third party.
Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers -- Administrative
Authority: Generally

The Bureau of Land Management may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved.

2. Oil and Gas Leases: Assignments or Transfers -- Rules of Practice:
Protests

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

APPEARANCES: James V. O'Kane, Esq., and F. Kenneth Millhollen, pro se;
Robert H. Strand, Esq., Roswell, New Mexico, for assignee D. L. Hannifin.

OPINION BY ADMINISTRATIVE JUDGE RITVO

James V. O'Kane and F. Kenneth Millhollen have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 31, 1974, denying their request for assignment approval of oil and gas lease NM 3620 to their predecessor in interest, Doreen Smith, and dismissing their protest against approval of an assignment of the same lease from Brown Walker to D. L. Hannifin. The State Office decision also implicitly denies appellants' request for reconsideration of an earlier decision which voided an assignment approval of the same lease in favor of appellants.

The unusual circumstances leading up to this appeal are as follows. On October 20, 1967, Franklin C. Eisenzopf was issued oil and gas lease NM 3620 for 519.91 acres in Eddy County, New Mexico. The effective date of the lease is November 1, 1967, with a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities. By assignment executed on October 21, 1967, Eisenzopf conveyed the entire lease interest to Ivan S. Osborn. This assignment was filed for BLM approval on December 29, 1967, and approved effective January 1, 1968.

On November 25, 1970, the State Office received a request for approval of an assignment from Doreen Smith in favor of Brown Walker, executed November 17, 1970, covering oil and gas lease NM 3620. By letter dated December 23, 1970, the State Office informed Mr. Walker that Ivan S. Osborn held record title to the lease, and requested information regarding the existence of an intervening assignment to Doreen Smith which had not been filed in the State Office for approval. Having received no reply, the State Office sent a follow-up inquiry to Walker on March 1, 1971. On March 8, 1971, the State Office received a reply from Walker in which he stated that he had no knowledge of any intervening assignment to Doreen Smith.

On March 25, 1971, the State Office sent to Doreen Smith a copy of the December 23, 1970, letter to Walker, and requested that she file proof of an intervening assignment within 30 days, otherwise the assignment to Walker would be held for rejection. On July 2, 1971, Doreen Smith filed for approval an assignment, executed July 1, 1971, by Ivan S. Osborn to Smith, conveying the entire lease interest. The Osborn-Smith assignment was approved effective August 1, 1971. The Smith-Walker assignment, filed on November 25, 1970, was simultaneously approved effective August 1, 1971. On November 1, 1971, Walker paid the rental for the lease year beginning on that date.

By assignment executed December 4, 1971, Smith conveyed the entire lease interest in NM 3620 to appellants. The assignment was filed for BLM approval on December 10, 1971, and approved effective February 1, 1972. Thereafter, appellants paid the 6th and 7th year rentals on the lease. Walker apparently submitted no rentals for these years. Following discovery that there was a gap in their record title which had not been noted by the BLM, appellants, on February 5, 1974, informed the State Office of the problem. By decision dated February 15, 1974, the State Office held that the assignment from Smith to appellants had been approved by mistake, and declared the assignment approval void. Record title to the lease would remain with Walker who, as noted above, acquired title from Doreen Smith by assignment approved effective August 1, 1971.

A right of appeal within 30 days from receipt of the decision was allowed, and the lessee of record, Walker, was called upon to remit the rentals for the 6th and 7th lease years. Walker paid the rentals on February 28, 1974, and on July 5, 1974, the State Office authorized refunds to appellants. No appeal was taken from the February 15, 1974, decision.

By assignment executed June 18, 1974, Walker conveyed the entire lease interest in NM 3620 to D. L. Hannifin. The assignment was filed for BLM approval on June 27, 1974. On July 16, 1974, appellants filed a protest against approval of the Walker-Hannifin assignment. On July 22, Doreen Smith joined with appellants as a protestant. The protestants contended that Walker had no right or title to the lease as he had previously conveyed the lease to Smith by assignment executed December 13, 1971. Protestants maintained that this assignment was not filed for approval due to inadvertence. Appended to the protest was the notarized original of the December 13, 1971, assignment plus two copies. Protestants requested that the Walker-Smith assignment be accepted and approved by the State Office as though it had been timely filed. Appellants specifically requested that the State Office reconsider its decision of February 15, 1974, and render a decision in favor of the proper owners, namely James V. O'Kane and F. Kenneth Millhollen. Appellants maintained that they did not appeal the February 15, 1974, decision within the required 30-day period because they were unable to locate Smith as more than two years had elapsed since they had dealings with her. Thus, they were unaware of the existence of an interim assignment (Walker-Smith: December 13, 1971) until the time of their protest.

In its decision dated July 31, 1974, the State Office denied the protestants' request for approval of the Walker-Smith assignment for the following reason:

To obtain approval of an assignment affecting record title, the assignment must be filed within 90 days from the date of execution of the assignment by the parties involved. (Title 43 CFR § 3106.3-1). Therefore, approval of the assignment filed on July 16, 1974, is hereby denied as it was filed 2 years and 7 months after the execution date.

Except for brief reference to the fact that no appeal was taken from the February 15, 1974, decision, no mention was made of appellants' request for reconsideration. The decision then went on to dismiss the protest against the Walker-Hannifin assignment (June 18, 1974) as follows:

The regulations Title 43 CFR § 3106.3-3 read as follows, "Effective date. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by this subpart." (Emphasis added). The reasons given by the protestants are moot since the assignment executed December 13, 1971, was not filed in this office within the time allowed by the regulations nor was it approved. In view of the foregoing, the protests filed by Messrs. O'Kane and Millhollen and Mrs. Doreen Smith are hereby dismissed.

* * * * *

After this decision becomes final, the assignment between Mr. Walker and Mr. Hannifin will be processed.

[1] On August 26, 1974, appellants filed a notice of appeal from the decision of the State Office. 1/ In their statement of reasons on appeal, appellants argue that the State Office was in error in its determination that the Walker-Smith assignment, executed December 13, 1971, could not be approved because the assignment had not been filed within 90 days from date of execution as

1/ Doreen Smith did not appeal from the decision; Robert H. Strand, Esq., filed an appearance on behalf of D. L. Hannifin requesting that the assignment to Hannifin be approved.

required by 43 CFR 3106.3-1. They correctly point out that this regulation does not impose a mandatory requirement and that failure to comply does not require rejection of an assignment. Joseph Alstad, 19 IBLA 104 (1975); Newton Oil Co., A-30774 (September 29, 1967); Alice R. Rudie, A-30061 (March 25, 1964); Newton Oil Co., A-27662 (December 17, 1958). The purpose of the regulation is simply to encourage assignees to file their assignments so that third parties will have notice of the transfer, and also to apprise the Department of the parties in interest in the lease. Accordingly, the BLM was not precluded from approving the Walker-Smith assignment following expiration of the 90-day period after execution. However, the Department may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved. Joseph Alstad, *supra*; Alice R. Rudie, *supra*. In the present case, D. L. Hannifin asserts an interest in the lease adverse to appellants'. Thus, under the circumstances, it was proper for the State Office to deny approval of the Walker-Smith assignment.

With regard to the Walker-Hannifin assignment, appellants maintain that Walker does not have any title or interest to convey. They assert that failure to file the Walker-Smith assignment which stripped Walker of his interest in the lease does not affect the validity of the transfers between the parties *inter se*. Appellants urge that the Department cannot ignore such contractual realities and must deny approval to the Walker-Hannifin assignment where it has evidence before it which discloses that the assignor does not have an interest equal to that which his assignment purports to convey. Finally, appellants urge that this is not a case requiring judicial resolution "for there can be little doubt on these facts that appellants are vested with legal and equitable title to this oil and gas lease."

[2] Given the existing controversy over title to the lease, it was improper for the State Office to indicate its intent to approve the Walker-Hannifin assignment. Where there is a private dispute as to the validity or effect of an assignment, it has been the long-standing policy of the Department to refrain from approving the assignment until the parties have had an opportunity to settle their dispute privately or in court. Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 n. 8 (1966); Joseph Alstad, *supra* at 112-13, and cases cited therein. Despite appellants' urgings to the contrary, a controversy does exist based on the facts at hand. All of the rights of the parties involved are fixed by the contractual obligations expressed in these several assignments, and

such rights will stand or fall upon the legal construction given to the relationships created by the instruments. In such instance, it is not for the Department to adjudicate the matter, but rather it will maintain the status quo for a period sufficient to permit the appellants to institute litigation or take other action to resolve the dispute. See Joseph Alstad, supra at 113, and cases cited therein.

Accordingly, to preserve the status quo, the State Office is instructed not to approve any further assignments of the subject lease for a period of 60 days from the date of this decision. If at the end of the 60-day period no notice is received by the Department of the initiation of any litigation to settle the dispute between the parties or of any other action to resolve the matter, this instruction will terminate and the BLM will be permitted to continue processing the assignment from the "record title holder," Brown Walker. See W. J. Goldston, A-30504 (May 19, 1966); Glen E. Petters, A-26265 (May 27, 1952). If the parties submit a court decree or other legal agreement settling their rights, the State Office is instructed to reconsider all actions previously taken, including its decision of February 15, 1974, and approve an assignment in accordance with the rights established by the decree or agreement. Joseph Alstad, supra at 111-12; D. J. Simmons, 64 I.D. 413, 416-17 (1957).

Appellants have presented numerous other arguments on appeal. Our disposition of the preceding arguments renders consideration of appellants' remaining arguments unnecessary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to the State Office for action consistent with the views expressed herein.

Martin Ritvo
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

