

PETROL RESOURCES CORP.

IBLA 81-1108

Decided June 24, 1982

Appeal from decisions of New Mexico State Office, Bureau of Land Management, accepting withdrawal by assignor of previously filed assignment of record title interest in noncompetitive oil and gas lease and simultaneously approving subsequent assignment to third party. NM-39156.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers -- Rules of Practice:
Appeals: Effect of

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

2. Oil and Gas Leases: Assignments or Transfers

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved through agreement or litigation.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant;
Robert C. Bledsoe, Esq., Midland, Texas, for Nortex Gas and Oil Company; Gayle E. Manges, Esq., Office of the Field Solicitor, U. S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Petrol Resources Corporation has appealed ^{1/} from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 22, 1981, accepting a "withdrawal" by the assignor, Gordon C. McDonagh, of the assignment to appellant of record title interest in a noncompetitive oil and gas lease, NM-39156.

On February 15, 1980, noncompetitive oil and gas lease NM-39156 was issued to Gordon C. McDonagh, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). On February 27, 1980, BLM received an application for approval of an assignment of the lease from McDonagh to appellant, dated February 21, 1980. By letter dated April 14, 1980, appellant requested that the assignment be "returned unapproved" because it had failed to disclose an agreement to convey the record title interest to a third party, Getty Oil Company (Getty). Appellant stated that it would submit a new assignment from McDonagh. Thereafter, on April 28, 1980, BLM received a second assignment of the oil and gas lease from McDonagh to appellant, dated April 7, 1980. On May 5, 1980, BLM received certain statements regarding the qualifications of Getty. In a memorandum to the Field Solicitor, dated September 11, 1981, appearing in the file, the Chief, Division of Technical Services, New Mexico State Office, BLM, stated that upon disclosure of Getty's interest, the assignment was "referred to the Investigative Task Force in Denver for further investigation," and that the investigation led to a finding of "suspicion of fraud" on the part of appellant. The memorandum further states that "[t]his office was directed to suspend all actions involving Petrol Resources Corporation."

By letter dated June 29, 1981, the assignor McDonagh requested that BLM allow him to "withdraw" the "pending assignment" between himself and appellant. In its July 1981 decision, BLM accepted the withdrawal "since the assignor (Gordon C. McDonagh) has withdrawn his consent to this pending assignment." The assignment was mailed unapproved to the assignor. Simultaneously, on July 22, 1981, BLM approved an assignment of the oil and gas lease from McDonagh to Nortex, effective August 1, 1981. The application for approval of this assignment had been received by BLM on July 13, 1981. By letter dated August 18, 1981, counsel for appellant protested BLM's acceptance of the assignor's withdrawal request, noting that it had "agreed to pay

^{1/} On Nov. 24, 1981, Nortex Gas and Oil Company (Nortex) filed a response to appellant's statement of reasons in which it argues that the appeal should be dismissed for failure to file timely the statement of reasons. The statement of reasons was filed Oct. 22, 1981. This was a timely filing pursuant to an order of the Board, dated Oct. 20, 1981, extending the time for submission "to and including Nov. 4, 1981." The motion to dismiss is denied.

a valuable consideration to Gordon C. McDonagh for an assignment to it of Lease NM-39156." 2/

In its statement of reasons for appeal, appellant contends that BLM was without statutory authority to "disapprove" the assignment to it, based on the assignor's withdrawal of his consent. Appellant refers to language in the statute providing that: "The Secretary shall disapprove the assignment * * * only for lack of qualification of the assignee * * * or for lack of sufficient bond." 30 U.S.C. § 187a (1976). Appellant also argues that BLM, by returning the unapproved assignment to the assignor, "at the sole request of the assignor," and immediately approving a second assignment to a third party, has interfered in a private dispute. Specifically, appellant states that BLM has interfered with "performance" of the agreement between the parties:

If the assignor, after agreeing to sell his lease and executing and delivering to Appellant a valid instrument of transfer of that lease, determines that he is unsatisfied with the deal he has struck, his recourse is to the assignee, or the courts, and not to the Bureau of Land Management to remedy an agreement he considers improvident. It was entirely improper for the Bureau of Land Management to, by its action, assist the assignor in reneging on his agreement and deprive Appellant of the benefit of its bargain. [Emphasis in original.]

(Statement of Reasons at 5). Furthermore, appellant argues that this is in contravention of established Departmental policy. Appellant cites numerous Departmental decisions and, in a supplemental response, quotes the following language in the case of Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 n.8 (1966):

Where there is a private dispute as to the validity or effect of an assignment, the Secretary does not decide the question and he will not approve the assignment or take other action until the parties settle their dispute in court. See McCulloch Oil Corp. of California, Int. Dept. Decision No. A-30208 (Nov. 25, 1964). [Emphasis added.]

2/ We note that by letter dated the same day and received by BLM on September 2, 1981, E. G. Axel, president of appellant, stated:

"On February 27, 1980, an Assignment Affecting Record Title to the captioned oil and gas lease from Gordon C. McDonagh to Petrol Resources Corporation was filed in your office. Attached to the Assignment was a Separate Statement of Interest disclosing other parties in interest to the assigned lease. It has now come to our attention that we neglected to disclose all interested parties at the time the assignment was filed. Therefore, please accept the enclosed Supplemental Separate Statement of Interest so that complete disclosure of all interested parties can be made."

Appellant states that BLM, upon notice of the controversy between itself and McDonagh, should have withheld approval of the second assignment from McDonagh to Nortex, allowing appellant an opportunity to resolve the dispute between the parties.

Finally, appellant contends that it was improper for BLM to approve the second assignment from McDonagh to Nortex during the appeal period following the July 1981 decision and pending the resolution of any appeal. Appellant argues that Nortex cannot be considered a bona fide purchaser because it is deemed to have "constructive notice" of the appeal period and subsequent administrative proceedings. Appellant cites Winkler v. Andrus, 494 F. Supp. 946 (D. Wyo. 1980), in support of its contention. Appellant requests that approval of the assignment to Nortex be revoked and that the assignment to appellant be returned to BLM for further processing in accordance with 30 U.S.C. § 187a (1976).

Counsel for Nortex contends that it had no notice of any controversy regarding the prior assignment to appellant, that it was informed that consideration for that assignment had not been paid, that the assignment was being withdrawn, and that it paid valuable consideration to McDonagh upon approval by BLM of the assignment from McDonagh to Nortex. It is contended that the purchase was made only after the BLM decision accepting McDonagh's withdrawal of the prior assignment. Counsel contends that Nortex is a bona fide purchaser of the lease and that the BLM decision approving the assignment should be affirmed.

Counsel for BLM contends that an assignment may be withdrawn by the assignor prior to approval by BLM. Although cases are cited in which the right of the assignee to withdraw an application for approval of assignment has been recognized, no cases are cited recognizing such a right in the assignor. Further, counsel argues that "return" of the assignment to the assignor by BLM when it became aware of the dispute between appellant and assignor maintained the status quo. No attempt is made to explain how simultaneous approval of the assignment to Nortex preserved the status quo.

An oil and gas lease may be assigned "subject to final approval by the Secretary." 30 U.S.C. § 187a (1976). The filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department except for lack of qualifications of the assignee or lack of sufficient bond. 30 U.S.C. § 187a (1976); Montana Bank, Trustee, 54 IBLA 359 (1981). Indeed, on the date of execution of an assignment, the assignment is effective as between the parties, see Frederick J. Schlicher, 54 IBLA 61, 65 (1981), and all that remains is for the assignee to obtain approval of the assignment.

[1] It is apparent from the official form submitted to BLM with regard to the request for approval of an assignment that the assignee is the proper applicant. The official form, entitled "Assignment Affecting Record Title to Oil and Gas Lease" (Form 3106-5 (Nov. 1975)), is executed by both the

assignor and the assignee. Part I, executed by the assignor constitutes the assignment between the parties. Part II, executed by the assignee, constitutes the assignee's request for approval of the assignment.

The assignee who files the request for approval of an assignment has been recognized as having the right to withdraw such a request. Hill v. Williams, 59 I.D. 370, 375 (1947). We can find no precedent for allowing withdrawal of the assignment by the assignor. ^{3/} Logic dictates that since the application for approval of assignment is filed by the assignee, it can only be withdrawn by or returned unapproved to the assignee. Application having been made by the assignee for approval of the assignment, any decision refusing approval of the assignment must be issued to the assignee. The decision allowing the assignor to withdraw the assignment unilaterally was, in effect, a refusal to grant appellant's application for approval of the assignment. Such a decision is adverse to the assignee and is subject to appeal by it. 43 CFR 4.410.

The regulations provide that a decision will not be effective during the time in which a person adversely affected may file a notice of appeal and that the filing of a timely notice of appeal will further suspend the effect of the decision appealed from until a decision is issued on appeal. 43 CFR 4.21(a). When an appeal from a decision of a BLM official is properly filed, that official loses jurisdiction over the case and has no authority to take any action on the case until jurisdiction is restored by Board action disposing of the appeal. Any adjudicative action taken by BLM after an appeal is filed relating to the subject matter of the appeal is a nullity because BLM is acting without jurisdiction. Sierra Club, 57 IBLA 288, 291 (1981); James T. Brown, 46 IBLA 265, 271 (1980). Similarly, any BLM action taken to implement a decision during the period in which a party adversely affected may file a notice of appeal is improper. Cf. James W. Smith, 44 IBLA 275, 281 (1979) (BLM erred in issuing right-of-way simultaneously with issuance of decision denying protest of the right-of-way, rather than suspending action during appeal period); California Association of Four-Wheel Drive Clubs, 30 IBLA 383, 385 (1977) (pendency of a protest which, upon decision, is subject to appeal by party adversely affected precludes implementation of the action protested, pending decision and appeal). Accordingly, the action taken by BLM to approve the assignment to Nortex, simultaneously with its decision allowing assignor to withdraw the assignment to appellant, was improper and must be set aside.

^{3/} The Solicitor points out that the authority of the assignor to relinquish a lease while an unapproved assignment is pending before BLM has been recognized, citing James L. Homberg, 67 I.D. 302 (1960). He contends that this supports the authority of the assignor to withdraw an assignment. We believe the two situations are distinguishable because there is express statutory authority in the Mineral Leasing Act for the right of the lessee to relinquish the lease, 30 U.S.C. § 187b (1976), and it is clear that an assignment has no independent existence apart from the lease which is being assigned. See J. M. Dunbar, 62 IBLA 119, 121 (1982).

[2] Likewise, the action of BLM in allowing the assignor to withdraw the assignment was improper because it was violative of a long standing Departmental policy. As pointed out by appellant, where there is a private dispute as to an oil and gas lease assignment, the Department has historically declined to adjudicate issues regarding the validity or effect of the assignment and thereby has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in court. William B. Brice, 53 IBLA 174, 177, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981); John D. and Elizabeth Archer, 46 IBLA 203, 206 (1980). In cases where an assignment has been approved by BLM without notice of the controversy, and the Department subsequently receives notice, it has declined to disturb existing conditions without evidence of agreement of the parties or a court decree on the matter in controversy. McCulloch Oil Corporation of California, A-30208 (Nov. 25, 1964); Anthony C. Vanderbecke, A-28073 (Feb. 11, 1960).

In this case, there was sufficient reason for BLM to believe that there was a private dispute or controversy concerning the McDonagh-Petrol Resources assignment that it should not have granted McDonagh's request for withdrawal, and clearly it should not have approved another assignment. The unilateral request by the assignor to withdraw the assignment was tantamount to a protest of the assignment, which should have provided notice of a controversy. However, in this case there is another factor that in and of itself should have prevented any action on the McDonagh-Petrol Resources assignment. That factor is that, prior to the approval of the withdrawal of that assignment, the New Mexico State Office "was directed to suspend all actions involving Petrol Resources Corporation." See memorandum from Chief, Division of Technical Services, BLM, Santa Fe, to Field Solicitor, Santa Fe.

Thus, BLM was aware of a controversy prior to the time it approved the withdrawal of the assignment. This was violative of Departmental policy to maintain the status quo, and in essence amounted to the Department prejudging the controversy. Fairness dictates that we restore the status quo.

Nortex contends that it is a bona fide purchaser of the lease by assignment from McDonagh. A bona fide purchaser of an oil and gas lease is afforded statutory protection against cancellation of the lease. 30 U.S.C. § 184(h)(2) (1976). Since the issue in this case is not cancellation of the lease but, rather, the legality and propriety of the BLM decision approving an assignment to Nortex prior to a final decision regarding the prior conflicting assignment to appellant, the bona fide purchaser issue is not properly before the Board.

Upon remand of this case, BLM should withhold approval of any assignment from McDonagh until such time as McDonagh, appellant, and Nortex have either reached mutual agreement as to the validity of the respective assignments or the validity of the assignments has been litigated between the parties in interest and the results certified to BLM.

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 set aside and the case is remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

