

Appeals from decisions of the Montana State Office, Bureau of Land Management, denying approval of various assignments relating to oil and gas lease M-34413 (ND).

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers

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 until presented with evidence that the parties have settled their dispute or with a copy of a court decree concerning the matter in controversy.

APPEARANCES: Robert A. Lees, Esq., Denver, Colorado, for appellants; Kenneth L. Milliard, Vice President, for Viking Resources Corporation; Richard Aldrich, Esq., Office of the Field Solicitor, Department of the Interior, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Fimple Enterprises Inc. (Fimple) has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated July 28, 1982, denying approval of the assignment of oil and gas lease M-34413 (ND) from Duncan Miller to Fimple. Al-Aquitaine Exploration, Ltd., Amax Petroleum Corporation, Western Exploration Limited, and Adobe Oil and Gas Corporation also appeal from a second July 28, 1982, BLM decision denying approval of assignments of various interests in the lease from Fimple to each company.

On December 11, 1981, Fimple filed with BLM an assignment of 100 percent interest in lease M-34413 (ND) executed on May 28, 1981, by Allen Myers as attorney-in-fact for Duncan Miller. Prior to receipt of this assignment, on August 31, 1981, BLM had received a letter from Jared E. Shafer notifying BLM that he had been appointed guardian of Duncan Miller on July 29, 1981, by

a Nevada state court. The letter also noted that "Allen Myers entered into certain assignments \* \* \* wherein he retained a beneficial interest for himself in violation of the terms and conditions of the Power of Attorney," and requested BLM to "withhold approval of any assignments which have been requested \* \* until [Shafer] \* \* \* had a chance to review the same to determine whether or not they were in conformance with the Power of Attorney." Consequently on June 23, 1982, BLM sent the Fimple assignment to Shafer for his review and instructions as to whether the assignment should be approved. Shafer responded on June 30, 1982, that the Fimple assignment "was not taken in the best interest of Duncan Miller" and instructed BLM not to approve the assignment. Thereafter, BLM issued the decisions on appeal.

We also note that by letter dated June 18, 1982, Viking Resources Corporation (Viking) protested against approval of the assignments at issue. <sup>1/</sup> On July 7, 1981, Allen Myers for Duncan Miller had also assigned a 25 percent interest in lease M-34413 (ND) to Viking. Viking filed this assignment for BLM's approval on July 15, 1981, but withdrew it by letter dated October 16, 1981, because Myers' power-of-attorney had been revoked and Viking had entered into a new agreement with Shafer. The file for lease M-34413 (ND) contains an unapproved assignment of 100 percent interest in the lease executed by Shafer for Miller to Viking on July 29, 1982.

The BLM decision on the Fimple assignment reviews the above-described events and concludes that "[i]n view of the \* \* \* conflict, we concur with Mr. Shafer's request and the assignment is hereby denied and returned unapproved to permit the parties involved to institute litigation or take other action to resolve the conflict." The BLM decision as to the subsequent assignments by Fimple recited the fact that the assignment to Fimple had been disapproved.

By motion received December 20, 1982, appellants and the Department of the Interior Field Solicitor jointly submitted certain stipulations concerning the circumstances of this case and requested the Board to dismiss the appeal without decision so that appellants could seek redress in Federal district court. Viking has opposed the motion. Appellants point out that the conflict in this case is between the record title holders and third parties, raises questions of the validity of their assignments based on contract or title, and that the Board has historically declined to address such matters. While we agree with that assertion, as discussed below, we issue this decision in order to ensure that the parties' interests vis-a-vis the Department of the Interior are properly preserved.

Initially, we note that the lease file before us does not contain copies of appellants' assignments. However, we find that their absence has no impact on the outcome of this appeal as discussed below.

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<sup>1/</sup> We note that this protest although submitted on Viking stationery is actually signed "Jan Jaeger for the Estate of Duncan Miller." There is no explanation in the record of any relationship between Duncan Miller and Viking other than that of potential assignor and assignee of various oil and gas leases.

[1] As appellants have pointed out, the Department has historically declined to adjudicate issues regarding the validity or effect of an assignment and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981). The Department has consistently declined to disturb existing conditions without evidence of an agreement of the parties or a court decree settling the controversy both in cases where assignments have been already approved and in cases where otherwise proper assignments are pending approval. The July Corp., 66 IBLA 20 (1982); William B. Brice, supra; James V. O'Kane, 19 IBLA 171 (1975). In a recent decision, Petrol Resources Corp., 65 IBLA 104 (1982), we found that 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 and held that Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved. In the case now before us, Shafer's pronouncements concerning the legality of the assignments executed by Myers and the protest submitted by Viking were sufficient reason for BLM to believe that there was a private dispute and that the assignment should not be approved. BLM should have suspended action on the assignments until notified that the dispute was resolved. BLM's denial of assignment approval violated Departmental policy to maintain the status quo. Fairness dictates that we restore the status quo by returning appellants' assignments to pending status.

Upon remand BLM should withhold approval of these assignments and any others affecting lease M-34413 (ND) until such time as BLM receives evidence that the parties have settled their dispute or the validity of the assignments has been litigated by the parties 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 of the Montana State Office are set aside and the case is remanded to BLM.

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Will A. Irwin  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

