

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, providing notice of termination of oil and gas lease W-84262 and denying approval of assignments for the terminated lease.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement

Where the record titleholder of an oil and gas lease has made numerous assignments of interests in that lease, none of which has been approved by BLM, and the lease terminates by operation of law for failure to pay rental timely, only the record titleholder, and not any of the holders of unapproved assignments, may successfully petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) or (d) (1982). The right to petition for reinstatement is personal to the record titleholder of the lease.

APPEARANCES: Howard H. Vinson, Needles, California, pro se; Kenneth N. Gumbs, Springfield, Massachusetts, pro se; Marloe Glass, Campbellsport, Wisconsin, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Wyoming State Office, Bureau of Land Management (BLM), issued noncompetitive oil and gas lease W-84262 to John Wesley Redden, effective May 1, 1983. Redden's oil and gas lease application was selected with first priority for parcel No. WY 327 in the January 1983 simultaneous oil and gas lease drawing. Lease W-84262 covered 1,350.64 acres in Natrona County, Wyoming. Redden subsequently assigned his interest in that lease to Gold Coast Mint and Coin Exchange, Inc. (Gold Coast), of Coral Gables, Florida. BLM approved that assignment effective November 1, 1983.

Gold Coast then sold small portions of this lease, between 40 and 80 acres, to at least 26 people and filed with BLM requests for record title assignments of those interests. 1/ On March 21, 1984, by notice published

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1/ The record contains some copies of documents titled "Purchase Agreements and Receipt" that these individuals entered into for purchase of interests in

in the Federal Register, BLM suspended approval of record title assignments of less than 640 acres of nonproducing noncompetitive oil and gas leases in the lower 48 states. The basis for the suspension was BLM's concern with fragmentation of large lease acreages into smaller undevelopable size parcels. 2/

By letter dated March 22, 1984, BLM specifically notified each assignee of the unapproved assignments of W-84262 of the suspension. Payment of lease rental for W-84262 was due on or before May 1, 1984. 3/ Gold Coast, as record titleholder, failed to make payment and, pursuant to 30 U.S.C. § 188(b) (1982), W-84262 terminated automatically by operation of law. 4/ On September 26, 1984, BLM issued a notice to Gold Coast informing it that W-84262 had terminated May 1, 1984, and advised it of its right to petition for reinstatement pursuant to 30 U.S.C. § 188(c) and (d) (1982). 5/ This

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W-84262. The owner of the lease is variously listed in the agreements as "Kimberly Land & Minerals and/or Gold Coast Mint & Coin Exchange" or "Great Western Resources." We note that Kimberly Land and Minerals was listed by Redden on his simultaneous oil and gas lease application as the filing service that had provided him assistance in filing his application. The official BLM records show Gold Coast as the record titleholder of the lease at the time of all the assignments.

2/ The suspension was lifted by notice in the Federal Register, effective Aug. 16, 1984. 49 FR 33501 (Aug. 23, 1984).

3/ All the copies of the purchase agreements in the file contain the clause:

"2. Purchaser understands that the assignment of the above described lease will convey a 100% percent interest therein to PURCHASER; that said Lease will be for a term of 9+ years; and that PURCHASER will be required to make annual rental payments in the sum of \$ 1.00 per acre to the Federal Government, or said Lease will be subject to forfeiture."

(Emphasis in original.)

4/ 30 U.S.C. § 188(b) (1982) provides:

"[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, or of any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law."

See also 43 CFR 3108.2-1(a).

5/ Previously on July 20, 1984, BLM issued a form letter to the holders of unapproved assignments of W-84262, informing them of the annual rental obligation and advising them that

"[i]f in checking with the assignor you find the rental covering lands in your partial assignment application(s) will be due, and is not or will not be paid by the assignor, you may wish to make remittance to this office to prevent the termination of the lease to the lands to which you have an interest. Such rental, generally due at the rate of \$ 1 per acre or fraction thereof, must be paid in time to be RECEIVED in this office ON OR BEFORE the anniversary date, May 1, otherwise the lease will automatically terminate by operation of law."

notice was mailed to Gold Coast's address of record but was returned by the Postal Service with the notation "Moved Left No Address." Gold Coast did not file a petition for reinstatement.

By letters dated December 7, 1984, BLM informed the holders of unapproved assignments of W-84262 that the lease automatically terminated on May 1, 1984, for nonpayment of rental and denied approval of the assignments. On December 24, 1984, Howard H. Vinson filed a "protest" of that decision. On January 4, 1985, BLM issued a decision dismissing that protest stating that only the lessee of record may successfully petition for reinstatement of a terminated lease. Vinson appealed that decision.

On January 25, 1985, BLM received a letter from Kenneth N. Gumbs stating "I protest the action taken on my assignment transfer." BLM dismissed that "protest" on February 11, 1985, on the same grounds stated in the Vinson decision. Gumbs filed no appeal of that decision; however, in his January 25, 1985, letter to BLM he had also stated, "[t]hus, I request an appeal of Regulation 43 CFR 3106.3, by I.B.L. Appeals Board."

On February 11, 1985, BLM received a letter from Marloe Glass complaining about the circumstances of her unapproved assignment of W-84262. This letter was forwarded to the Board by BLM for possible consideration of "your letter as an appeal although it was filed 66 days after our December 1984 letter."

For the following reasons, we will consider Vinson, Gumbs, and Glass all to have perfected timely appeals to the Board. First, BLM's December 7, 1984, letters were, in fact, decisions denying approval of the assignments. Second, none of those "decisions" informed the recipients of their right to appeal to this Board. Third, they do not appear to have been sent certified mail. At least there is no evidence of such in the file, and therefore, the 30-day appeal period of 43 CFR 4.411 may not be accurately calculated, absent other evidence of receipt. In addition, BLM treated the Vinson and Gumbs letters as "protests." This was improper because a "protest" is any objection to any action proposed to be taken. 43 CFR 4.450; Goldie Skodras, 72 IBLA 120 (1983). Also a document which is labeled a protest, or contains the word protest, may be an appeal, and vice versa. See California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). In Gumbs' case his letter contained both the words "protest" and "appeal." Because the letters from all three individuals were filed with BLM after its December 7, 1984, decisions denying approval of the assignments, they should have been considered appeals and the case files forwarded to the Board. In the absence of evidence of date of receipt of BLM's December 7 decisions, the Vinson, Gumbs, and Glass filings must be considered timely filed to have invoked the jurisdiction of the Board. See Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 174 (1986). We will address the issues raised by these appeals.

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(Emphasis in original.) The record shows this notice caused confusion since no year was included, and the lease had already terminated automatically for failure to pay on or before May 1, 1984.

[1] There is no question W-84262 terminated automatically for nonpayments of rental pursuant to 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the statutory provision for class I reinstatement, a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of termination upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985). Gold Coast did not pay rental within the 20-day period, nor did it petition for reinstatement following BLM's September 26, 1984, notice. However, on May 14, 1984, Vinson submitted a check for \$ 40 to BLM to cover the acreage assigned to him.

The question raised is whether Vinson's payment protected his assigned interest. We must conclude it did not. In Ladd Petroleum Corp., 70 IBLA 313 (1983), the Board held that holders of unapproved assignments may submit their proportional share of rental to protect their assigned interest in an outstanding lease and the assignment may be approved after termination of the base lease. However, that holding was limited to the situation where the holders made payment prior to termination of the base lease. Therefore, Ladd is not controlling in Vinson's case where he tendered rental after termination of the base lease, and no petition for reinstatement was filed by the record titleholder, Gold Coast.

The Board has ruled that where an oil and gas lease has terminated for failure to pay rental timely prior to approval of a pending assignment, only the record titleholder of the lease, and not the holders of an unapproved assignment, may file a petition to reinstate the lease. Grace Petroleum Corp., 62 IBLA 180 (1982). In a subsequent case Victory Land & Exploration Co., 65 IBLA 373, 374 (1982), the Board set forth the statutory bases for denying a petition for reinstatement of a terminated oil and gas lease filed by a holder of an unapproved assignment:

There are two statutory bases for this holding. Under 30 U.S.C. § 188 (c) (1976), as noted above, a terminated lease may be reinstated only if the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." (Emphasis added.) Furthermore, the statutory provision governing assignments, 30 U.S.C. § 187a (1976), states that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." 6/

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6/ This rationale is equally applicable to class II reinstatement under 30 U.S.C. § 188(d) (1982). That section provides:

"(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due

See also J. Edward Hollington, 86 IBLA 345, 349 (1985). Thus, where the record titleholder of a lease fails to file a timely petition for reinstatement, the lease may not be reinstated, even where a holder of an unapproved assignment has done so. Victory Land & Exploration Co., *supra*.

The Board followed this holding in Otto C. Svancara, 87 IBLA 319 (1985). Therein, BLM had denied a petition for reinstatement filed by two holders of unapproved assignments. The Board affirmed, quoting from Victory Land & Exploration Co., *supra*, and stating at page 321, "As holders of an unapproved assignment, appellants could not petition for reinstatement." The Svancara case, however, contains a statement of law which has limited applicability and may be misinterpreted. The Board stated at page 321:

While we have held that potential assignees may pay the proportionate rental to protect their assigned interest in an outstanding lease, their rental must be received prior to termination of the base lease, or within 20 days following the date of termination of the base lease for nonpayment of rentals. See Ladd Petroleum Corp., 70 IBLA 313 (1983). (Emphasis added.)

The statement is accurate only if the actual rental paid by one or more holders of unapproved assignments within 20 days is 100 percent of the total rental due for the base lease, and the record titleholder files a timely petition for reinstatement making the necessary showing. This is because the lessee's obligation under the lease is to pay 100 percent of the rental, and if the lease terminated by operation of law for nonpayment of rental, that payment under 30 U.S.C. § 188(c) (1982) must be made within 20 days of the lease anniversary date. <sup>7/</sup> In this case where there were many holders of unapproved assignments and only Vinson paid his proportionate

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to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities."

The implementing regulations provide at 43 CFR 3108.2-3(b)(1):

"(b)(1) For leases that terminate on or after Jan. 12, 1983, consideration may be given to reinstatement if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the of;                    "(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record; or

"(ii) Fifteen months after termination of the lease."

Gold Coast filed no petition for reinstatement.

<sup>7/</sup> While 43 CFR 3108.2-1(b) provides for a Notice of Deficiency where the rental payment is made on or before the anniversary date and the payment is nominally deficient within the meaning of the regulation, that regulation is not applicable where payment is made after lease termination.

rental (\$ 40) of the \$ 1,351 rental due on W-84262, a petition for reinstatement by the record titleholder (Gold Coast) would have been subject to rejection for failure to pay the full amount due. In Vinson's situation, even if he had paid the entire \$ 1,351 and his letter accompanying the payment could have been considered a petition for reinstatement, reinstatement would have been denied because Gold Coast filed no petition. The right to file such a petition is personal to the record titleholder of the lease.

Both the Gumbs and Glass appeals are also governed by the cited cases. Neither of those individuals submitted rental prior to the automatic termination of W-84262. Even if they had made full payment after termination in accordance with the reinstatement provisions of 30 U.S.C. § 188(c) or (d) (1982), reinstatement would be precluded by the failure of Gold Coast to have petitioned for reinstatement.

Accordingly, 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 affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

