Appeal from a decision of the Wyoming State Office, Bureau of Land Management, returning, unapproved, partial assignment of oil and gas lease W-69214.

Reversed and remanded.

1. Oil and Gas Leases: Assignments or Transfers

Where the unapproved assignee of a partial assignment of an oil and gas lease tenders, prior to the anniversary date of the lease, rental for that portion of the lease assigned to it, the lease as to that portion does not terminate, and a decision by BLM holding otherwise and returning the partial assignment unapproved will be reversed.

APPEARANCES: William S. Jones, Esq., Atlanta, Georgia, for appellant.

OPINION OF ADMINISTRATIVE JUDGE HARRIS

Russell Sinclair Grove, Jr., has appealed a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 19, 1985, denying his request for approval of a partial assignment of noncompetitive oil and gas lease W-69214. The basis of the decision was that the base lease terminated on November 1, 1984, for lack of payment of the annual rental for the lease.

Effective November 1, 1979, BLM issued lease W-69214 to Robert W. David for 1,866.30 acres in secs. 4, 5, and 6, T. 29 N., R. 102 W., sixth principal meridian, in Fremont County, Wyoming, pursuant to section 17 of the Mineral Leasing Act (the Act), as amended, 30 U.S.C. § 226 (1982). David assigned lease W-69214 to Lander Creek Corporation effective August 1, 1981, and Lander Creek Corporation assigned the lease to Caporale Exploration Company (Caporale), effective March 1, 1984. Subsequently, on March 6, 1984, Caporale filed for approval an assignment of lease W-69214 to WLM Corporation and on March 7, 1984, WLM Corporation filed for approval an assignment of that lease to
Leland Capital Corporation (Leland). 1/ In turn, Leland sold small portions of this lease to at least 33 people, and on March 7, 1984, filed requests with BLM for record title assignments of those interests. 2/ Appellant herein was among these partial assignees. Caporale was lessee of record when rental became due on November 1, 1984, with the assignments from Caporale to WLM Corporation, from WLM Corporation to Leland, and from Leland to the numerous partial assignees unapproved by BLM on that date. 3/

On January 16, 1985, BLM provided notice to Caporale that lease W-69214 had terminated automatically for failure to pay rental in a timely manner, by November 1, 1984, the anniversary date of the lease. That notice provided detailed information about the conditions necessary for obtaining either a Class I reinstatement under 30 U.S.C. § 188(c) (1982) or a Class II reinstatement under 30 U.S.C. § 188(d) and (e) (1982). Caporale did not respond to this notice.

By letter-decisions dated April 19, 1985, BLM informed the holders of unapproved assignments of W-69214, including WLM Corporation, Leland, and appellant, that the lease automatically terminated on November 1, 1984, because Caporale, the lessee of record, had failed to make payment of annual rental by that date, and had failed to seek either a Class I or Class II reinstatement. The decision provided the following explanation:

The Interior Board of Land Appeals (IBLA) in Grace Petroleum Corporation, 62 IBLA 180 (1982), has ruled that:

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee [or assignor of record] as the holder of record of the

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1/ The case file does not contain a copy of the assignment from WLM Corporation to Leland, but a decision by BLM, dated Apr. 19, 1985, states that such an assignment was received.
2/ On Mar. 21, 1984, by notice published 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. The suspension was lifted by notice in the Federal Register, effective Aug. 16, 1984. 49 FR 33501 (Aug. 23, 1984).
3/ This Board has recognized that the holder of an unapproved assignment of an interest in an oil and gas lease may execute a further assignment of that interest, assuming the assignor of the unapproved assigned interest, and the assignee of that interest, are qualified to hold the lease. Richard P. Walker, 54 IBLA 4 (1981); see also Duncan Miller, 12 IBLA 201 (1973). Under 30 U.S.C. § 187a (1982), a proposed assignment of an oil and gas lease may be disapproved only for lack of qualification of the assignee or for lack of sufficient bond. See 43 CFR Subpart 3102 - Qualifications of Leases.
lease, and not a potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Thus, where the base lease terminates for lack of timely payment of annual rental, prior to BLM's approval of a pending assignment, the potential assignee cannot petition for or be granted a reinstatement. Only the lessee of record (assignor) may petition for reinstatement of a terminated federal oil and gas lease, since the rights of the assignee shall not be recognized by the Department until the assignment has been approved by the authorized officer. 43 CFR 3106.1(a). Moreover, in accordance with 43 CFR 3106.7-2, until the assignment is approved, the assignor shall continue to be responsible for the performance of all obligations under the lease.

Lease W-69214 is now closed; therefore, the assignment is hereby returned to you unapproved (enclosed). In accordance with 43 CFR 3106.3, the filing fee is nonrefundable.

Appellant's statement of reasons was accompanied by a cancelled check payable to Minerals Management Service (MMS), dated October 23, 1984, and stamped "Received" by MMS on October 25, 1984. The check bears the notation, "Lease No. W-69214 - Annual Rental Payment." Appellant asserts that this payment of annual rental was timely, and appellant requests that his lease be reinstated and the record title assignment approved. 4/

[1] Section 30 of the Act, 30 U.S.C. § 187 (1982), provides that Federal oil and gas leases may not be assigned except with permission of the Secretary of the Interior. Such leases may be assigned or subleased,

4/ We note Instruction Memorandum No. 86-238, dated Jan. 31, 1986, provides:

"Some applicants for pending partial oil and gas lease assignments have paid their portion of the base lease rental to hold the interest in their unapproved partial assignments to the Bonus and Rental Accounting Support System (BRASS) [MMS] instead of to the Bureau of Land Management (BLM). The BLM, having no record of the rental payment, has issued a notice of termination for a base lease and was subsequently informed by such assignees upon denial of the assignment that rental payments were made to BRASS. This in turn has resulted in a BLM inquiry to BRASS.

"BRASS personnel have indicated that they are no longer able to respond to State Office requests for verification that rental has been timely paid on leases for which a partial assignment is pending. Therefore, in cases where partial rental payments were made to BRASS instead of to the proper BLM Office, you will need to request evidence from the remitter (a copy of the front and back of the check) to verify that timely payment was made to BRASS. Use this method only if the lease payment records alone are insufficient for proper documentation."

as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease * * * and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof * * *


Section 31(b) of the Act, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease will "automatically terminate by operation of law" where the lessee fails to pay the annual rental on or before the lease anniversary date and there is no well capable of producing oil or gas in paying quantities. Accordingly, in the absence of evidence that the rental was tendered by the anniversary date, oil and gas lease W-69214 automatically terminated on November 1, 1984, for failure to pay the annual rental due on or before that date. Ruth L. Schoerer, 92 IBLA 98 (1986); Dena F. Collins, 86 IBLA 32 (1985).

An assignment of 100 percent of the record title to a portion of the leased lands segregates the assigned portion and the retained portion into separate leases. 43 CFR 3106.7-5. In Ladd Petroleum Corp., 70 IBLA 313 (1983), this Board held that a partial assignment of record title to certain acreage in a Federal oil and gas lease, filed by a qualified assignee prior to the lease anniversary date, may be approved after the anniversary date where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date.

Appellant's appeal falls within the Ladd Petroleum ruling. His check, dated October 23, 1984, was received by MMS on October 25, 1984, before the anniversary date of the lease. Thus, appellant's timely rental payment

Regulations promulgated by BLM specify where an oil and gas lessee, or the assignee of an oil and gas lease, must submit filing fees, rentals, and royalties. The regulation in effect when appellant in the instant case was required to submit annual rental to protect his assigned interest in lease W-69214 provided:

"(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under Group 3100 of this title shall be paid to the proper BLM office. In addition, all second-year and subsequent rentals for nonproducing leases covering: Coos Bay Wagon Road; Oregon and California Grant; BLM National Grasslands; National Petroleum Reserve-Alaska; the south half of the Red River, Oklahoma; or acquired Taylor Grazing Act lands shall be paid to the proper BLM office.

"(2) All second-year and subsequent rentals for nonproducing leases not covered by paragraph (a)(1) of this section shall be paid to [MMS]."

43 CFR 3103.1-2 (emphasis added) (48 FR 33662 (July 22, 1983), as amended, at 49 FR 11637 (Mar. 27, 1984)).
protected his partial assignment from the automatic termination of the base lease, and the ruling in *Grace Petroleum* is inapplicable. 6/

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 reversed and the case is remanded to BLM for further action consistent with this opinion.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

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fn.5 (continued)

There is no indication in the case file that lease W-69214 falls within paragraph (a)(1) of 43 CFR 3103.1-2, so that "subsequent rentals" were required to be paid, as in fact they were paid, to MMS. In any event, 43 CFR 3103.2-2 presently provides that "[p]ayments made to an improper BLM office or the designated [MMS] office shall be returned and shall not be forwarded to the proper BLM office or the designated [MMS] office, except that during the period April 1, 1984, through March 31, 1985, payments made improperly to either the Bureau or [MMS] shall be forwarded to the appropriate agency." (Emphasis added.)

BLM further amended 43 CFR 3103.1-2 to provide that "[a]ll filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year rentals and bonuses for leases issued under Group 3100 of this title shall be paid to the proper BLM office." 43 CFR 3103.1-2(a)(1) (49 FR 39330 (Oct. 5, 1984)). Otherwise, "[a]ll second-year and subsequent rentals shall be paid to [MMS]." 43 CFR 3103.1-2(a)(2) (49 FR 39330 (Oct. 5, 1984)).

6/ Had appellant's partial rental payment been received after termination of the base lease, the *Grace Petroleum* case would be applicable. See *Howard H. Vinson*, 90 IBLA 280 (1986).