

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying approval of a partial assignment of oil and gas lease AA 48979.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers

When conflicting oil and gas lease assignments are filed with BLM, suggesting a controversy as to the validity of either or both of those assignments, the denial or approval of either of those assignments is improper; rather, BLM should suspend action on the assignments, maintaining the status quo until presented with either evidence that the parties have resolved the dispute or a copy of a court decree concerning the matter in controversy. However, if BLM has mistakenly approved the first-filed assignment, and subsequently denied approval of the second-filed assignment, the approval will not be rescinded, but the denial will be set aside for a period of time sufficient to allow the parties to institute litigation or take other action to resolve the dispute. Failure to take appropriate action within the time allowed will result in confirmation of the approved assignment.

APPEARANCES: Herbert P. Kenney, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Herbert P. Kenney, Jr., has appealed from a June 4, 1985, decision of the Alaska State Office, Bureau of Land Management (BLM), denying approval of a partial assignment of oil and gas lease AA 48979. BLM stated that the lands encompassed by the assignment had previously been assigned by the assignor and were no longer available for assignment to appellant.

BLM originally issued noncompetitive oil and gas lease AA 48979, effective February 1, 1984, to Alan E. Hartstein for 9,595 acres. On March 8, 1984, Hartstein executed an assignment to Edith Neuberg, describing 40 acres in the NW 1/4 SE 1/4, sec. 21, T. 20 S., R. 8 E., Fairbanks Meridian, Alaska. The assignment was filed with BLM on March 16, 1984, and identified by serial

number AA 48979-U. However, on March 21, 1984, Hartstein executed an assignment to appellant, embracing the same 40 acres assigned to Neuberg. The assignment to appellant was filed for approval on March 27, 1984, and designated AA 48979-P. On May 24, 1985, BLM approved the assignment to Neuberg, effective April 1, 1984. ^{1/}

In his statement of reasons, appellant asserts that he has paid the necessary fees, and therefore is entitled to the lease. He also states that he has paid rental on the lease in accordance with instructions from BLM which confirms his entitlement to the lease.

[1] The conflicting lease assignments in the instant appeal signify the existence of a controversy as to the effect or validity of one and possibly both of those assignments. The filing of Hartstein's assignment to appellant, prior to BLM's approval of Hartstein's assignment to Neuberg for lands described in both assignments, should have placed BLM on notice of that controversy. The Department has consistently held that it will not act on an assignment of an oil and gas lease submitted for approval when it has notice of a controversy between the parties as to the effect or validity of the assignment. Fimple Enterprises, Inc., 70 IBLA 180 (1983); McCulloch Oil Co. of California, A-30208 (Nov. 25, 1964), and cases cited therein.

In Fimple Enterprises, BLM had received positive notice from an interested party of a controversy concerning certain assignments, and had been requested to withhold approval of such assignments. BLM issued decisions denying approval of those assignments and Fimple and other assignees appealed. The Board ruled that BLM should not have denied approval of the assignments: "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." 70 IBLA at 182. Likewise, BLM acted improperly in denying approval of appellant's assignment in this case; rather, BLM should have suspended action on that assignment until receiving notice that the controversy was settled.

This appeal raises the additional question whether the approval of Hartstein's assignment to Neuberg should be rescinded, given the fact that BLM should have been aware of the conflict between Neuberg's assignment and that of appellant. ^{2/} In McCulloch Oil Co., *supra*, the appellant argued that BLM had approved an assignment with knowledge that the assignment had been

^{1/} It is unclear why appellant's assignment, which was filed subsequent to the Neuberg assignment, was assigned a lower alphabetical serial number than the Neuberg assignment.

^{2/} In cases where an assignment has been approved without notice of a controversy as to its effect or validity and the Department subsequently receives notice of a controversy, it has declined to disturb existing conditions or to approve any change without evidence of an agreement among

altered. The Department ruled that while BLM might well have withheld approval of the assignment until it was assured that the assignment was in order, the Department declined to rescind that approval stating:

In the circumstances, there seems to be no necessity for departing from the practice of allowing matters to remain in status quo pending a resolution of the dispute between the parties. If McCulloch is ultimately successful, there will be time to rescind approval of the assignments. If Chittim is successful, the approvals can be allowed to stand. An interim shifting of the position of the parties would not resolve the ultimate issue and, depending on the final outcome, may simply be an exercise in paper work.

(A-30208 at 4).

We instruct BLM not to approve or disapprove any further assignments of the subject land or to take any action concerning the land for a period of 90 days from the date of this decision. If at the end of the 90-day period no notice has been given to BLM of the initiation of any action to settle or otherwise resolve the dispute between the parties, the approval of Neuberg's assignment will be allowed to stand. See McCulloch Oil Co., supra at 4; Utah Gas & Oil Corp., 64 IBLA 254, 256 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's denial of approval of Hartstein's assignment to appellant is set aside, and the case is remanded to the Alaska State Office, BLM, for further disposition in accordance with this decision.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski R. W. Mullen
Administrative Judge

Administrative Judge

fn. 2 (continued)
the parties or a court decree on the matter in controversy. Utah Gas & Oil Corp., 64 IBLA 254 (1982); John D. & Elizabeth Archer, 46 IBLA 203 (1980) (phosphate lease); McCulloch Oil Co. of California, supra, and cases cited therein.