

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying approval of partial assignment of oil and gas lease C-35330.

Affirmed.

1. Oil and Gas Leases: Assignments and Transfers

Where a partial assignment of an oil and gas lease was filed with BLM after Dec. 22, 1987, when amendments to provision of the Mineral Leasing Act controlling administration of partial assignments became effective, the partial assignment became subject to the amended law. Therefore, because the land assigned was less than the entire lease, was part of a legal subdivision, and there was no showing that approval of the partial assignment would further development of oil and gas, the partial assignment was correctly denied.

APPEARANCES: Robert Macdonald, San Gabriel, California for appellant; Michael F. Deneen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Wheeler-Lea Company (Wheeler) appeals from a March 21, 1988, decision of the Colorado State Office, Bureau of Land Management (BLM), denying approval of partial assignment of oil and gas lease C-35330, comprising 40 acres in sec. 13, T. 11 N., R. 98 W., sixth principal meridian, Moffat County, Colorado. The request for partial assignment, dated March 6, 1988, was filed by Wheeler with BLM on March 9, 1988. The portion of the assignment executed by Petroleum Research Corporation, the assignor, bears the date December 26, 1987.

On March 21, 1988, BLM issued a decision finding that the partial assignment was subject to adjudication pursuant to provision of Title V, § 5103, Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, 101 Stat. 1330-258, providing that the Secretary of the Interior may disapprove any assignment of "less than 640 acres outside Alaska" except where "the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas." Id.

The BLM decision finds that the Wheeler partial assignment was for less than 640 acres and did not constitute all of the lease. The decision allowed both assignor and assignee 30 days to provide evidence to show that approval of the partial lease would encourage oil and gas development. Neither Wheeler nor the assignor provided a response to the BLM decision. An appeal from the decision denying approval of the partial assignment was, however, timely filed by Wheeler.

Wheeler's notice of appeal includes a statement of reasons which argues that: "I purchased the lease in good faith from the Petroleum Research Corp. in full for the lease. I recorded the purchase with the Moffat County Recorder. I have paid the annual rental fee of \$40 starting Nov. 1, 1988 (see enclosure)." The enclosure provided by Wheeler is a copy of check No. 1151 drawn on the account of Robert Macdonald of Wheeler-Lea Company, and Peggy B. Macdonald dated May 6, 1988, payable to the Minerals Management Service.

BLM answers Wheeler that:

Even if Wheeler-Lea argues that [FOOGLRA] does not apply because the assignment was already executed [when FOOGLRA took effect], the assignment was not filed until after the [1987] Act became effective. The preamble to the lease binds the lessee and its assignees to all subsequent amendments of the Mineral Leasing Act (see lease in BLM file). The filing date brings the assignment within the scope of the [1987] Act. There was nothing in the actions of BLM which prohibited either [the assignor of the partial lease] or its assignees from filing assignments.

(Answer at 4).

FOOGLRA was effective December 22, 1987. Section 5106(c) of the Act provides: "Except as provided in subsections (a) and (b) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920, after the date of enactment of this subtitle shall be conducted in accordance with the provisions of this subtitle." Subsections (a) and (b) enumerate the exceptions to which FOOGLRA will not apply. These exceptions are "all noncompetitive oil and gas lease applications and offers and competitive oil and gas bids pending on the date of enactment" and certain lease offers and applications pending in specified locations not here relevant.

[1] The provisions of subparagraphs (a) and (b) compel the conclusion that pending oil and gas lease assignments, which are omitted from the list of actions not affected by FOOGLRA at enactment, are not included in the exception to section 5106(c) of the Act. See H. Rep. No. 378 (Part I), 100th Cong., 1st Sess. 15 (1987), explaining that the exceptions to the rule that provisions of the Act would become effective on enactment dealt only with "simultaneous oil and gas leasing applications and competitive bids filed prior to and pending on the date of enactment."

The provisions of FOOGLRA therefore control the administration of partial assignments filed after the effective day of the Act, December 22, 1987. Subparagraphs (a) and (b) of the Act illustrate that where Congress intended to carry over operation of prior provisions of the Mineral Leasing Act to pending offers, applications, and bids, it expressly so provided. No such provision was made for assignments of leases. Because Wheeler's partial assignment was filed with BLM on March 9, 1988, it immediately became subject to the terms of the 1987 amendments governing assignments. Even assuming the exception in section 5106(c) extended to assignments, which we hold it does not, the exception would afford Wheeler no relief because Wheeler's application was not pending before BLM on December 22, 1987, the effective date of the FOOGLRA amendments.

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 affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge