

Editor's note: Reconsideration denied by Order dated Sept. 15, 1993

STANLEY ENERGY, INC.

IBLA 90-84

Decided January 16, 1992

Appeal from a decision of the Eastern States Office, Bureau of Land Management, amending the acreage subject to a competitive oil and gas lease and requiring payment of additional rental and minimum bonus bid. MIES 40928.

Appeal dismissed.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Competitive Leases--Rules of Practice: Appeals: Standing to Appeal

A purported assignee of a competitive oil and gas lease lacks standing to appeal from a BLM decision amending the lease to correct an erroneous acreage figure and requiring the lessee to pay additional first year's rental and minimum bonus bid depending on the revised figure, when the purported assignee has failed to sign the assignment document.

APPEARANCES: Rosalie Leabres, Esq., and Kevin L. Shaw, Esq., Los Angeles, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Stanley Energy, Inc. (Stanley), has appealed from an August 30, 1989, decision of the Eastern States Office, Bureau of Land Management (BLM), amending the acreage subject to competitive oil and gas lease MIES 40928 by increasing the contained acreage from 871.75 to 976.20 acres and requiring payment of additional rental and minimum bonus.

Meridian Energy Corporation (Meridian) participated in BLM's July 11, 1989, competitive oil and gas lease sale and submitted the high bid for parcel ES-217. On the day of the sale, Meridian submitted the minimum bonus bid (\$1,744) and the first year's advance rental (\$1,308). ^{1/} The \$2-per-acre minimum bonus bid and \$1.50-per-acre first year's rental submitted that day was based on 871.75 acres, the acreage stated in the description of parcel No. ES-217. The balance of the bonus bid (\$6,976) was submitted after the sale.

^{1/} A \$75 administrative fee was also tendered. See 43 CFR 3120.5-2(b).

On August 29, 1989, the appropriate lease form was executed on behalf of BLM and competitive oil and gas lease MIES 40928 was issued to Meridian, effective September 1, 1989. As originally issued, the lease was for 871.75 acres situated in secs. 4 through 7, T. 16 N., R. 13 W., Michigan Meridian, Newaygo County, Michigan, within the Manistee National Forest.

In its August 30, 1989, decision, BLM notified Meridian that BLM had erred when calculating the leased acreage. To correct this error, BLM amended the lease to reflect the correct acreage (976.20 acres). In addition, BLM stated that, as a result of its error the bonus bid and first year's rental were understated. It then concluded that Meridian owed \$1,207.50 in additional rental and bonus, and directed Meridian to submit payment within 30 days of receipt of the decision. Meridian received this decision on September 5, 1989. On September 18, 1989, Meridian filed an assignment of the record title interest in the oil and gas lease to Stanley. The assignment had been executed by Meridian on September 15, 1989, but had not been executed by Stanley.

On October 27, 1989, Stanley filed a notice of appeal from the August 1989 BLM decision. In its statement of reasons (SOR) for appeal Stanley contends that BLM improperly assessed the additional rental and minimum bonus bid. It argues that the lease should not have issued because BLM's incorrect description of the parcel acreage in the July 1989 sale notice precluded the mutual assent necessary for a binding agreement. It asserts that "[u]pholding the Decision forces Stanley, as Meridian's assignee, to accept acreage and price terms which it neither sought nor agreed to" (SOR at 3). Stanley seeks to have the Board cancel the lease and direct BLM to refund the monies already paid.

Initially, we deem it appropriate to examine that portion of the BLM decision dealing with the amount due by reason of the increased acreage.

As noted above, the acreage was corrected to read 976.20 acres, rather than 871.75 acres, an increase of 104.45 acres (for rental purposes 977 acres less 872 acres or 105 acres). In its October 30, 1989, decision BLM stated that additional rental of \$157.50 and an additional bonus of \$1,050 was due. This calculation is in error. There are two reasons for this finding. First, under 43 CFR 3120.5-2(b), each winning bidder is required to submit a minimum bonus bid of \$2 per acre or fraction thereof and the total amount of the first year's rental at the time of the sale. In this case the rental is \$1.50 per acre. See 43 CFR 3103.2-2(a). Therefore, if the acreage had been correctly stated at the time of the sale Meridian would have been required to tender a minimum bonus bid of \$1,954, rather than \$1,744, and a first year's rental of \$1,465.50, rather than \$1,308. The total deficiency in the original payment was \$367.50 (\$210 in minimum bonus bid and \$157.50 in rental), and not \$1,207.50. This calculation is supported by the bid document which provides for a minimum bonus bid of \$2 per acre and a stated additional bonus amount to be submitted within 10 days from the date of the sale. The additional bonus amount was \$6,976. The bonus bid was a flat amount, not a "per-acre" bonus. In effect the bonus amount over and above the minimum per-acre bonus remains unchanged by

any subsequent adjustments to the actual number of acres in the described tract.

[1] We will now examine appellant's standing to appeal. To have standing to appeal from a BLM decision under 43 CFR 4.410(a), the appellant must be a party to the case and adversely affected by that decision. See Storm Master Owners, 103 IBLA 162, 177 (1988). A party to a case is the responsible party who had taken the action which is the subject of the BLM decision on appeal, is the object of that decision, or who had otherwise participated in the decisionmaking process leading to that decision. See, e.g., James C. Mackey, 114 IBLA 308, 313 (1990); The Wilderness Society, 110 IBLA 67, 72 (1989); Utah Wilderness Association, 91 IBLA 124, 128 (1986); California Association of Four Wheel Drive Clubs, 30 IBLA 383, 385 (1977). The record contains no record of Stanley having had any interest, directly or indirectly, in the lease at issue until after BLM had issued the decision now under consideration.

In Tenneco Oil Co., 63 IBLA 339, 341 (1982), we concluded that an unapproved assignee of an oil and gas lease had standing to appeal from a BLM decision holding the lease to have terminated by operation of law where the decision was "adverse to its interests" because termination foreclosed BLM from approving the assignment. See also Texaco Inc., 115 IBLA 369, 371 (1990). Similarly, an unapproved assignee will have standing to appeal from an adverse action taken by BLM directly with respect to the assignment. Thus, in Petrol Resources Corp., 65 IBLA 104, 108 (1982), we concluded that an unapproved assignee was adversely affected by a BLM decision to allow a unilateral withdrawal of the assignment by the assignor where the decision effectively denied the assignee's request for approval of the assignment and, thus, the assignee had standing to appeal that decision. See also Martin Faley, 116 IBLA 398 (1990); Donald & Barbara Schneider, 94 IBLA 84 (1986); Dallas Oil Co., 93 IBLA 218 (1986).

By contrast, in G.H. Allen, 119 IBLA 272, 275 (1991), we recently held that unapproved assignees of a coal lease did not have standing to appeal from a BLM decision approving the assignment because, "[s]ince [they] have the ability to withdraw their request for approval of the assignment at any time prior to approval, they had not been adversely affected by the BLM decision." The appellants in Allen had objected to approval on the basis that BLM should have delayed approval pending negotiations between the assignees and the assignor. We held that the appellants were not affected by any BLM refusal to delay approval where they could have simply withdrawn their request and, thus, precluded such approval.

2/ At the time of that decision the assignee could unilaterally withdraw the assignment at any time prior to approval. See Petrol Resources Corp., supra at 107-08. The regulations have since been amended, and 43 CFR 3106.1(b) now provides that an assignment "may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer." (Emphasis added.) An assignment can no longer be unilaterally withdrawn.

The common thread running through all of the above cases is the impact of the BLM action on the appellants. In Tenneco Oil Co., supra, termination precluded assignment. A similar end result occurred in Petrol Resources Corp., supra. In G.H. Allen, supra, the assignee's apparent interest was not adversely affected by BLM's decision, as it had conveyed its desire to have the lease assigned to it at the time of the decision. The issue in this case is the impact of the modification of the lease terms on the lessee and the assignee's right to object to that action. Without the ability to appeal, an assignee has no more protection from modification than from termination. ^{3/} We believe that an assignee named in an unapproved assignment should have standing to appeal in circumstances such as those presented to us. Without this protection it could find itself bound to terms and conditions that would be totally objectionable if in existence at the time that the assignment was agreed upon.

Notwithstanding this conclusion, Stanley is not in the position of an unapproved assignee. As noted above, Stanley did not execute the assignment from Meridian, an act which is crucial to standing in this case. By executing the assignment the assignee agrees to be bound by the terms and conditions of the lease being assigned. ^{4/} It stands to reason, therefore, that if a prospective assignee does not execute the assignment agreement, BLM would be hard pressed to argue that the lease terms are binding on it. Thus, we are hard pressed to conclude that Stanley is adversely affected by the BLM decision now on appeal. Cf. Kenneth W. Bosley, 101 IBLA 52, 55 (1988) (one who does not express any intention to purchase Federal land lacks standing to challenge method of sale). Stanley has no actual or contingent responsibility under the lease because it has not executed an assignment. See 30 U.S.C. § 187a (1988); e.g., Interior Reserves Corp., 116 IBLA 73, 79 (1990); Ralph G. Abbott, 115 IBLA 343, 345-46 (1990).

We conclude that Stanley lacks standing to appeal from the August 1989 BLM decision. Stanley's appeal is dismissed for that reason. See Resource Associates of Alaska, 114 IBLA 216, 219 (1990). Any dispute regarding an underlying agreement regarding an assignment of the lease is between Stanley and Meridian. See Pat Reed, 119 IBLA 338, 342-43 (1991).

^{3/} The adverse impact can be illustrated by considering a BLM amendment to a lease clearly having an adverse impact on an assignee. If the assignee has no right of appeal, the assignor could agree to the amended terms, refuse to agree to a withdrawal of the assignment, and bind the assignee.

^{4/} Part B, paragraph 3 of the assignment document provides that "[a]ssignee's signature to this assignment constitutes acceptance of all applicable terms, conditions, stipulations, and restrictions pertaining to the lease described herein" (Form 3000-3 (June 1988)). This form constitutes the "Certification and Request for Approval."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, Stanley's appeal from the August 1989 BLM decision is dismissed.

R. W. Mullen
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge