

INTERIOR BOARD OF LAND APPEALS

Robert H. Gleason

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Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying request for approval of assignment of overriding royalty interest in coal leases C-081251 and C-081258.

Decision vacated.

1. Coal Leases and Permits: Generally--Coal Leases and Permits: Leases

Ordinarily, BLM does not have authority to disapprove an assignment of an overriding royalty interest in Federal coal leases, but instead merely accepts a copy of such assignment for information only, so that it will have full historical information concerning how much overriding royalty has been reserved. BLM does have authority to disapprove such assignment either where the assignee is not qualified to hold an interest in the lease or where the assignment would so burden the leasehold that a lessee or operator would shut down what could be an economically viable operation if not for the excess royalties that must be paid. However, BLM's decision denying a request for approval of an assignment of overriding royalty is properly vacated where the record does not reveal such circumstances. BLM should instead have merely accepted the submitted documents for filing.

APPEARANCES: Robert H. Gleason, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Robert H. Gleason (appellant) has appealed the May 19, 1992, decision of the Colorado State Office, Bureau of Land Management (BLM), denying his request for approval of an assignment of an overriding royalty interest in Federal coal leases C-081251 and C-081258.

On April 6, 1962, William E. Roope applied for coal prospecting permits for lands in Routt County, Colorado. Those permits were assigned serial numbers C-081251 and C-081258. By an agreement dated December 18, 1962, Roope assigned all right, title, and interest in and to those prospecting permits to the United Electric Coal Companies (UECC). Copies of

that agreement were filed with BLM, which approved the assignment of record title from Roope to UECC in February 1963, and issued prospecting permits in UECC's name effective March 1, 1963.

The consideration for the record title assignment agreement between Roope and UECC was not specified in the December 18, 1962, assignment contract filed with BLM. Other documents in the record indicated, however, that there was a separate agreement between Roope and UECC, also dated December 18, 1962, which may well have provided for a cash payment to Roope as well as reservation by Roope of an overriding royalty in the prospecting permits. Article 6 of an April 1, 1963, agreement between Roope and UECC provides that it "supersedes, cancels and terminates an agreement between the parties dated December 18, 1962 and that with the signing of this instrument by the parties hereto the agreement of December 18, 1962 becomes null and void and of no effect." Although the December 18, 1962, date coincides with the date that the assignment of the prospecting permits was executed by Roope and UECC, that assignment agreement could not be the document referenced in Article 6, since the April 1, 1963, agreement would then have "superseded, cancelled and terminated" the assignment itself, an event that plainly did not occur.

The existence of a December 18, 1962, overriding royalty assignment agreement is generally corroborated by a letter from William Bateman explaining the nature of a partnership between Roope, Gleason, and himself, and expressly noting: "In December [1962] the company took an assignment from [Roope] on the two permits and paid \$1,000 * * *. At the same time they issued an agreement entitling [Roope] to a three cents per ton overriding royalty * * *" (Letter of Nov. 20, 1990, at 2). ^{1/}

It does not appear that a copy of any December 18, 1962, overriding royalty assignment agreement between UECC and Roope was ever filed with BLM.

On January 31, 1963, Roope unilaterally executed a handwritten document stating as follows: "I hereby assign, set over & convey to Robert H. Gleason, 1 ¢ (\$0.01) per ton overriding royalty on all coal leases and options for the same which I have heretofore or will hereafter transfer to United Electric Co., 307 Michigan Blvd., Chicago, Ill." The document bears what appears to be Roope's signature but is not witnessed. No copy of that document was filed with BLM in 1963.

On April 1, 1963, UECC and Roope signed a contract under which UECC, in express recognition of Roope's having obtained (among other interests) prospecting permits C-081251 and C-081258, agreed to pay Roope a specific cash amount, and also to pay him an overriding royalty of \$0.03 per ton of coal mined and sold from the property covered by those permits. As noted above, it appears from Article 6 of that agreement that it either replaced or continued an earlier agreement dated December 18, 1962, granting Roope a

^{1/} As discussed below, it is unnecessary to consider either the credibility or legal significance of this evidence.

similar overriding royalty. A copy of the April 1, 1963, agreement was also not immediately filed with BLM.

Preference right coal leases were issued to UECC in May 1965. By decision of December 9, 1975, BLM approved a sublease to mine portions of the lands covered by C-081251 and C-081258. The sublessor on this transaction was Material Service Corporation (UECC's successor in interest and record title holder), and the sublessee was Seneca Coals, Ltd. 2/ Paragraph 6 of that sublease referred to Roope's overriding royalty interest.

On August 28, 1989, BLM approved an assignment of all record title in leases C-081251 and C-081258 from Material Service Corporation to Peabody Coal Company. BLM acknowledged the existence of Roope's overriding royalty but did not expressly approve it.

On November 6, 1990, an agent of Peabody Development Company filed the following letter with BLM:

I have recently researched the above captioned lease files and have noted that the [April 1, 1963,] agreement granting an overriding royalty interest to William E. Roope is not included in said files. Therefore, please find enclosed a copy of an Agreement by and between William E. Roope and The United Electric Coal Companies granting said interest. Please note that this document has not been filed either with the B.L.M. or in the county records of Routt County.

On December 6, 1990, the heirs of Roope (William E. Roope and James Donald Roope, hereafter "the heirs") filed notice with BLM of their status as successors to Roope's overriding royalty on the leases. By decision of July 3, 1991, BLM confirmed and accepted the overriding royalty interest created by the April 1, 1963, agreement between William E. Roope and UECC. BLM recognized the heirs as successors to William E. Roope's 3-cent per ton overriding royalty interest. 3/

In the meantime, on November 23, 1990, Robert H. Gleason filed a request for approval of the assignment of a \$0.01 per ton overriding royalty on both of the instant leases to him from Roope, based on the handwritten document dated January 31, 1963, quoted above. 4/ BLM did not process that application immediately. Gleason renewed his request for approval in December 1991, and again in April 1992.

2/ Seneca Coals Ltd. is described in the sublease as a joint venture between Peabody Coal Company and Western Utility Company with Peabody being the "managing venturer" of Seneca.

3/ As discussed below at footnote 7, the propriety of BLM's July 3, 1991, decision, is not at issue in the instant appeal.

4/ The note bears a date-stamp indicating that it was filed with the Routt County, Colorado, Recorder on Nov. 2, 1990.

BLM's May 19, 1992, decision denied Gleason's request for assignment, ruling that on January 31, 1963, "William E. Roope had no interest in either federal coal lease C-081251 or C-081258 that he could transfer to another party." Gleason appealed.

[1] Gleason claims entitlement to a 1-cent overriding royalty by virtue of the January 1, 1963, "note," arguing that a royalty interest is real estate and that "after-acquired title" to the 1-cent royalty passed to him by virtue of this document. BLM denied his request for approval of that assignment, ruling that Roope possessed no overriding royalty interest in those prospecting permits on January 31, 1963, when he executed the deed to Gleason, as he did not acquire such until April 1, 1963, when the contract with UECC was signed. As discussed above, BLM's conclusion is rendered doubtful, in that it appears that an agreement establishing an overriding royalty interest may have existed as of December 18, 1962. However, it is unnecessary to resolve this question, as we have concluded that, under the present regulatory structure, BLM erred in reviewing the validity of the putative assignment of overriding royalty interest from Roope to Gleason.

Historically, the Department has concerned itself with overriding royalties based on two considerations. First, there was the fear that excess royalties might so burden the leasehold that a lessee or operator would shut down what could be an economically viable operation were it not for the excess royalties which must be paid. This concern was expressed in regulations governing both oil and gas leasing (until 1988) at 43 CFR 3103.3-3 (1987), which informed the public that any overriding royalties in excess of five percent were subject to being suspended by the Secretary if they unduly burdened the lease, and in coal leasing at 43 CFR 3473.3-2(d), which prohibits the creation of overriding interests which aggregate in excess of 50 percent of the Federal royalty interest, with certain exceptions.

The second traditional area of concern involved the enforcement of limitations on acreage that can legally be held by one entity or acreage chargeability. Since overriding royalty interests are charged with the full acreage of the lease just as is the lessee, any transfer of an overriding royalty interest had to be examined to be sure that the acreage limitations were not violated.

Beyond those two considerations, however, so long as the holder of the overriding interest met the qualifications to hold a lease, the Department had no abiding interest in who held such an interest or how it came into being. 5/

5/ In early Departmental adjudications, the Department approved or disapproved all transfers of interests. See, e.g., John Wight, A-28230 (Apr. 14, 1960). Eventually, however, as the process of approving all of the myriad varieties of assignments consumed increasing amounts of time, this practice was reexamined. The upshot of this was a general consensus that, except for record title interests (and operating rights), the

This result was clearly adopted in oil and gas leasing, where 43 CFR 3106.1(b) now provides, inter alia, that "[a] transfer of production payments or overriding royalty or other similar payments shall be filed in the proper BLM office but shall not require approval." Further, the same approach can be gleaned from applicable coal regulations. Thus, 43 CFR 3453.2-2, the regulation cited in BLM's decision, differentiates between transfers of record title and transfers of other interests. For record title transfers, 43 CFR 3453.2-2(a) provides that "[t]ransfers of any record title interest shall be filed in triplicate and shall be accompanied by a request for approval from the transferee." This should be read in concert with 43 CFR 3453.2-2(d) which provides that "[a] single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other security or mortgage documents shall not be accepted for filing." Nothing in the latter regulation provides for the "approval" by BLM of "other instruments of transfer."

Thus, under the regulations, BLM will accept three copies of "transfers of record title" and must rule on the request for approval that the transferee is required to file. In contrast, BLM will accept for filing a single signed copy of all "other instruments of transfer," that is, non-record title transfers, other than security or mortgage documents which do not have to be filed with BLM at all. An overriding royalty interest is a "non-record title transfer," and falls into the latter category, that is, "other instruments of transfer." It is not a "security or mortgage document," so that a party must merely file a single copy of the instrument which BLM accepts for filing but does not formally approve.

Admittedly, the regulations do provide limited authority for BLM to disapprove an assignment of an overriding royalty interest. Under 43 CFR 3453.3-1(a)(5), no transfer of a lease shall be approved if "the transfer would create an overriding royalty or other interest in violation of § 3473.3-2 of this title." ^{6/} Under 43 CFR 3473.3 2(d), certain specific limits are placed on the amount of overriding royalty interests that can legally be created. BLM may also disapprove an assignment of an overriding royalty interest if the transferee is not qualified to hold a lease, including situations where transfer would violate acreage limitations. See generally 43 CFR 3455.3 1(a). However, in other situations, BLM neither approves nor disapproves assignments of overriding royalties but merely accepts them for filing, regardless of any questions that BLM may have as to their legality or enforceability.

This practice is consistent with the longstanding rule that conflicts arising out of assignments of record title of interests granted under the

fn. 5 (continued)

Department would no longer formally approve the transfer of interests in leases but would merely accept them for filing. See generally Law of Federal Oil & Gas Leasing, §§ 10.03[2], 10.03[3], 10.06[3].

^{6/} It is questionable whether this provision even applies, since Gleason's asserted interest arose not from a transfer of the lease but from an assignment of a portion of Roope's overriding royalty.

Mineral Leasing Act are governed by State law, and there is therefore no basis for BLM to intercede to resolve such conflicts. See Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 n.8 (1966); Pat Reed, 119 IBLA 338, 342 (1991); July Corp., 66 IBLA 20, 21-22 (1982). ^{7/} Indeed, where the validity of an assignment of record title is in dispute, BLM may not take any action which operates to advance the position of one party over the other. See Ernhart, Inc., 108 IBLA 267, 269 (1989). Similar considerations prevent BLM from ruling on the validity of assignments of overriding royalty interests, except for the limited purposes noted above.

Nothing in the record indicates either that the assignees were unqualified to hold an overriding royalty interest or that such interest would be impermissible under 43 CFR 3473.3 2(d). Accordingly, there was no basis for BLM to invalidate the assignment here. We appreciate that BLM acted in response to Gleason's request for approval of the overriding royalty interest here. However, in these circumstances, BLM should have merely accepted for filing the copy of the assignment of overriding royalty interest submitted by Gleason without ruling on its validity. The efficacy or enforceability of this overriding royalty was not a matter of its concern.

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 vacated.

David L. Hughes
Administrative Judge

I concur:

James L. Burski
Administrative Judge

^{7/} Accordingly, we offer no comment on the validity of the assignment of the overriding royalty from Roope to Gleason. That question and its subsidiaries (for example, whether the transfer instrument is valid, whether the claim is barred by laches, and whether a claim can now be made against Roope's estate) are matters for resolution in a court of competent jurisdiction under State law.

Similarly, we note that BLM's previous approval of the assignment of overriding royalty interest from UECC to Roope and its recognition of the heirs should not be viewed as a determination by the Department that the interest presently held by the heirs is superior to any competing claim against the proceeds of the leases. That, too, is a question for resolution under State law by the parties involved.