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United States Department of the Interior



OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

MAY 19 1987

APPENDIX 22

BLM.ER.0645

MEMORANDUM

To: Director, Bureau of Land Management (620)  
From: Acting Deputy Associate Solicitor  
Energy & Resources  
Subject: Guidance in the treatment of lessees who have filed for relief under Chapters 7 and 11 of the Bankruptcy Code 11 U.S.C. §101, et seq.

You have requested general guidance on issues that arise when holders of Federal mineral leases file for protection under the bankruptcy laws. 11 U.S.C. §101 et seq. A general overview of bankruptcy law is provided for a better understanding of specific provisions as they relate to areas of concern to the Bureau of Land Management (BLM).

I. Chapter 7 and Chapter 11 Proceedings

Holders of Federal mineral leases will be primarily involved in either a Chapter 7 or a Chapter 11 bankruptcy proceeding. Essentially, a Chapter 7 proceeding is a liquidation process in which the assets of the debtor are sold and the creditors paid from the proceeds. A trustee is always appointed in a Chapter 7 bankruptcy, and is responsible for conducting the business of the estate (the assets of the bankrupt) pending liquidation.

Unlike a Chapter 7 dissolution proceeding, a Chapter 11 bankruptcy anticipates that the debtor will continue to exist and operate after the bankruptcy concludes. A Chapter 11 proceeding allows for a restructuring of the debts of the debtor through a plan of reorganization that is submitted to and confirmed by the court. The plan is designed to provide some return to creditors while enabling the company to be viable again by preserving those assets necessary to carry out the business of the debtor. In a Chapter 11 case, a trustee may or may not be appointed. Absent the appointment of a trustee, the debtor runs the affairs of the

business. (References to "trustee" below also apply to the debtor if no trustee is appointed.) Generally, the trustee or debtor may run the business in its ordinary course without hearings before the bankruptcy court. For purposes of discussion, the information below applies equally to Chapter 7 and Chapter 11 cases except where otherwise noted.

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II. Acceptance or rejection of executory contracts and unexpired leases under 11 U.S.C. §365

The Bankruptcy Code provides that, subject to the court's approval, a debtor in bankruptcy or its trustee may accept or reject executory contracts and unexpired leases. 11 U.S.C. §365(a).<sup>1/</sup> This provision recognizes that certain contractual obligations incurred by the debtor may be particularly burdensome and that performance of them would thwart the primary goal of bankruptcy which is the recovery of the debtor from its financial difficulties. Section 365 was enacted to avoid this problem and empowers the trustee to accept those leases that benefit the bankrupt estate and reject those that are burdensome.

Although the trustee may assume or reject any executory contract or unexpired lease of the debtor,<sup>2/</sup> certain safeguards exist for the creditor if a default has occurred in the lease. If a default exists, the trustee may not assume the lease unless the trustee -

1. cures or provides adequate assurance that he will promptly cure the default; ✓
2. compensates, or provides adequate assurance that he will promptly compensate, the creditor for any actual pecuniary loss resulting from the default; and
3. provides adequate assurance of future performance under the lease.<sup>3/</sup>

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<sup>1/</sup> An executory contract is a contract that has not as yet been fully completed or performed. Blacks Law Dictionary 512 (5th ed. 1979).

<sup>2/</sup> 11 U.S.C. § 365(a) (1982). This provision was not affected by the 1984 amendments although the procedures to be followed by the trustee were amended as described below.

<sup>3/</sup> 11 U.S.C. § 365(b)(1) (1982).

On July 10, 1984, Congress amended certain provisions of the Bankruptcy Code, including section 365. Public Law 98-353; 98 Stat. 361. Section 553 of the 1984 amendments provides that such amendments become effective for cases filed 90 days after the date of enactment that is, October 8, 1984. Therefore, in determining the current status of the lease, it is important to ascertain whether the petition for bankruptcy was filed before or after October 8, 1984.

A. Pre-October 8, 1984 Bankruptcy. In a Chapter 7 bankruptcy case, if the trustee does not assume or reject the lease within 60 days after the order for relief,<sup>4/</sup> then the lease is deemed rejected.<sup>5/</sup> The Court may within such 60-day period grant additional time for cause. Prior to the 1984 amendments, petitions filed under Chapter 11 were not restricted by the 60-day limitation. For Chapter 11 petitions filed prior to October 8, 1984, the trustee may assume or reject an unexpired lease any time prior to the confirmation of the reorganization plan. Upon request of a party to the lease,<sup>6/</sup> however, the court may order the trustee to decide within a specified time period whether to assume or reject the lease.<sup>7/</sup>

B. Petitions filed after October 8, 1984. The 1984 amendments added several important provisions to section 365. A new provision requires the trustee to perform timely all obligations of the debtor under the lease arising from and after the order

<sup>4/</sup> The bankruptcy process begins with the filing of a petition in the bankruptcy court. If the petition is filed by a debtor seeking relief, then the case is considered voluntary. The filing of a voluntary petition constitutes an order for relief. 11 U.S.C. § 301 (1982). Therefore, the 60-day period would be measured from the date of filing. The bankruptcy petition may also be filed by certain creditors of the debtor. Such a case is deemed to be involuntary. In an involuntary bankruptcy case, the order for relief is entered after the petitioners prevail at trial or upon default if the petition is not timely controverted by the debtor. 11 U.S.C. § 303 (1982).

<sup>5/</sup> 11 U.S.C. 365(d)(1) (1982)

<sup>6/</sup> This request is made by formal motion to the court under Bankruptcy Rules (BR) 6006 and 9014.

<sup>7/</sup> 11 U.S.C. 365(d)(2) (1982).

for relief until such lease is assumed or rejected.<sup>8/</sup> Furthermore, the time difference between Chapter 7 and Chapter 11 bankruptcies as it relates to assumption of the lease has been abolished. If the trustee does not assume or reject the lease within 60 days after the date of the order for relief (see footnote 4, *supra*), the lease is deemed rejected and the trustee must immediately surrender the property to the lessor.<sup>9/</sup> The court may grant additional time for cause within such 60-day period. Now that the trustee in both Chapter 7 and Chapter 11 proceedings must decide to assume or reject the lease within rather short timeframes, BLM may wish to establish whether the lease is in default and what actions are necessary to cure such default.<sup>10/</sup> Since the trustee is responsible for the timely performance of all debtor's obligations under the lease, BLM may establish contact with the trustee to advise the trustee of the debtor's obligations and to see that they are carried out.

If you encounter a situation in which the petition has been filed for a period longer than 60 days, it is necessary to contact either the trustee or the court to determine whether the lease has been accepted or rejected. Be aware that the power of the trustee to assume or reject unexpired leases is subject to court approval.<sup>11/</sup> Even if you are advised by the trustee of its

<sup>8/</sup> 11 U.S.C. 365(d)(3) (1984 Supp.)

<sup>9/</sup> 11 U.S.C. 365(d)(4) (1984 Supp.)

<sup>10/</sup> This would primarily include incidents of noncompliance and unpaid royalty. Failure to pay rent timely is not considered a default because it results in an automatic termination of the lease. If failure to pay rent occurs and the lease terminates by its own terms, such termination is not precluded by the automatic stay (discussed in part IV below). Likewise, since failure to pay rent terminates the lease, the ability to continue or reject the lease normally afforded the debtor under 11 U.S.C. § 365(a) is no longer an option. *In re Trigg*, 630 F.2d 1370 (10th Cir. 1980).

<sup>11/</sup> Section 365(a) of the Bankruptcy Code requires approval of the court for the assumption or rejection of an executory contract or unexpired lease by the trustee. Such approval is obtained by a proceeding before the court. Bankruptcy Rule 6006(a) provides that a proceeding to assume or reject an executory contract or unexpired lease, other than part of a plan, (footnote continued)

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intention to assume the lease, such decision may not be binding without approval of the court. Furthermore, even if the 60 days has lapsed and the trustee has not acted to assume or reject the lease, you should not assume that it is deemed rejected without first ascertaining whether the court has granted an extension of time during the 60 day period. Finally, if the 60 day period has rph, no assumption or rejection has occurred, and the court has not granted an extension of time, it is prudent to notify the court and the trustee of your intention to make the lands available for leasing before actually doing so even though the lease is deemed rejected.

### III. Discrimination Against Debtors

The Bankruptcy Code prohibits a governmental unit from denying, revoking, or suspending "a license, permit, charter, franchise, or other similar grant to . . . a person that is or has been a debtor under [the Bankruptcy Code] . . . or another person with whom such . . . debtor is associated, solely because such . . . debtor is or has been a debtor under this title . . . or has not paid a debt that is dischargeable . . . ." <sup>12/</sup> The purpose of this provision is to ensure that the debtor is given the "fresh start" to which he or she is entitled under the terms of the bankruptcy discharge. Any policy that would treat bankrupts

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is governed by Rule 9014. If the acceptance or rejection of an unexpired lease is provided for in the reorganization plan, then the approval of the plan by the court would necessarily constitute approval of the rejection or assumption of the lease and a separate proceeding would not be necessary.

Rule 9014 sets forth procedures to be followed relating to contested matters in general, and requires that relief sought under the rule be requested by motion to the court. The motion is required to be served in the manner prescribed for service of a summons or complaint by Rule 7004, which calls for delivery of the complaint to the United States attorney and sending a copy by registered or certified mail to the pertinent agency.

There is no specific provision for notifying the lessor in those situations where the trustee neither accepts or rejects within the 60-day period and the lease terminates by operation of law. If you seek to determine the status of such leases, you should coordinate with the Regional Solicitor.

12/ 11 U.S.C. 525

different simply by virtue of the bankruptcy would violate this provision. Thus, pending lease offers and applications for approval of assignment should be processed in the ordinary course of business. This does not mean, of course, that lease offers by applicants in bankruptcy must automatically be granted if other valid reasons for rejection exist. In the event you become concerned with the status of a particular bankruptcy, you should consult with the appropriate office of the solicitor.

#### IV. Automatic Stay

Upon the filing of a petition under either Chapter 7 or Chapter 11, the automatic stay provisions of 11 U.S.C. 362(a) become effective. The stay prevents the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case; the enforcement of a judgment obtained against the debtor before the commencement of the bankruptcy case; the taking of any other action to collect, assess, or recover a claim against the debtor that arose before the commencement of the [bankruptcy] case; and the setoff of any debt owed to the debtor that arose before the commencement of the [bankruptcy case] against any claim against the debtor. The stay is applicable against all entities, including agencies of the United States government. This provision was implemented to insure that the bankruptcy is an orderly process and to safeguard the assets of the bankrupt estate.

Certain actions are exempt from the automatic stay under section 362(b) of the code, including (4) . . . the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; and (5) . . . the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power. The automatic stay remains in effect until a case is closed, whichever occurs first. The exceptions to the stay have been interpreted narrowly by the courts. Generally, any exercise of a regulatory power to protect a purely pecuniary interest of the United States would be considered a violation of the stay. Exercise of power to protect the public health, safety and welfare would properly come within the exceptions.

## V. Operational Questions and Considerations

In the past, the State Director, Colorado State Office, requested guidance relating to specific operational problems encountered by field personnel in dealing with bankruptcy issues. These issues were thoroughly researched and succinctly addressed in a memorandum from the Regional Solicitor, Rocky Mountain Region. In that the problems are likely to be encountered by other state offices, these questions and the answers provided by the Regional Solicitor, Rocky Mountain Region, in her March 5, 1986 memorandum to the Colorado State Director are set forth in the remainder of this section.

The questions addressed were:

1. Can we require full compliance with applicable regulations and terms and conditions of the various lease, grants, permits, etc., within the normal timeframes?
2. Should we issue Notice of Incidents of Noncompliance under 43 CFR 3160, when applicable?
3. Can we assess damages and/or penalties under 43 CFR 3163.3 and 43 CFR 3163.4?
4. Can we attach a bond to obtain compliance?
5. Can we shut down operations?
6. Can we terminate a lease, grant, or other permit?
7. Is it our responsibility to initiate contact with the bankruptcy court's trustee in resolving noncompliance problems; and, should the trustee be our point of contact in bankrupt cases?

Set out below are the responses of the Regional Solicitor with certain deletions to avoid repetition of our earlier discussion and with the footnotes renumbered.

### A. An Operator in Bankruptcy

An operator of an oil and gas lease that is not also a lessee of the lease gains its rights from being designated by the lessee. 43 C.F.R. 3162.3(a) (1985). For the purposes of this discussion, we will assume that the operator has merely been "designated" under this regulation, rather than having been assigned operating

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rights.<sup>14/</sup> In essence, the operator is the agent of the lessee and has a direct contractual relationship with the lessee, not the United States.<sup>15/</sup> Therefore, there is no executory contract vis-a-vis the BLM.<sup>16/</sup> However, the BLM regulations make the designated operator liable for violations of lease terms, regulations, and NTL's (notices to lessees). If a default has occurred, your enforcement can proceed regardless of whether the default occurred before or after the bankruptcy action was filed.

The automatic stay does not apply "where a governmental unit is suing [or otherwise proceeding against] a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violations of such a law." H.R. No. 95-595, p. 343, reprinted in 1978 U.S. Code & Cong. Admin. News, p. 6299. Therefore, so long as your action is not simply seeking to protect the pecuniary interest of the United States, you may enforce the regulations and issue notices of incidents of noncompliance pursuant to your normal time frames<sup>17/</sup> for infractions that occurred prior to a filing of a bankruptcy.

<sup>14/</sup> Any difference in result if operating rights had been assigned will be addressed in a supplementary opinion.

<sup>15/</sup> At most, the United States is a third-party beneficiary of the contract between the lessee and operator.

<sup>16/</sup> If the operator holds a right-of-way, it would be an executory contract. See part V.B., infra, for differences in the treatment when an executory contract is involved.

<sup>17/</sup> The legislative history shows that the exception to the automatic stay is intended to be narrowly construed to apply to police and regulatory actions, "not . . . to actions by a governmental unit to protect a pecuniary interest in property of the debtor or property of the estate." Statement of Hon. DeConcini, 124 Cong. Rec. S17406 (October 6, 1978); reprinted in 1978 U.S. Code Cong. & Adm. News, p. 6513. It is our belief that the regulations you enforce are not such "pecuniary" interests. However, an action by Minerals Management Service to recover past due royalties might be stayed against the operator.

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Moreover, the automatic stay provisions do not apply to defaults that arise after the filing of the bankruptcy action. Matter of M. Frenville Co., Inc., 744 F.2d 332 (3rd Cir. 1984). Therefore you should continue to enforce the regulations against the operator.

By enforcing the regulations and lease terms against the operator, we mean that remedial action may be sought. Normal time frames may be employed for a correction of both postpetition and prepetition violations of operational requirements.<sup>18/</sup> Additionally, assessments of fines and damage calculations may be made. The operator should be rendered an appealable decision and be made to exhaust its administrative remedies. Actual collection of any money, however, might not be allowed, regardless of whether the default occurred before or after the bankruptcy filing.

The exception from the automatic stay is merely for governmental enforcement proceedings. An injunction (or order to perform) may be enforced and an entry for a monetary judgment may be obtained. 11 U.S.C. § 362(b)(4). Collection of the dollar judgment might not be allowed. The legislative history states the following:

Since the assets of the debtor are in the possession and control of the bankruptcy court, and since they constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors.

Actions against any property of the estate are generally stayed. 11 U.S.C. § 362(a)(3).<sup>19/</sup>

<sup>18/</sup> As was noted above and will be discussed below, if an executory contract is involved, the court may grant extensions of time to correct postpetition defaults. The operator, however, is in a contractual relationship with the lessee, not the United States. Therefore, the court should not be able to alter the operator's regulatory requirements. Moreover, such relief is not automatic but must be requested.

<sup>19/</sup> Two cases have been located where such activities have been allowed since the actions were a part and parcel of the agency's regulatory action. For instance, the Office of Surface Mining was allowed to collect a civil penalty. U.S. v. Energy Intern., Inc., 19 B.R. 1020 (D.C. Ohio 1981). The Securities and Exchange  
(footnote continued)

However, you are not without resources to collect any sums owing or to seek remedial actions if the operator fails to perform such corrections of lease violations. The lessee of record remains liable for lease operations despite the presence of an operator. 43 C.F.R. 3162.3 (1985). Therefore, if you have knowledge that an operator is in bankruptcy and might prove recalcitrant, notify the lessee by copy of any notice, decision, or order you might file on the operator. This would enable the lessee to respond. Additionally, the operator's bankruptcy has no effect on the operator's surety. The operator's bond is thus a source of payment. Moreover, if you comply with the notice provisions of the regulations, lease cancellation or shutdowns may be sought. 43 C.F.R. 3163.2 (1985).<sup>20/</sup>

#### B. When the Lessee is the Debtor

Generally, the remedies available if the lessee is conducting oil and gas operations are the same as when an independent operator is in charge. The automatic stay provisions will not generally prevent your enforcement actions. The exception would be that lease cancellation might not be available. If the lease terms require action to terminate the lease, the stay might apply. Cf. In re Trigg, 630 F.2d 1370 (10th Cir. 1980) (automatic termination for failure to pay rentals not stayed.) The same is

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Commission was allowed to have a receiver appointed as part of injunctive relief. S.E.C. v. First Financial Group of Texas, 645 F.2d 459 (5th Cir. 1981). Other cases, however, refuse to allow collection of a judgment. Although we might in an appropriate situation attempt to push the "penalty" exception noted in the Energy International case, this might only be expeditious if there are no alternative parties to pay or if the violations were particularly egregious - i.e., theft or extreme environmental or safety violations.

<sup>20/</sup> If the operator had a right to earn an interest in the lease by performance of various obligations, a bankruptcy court might view the lease as "property" of the estate and the automatic stay might be applicable. However, you normally do not know the terms of such agreements. A copy of any shut-in or proposed cancellation orders should therefore be filed on the operator as well as the lessee. That would enable you to ascertain whether or not the lease is within the estate.

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true for rights-of-way. See 43 C.F.R. 2883(6) (1985).<sup>21/</sup> Additional considerations, however, exist since the oil and gas lease is an executory contract.

As was stated above, an executory contract may be either accepted or rejected by the debtor. Prior to acceptance, the lease is in a certain state of limbo--especially if the bankruptcy action was filed prior to October 8, 1984. If this is the case and you note defaults in lease operations, you should apprise the Regional Solicitor if no response is made to your orders. Either the Solicitor or the U.S. Attorney can investigate the status of the proceeding.<sup>22/</sup> A motion may be filed with the court seeking to compel the lessee to accept or reject the lease. The benefit of such a move would be that, if acceptance is desired by the debtor, all defaults must either be cured or adequate assurance of prompt cure be given. Adequate assurance of future performance is also necessary. Both prepetition and post-petition defaults need to be addressed by the debtor. Consequences of rejection are discussed below.

If the lessee decides to reject the lease rather than accept it, in essence, a relinquishment occurs and the BLM can file a claim for damages that would relate back to the date of filing of the action. The extent of this claim is questionable. Some case law exists to state that, when a lease is rejected, the condition of the premises is immaterial and no obligation exists to compel the debtor to repair. In re Stable Mews Associates, 41 B.R. 594 (Bkrtcy. N.Y. 1984). However, the Supreme Court recently held

<sup>21/</sup> Emergency suspensions may proceed, however. These are similar to injunctions and are exercises of your regulatory power. See 43 C.F.R. 2883.5 and 43 C.F.R. 3163.2(b) (1983). Please also note that the bankruptcy court may stay actions that are not "automatically stayed" - i.e., terminations for nonrental payments. This would require a court order.

<sup>22/</sup> A lessor is in an awkward position in a bankruptcy proceeding. If no sums are owing on the date the action is filed, the lessor has no "claim" and is not a "creditor." Therefore, notices of activities within the proceeding need not be filed on the U.S. Attorney or the BLM. In re Waipuna Trading Co., Inc., 41 B.R. 812 (Bkrtcy. Hawaii 1984). It appears that notice would only have to be given to the lessor as a "party in interest" if lease acceptance or rejection is being considered. Bankruptcy Rules 3017 and 6006. Matter of Artic Enterprises, Inc. 16 B.R. 153 (Bkrtcy. Minn. 1981).

that a debtor cannot abandon property that is burdensome if such abandonment is contrary to State environmental laws. At issue was a hazardous waste site. Environmental laws of New York and New Jersey required various actions prior to closure. Matter of Quanta Resources Corp., 739 F.2d 912 (3rd Cir. 1984), aff'd, 54 L.W. 4138 (January 27, 1986).

Therefore, we believe that, if a lessee attempts to reject a lease, you should insist that departmental regulations dealing with relinquishments be followed, to wit:

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in the proper BLM office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. 43 C.F.R. 3108.1 (1985) (emphasis added).

A claim for the cost of complying with the underlined provision should be made or the court should be requested to order the same to be completed by the debtor as a condition of rejection.<sup>23/</sup> Any claims for fines or assessments levied during the pendency of the action should also be submitted. Accrued rental and royalties would most likely be normal creditor claims in the bankruptcy proceedings.<sup>24/</sup>

Potentially more relief avenues exist if the bankruptcy action was filed on or after October 8, 1984. Pursuant to the 1984 amendments to the Bankruptcy Code discussed above, acceptance or rejection must occur within a specified time period and lease terms must be complied with in the interim. Hence, you should enforce all regulations, with the caveat that the bankruptcy

<sup>23/</sup> It is noted that in a Chapter 7 liquidation case, the Supreme Court held that an affirmative injunction requiring a party to clean up a polluted site may be discharged in bankruptcy if the State's action is at a point where only a money payment could fulfill the obligation. Ohio v. Kovacs, 469 U.S. \_\_\_\_\_, 83 L. Ed. 2d 649, 105 S. Ct. \_\_\_\_\_ (1985). Therefore, you should seek compliance while the debtor still has ties to the lease and has some operative ability, rather than after we repossess the lease and perform the shutdown ourselves.

<sup>24/</sup> Those that accrued between the date of filing and the date of rejection would have priority in a distribution of assets.

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court could extend the time for performance of orders issued within the first 60 days after the bankruptcy action was filed. Eventual acceptance or rejection will have the same consequences as discussed above.

If a plan of reorganization is thereafter confirmed, all claims existent prior to the date of the confirmation of the plan are discharged. 11 U.S.C. § 1141 (1984). What replaces these claims is the debtor's obligation to comply with the plan. In it, preexisting obligations may be compromised or extended or even forgiven. Therefore, if the plan seeks to accept a lease, then the ability of the lessee to remedy past defaults and assure future performance must be scrutinized. If the lease is rejected, the BLM--like any other creditor--must attempt to receive the best deal possible. However, you should note that, if there is any hope that a debtor can emerge from a bankruptcy as a viable business, the bankruptcy court will tend to favor the debtor over the creditors. After confirmation of the plan, the debtor or a reorganized entity created by the plan must perform future obligations just as any other party would be required to act unless the plan provided otherwise.

#### VI. Corporations in Bankruptcy

Generally, the applicability of the bankruptcy laws in the case where the debtor is a corporation may be influenced by the corporate structure. A corporation is regarded in law as having a personality and existence distinct from that of its several members.<sup>25/</sup> Essentially, the act of incorporation creates an artificial person. That corporate entity is capable of owning stock in other corporations. Since even a wholly-owned subsidiary is considered to be a separate legal entity under the law, the bankruptcy of the parent corporation will not necessarily be imputed to the subsidiary. Although the stock owned by the first corporation will be considered an asset of its bankrupt estate, it does not follow that the property owned exclusively by the subsidiary will be impacted in any way.

A subsidiary corporation should not be confused with a corporate subdivision. A corporation may structurally have numerous operational subdivisions, none of which are incorporated separately. As such, they have no independent legal status and are considered part of the corporation. Accordingly, bankruptcy by the corporation would impact all of the assets and property held by its subdivisions.

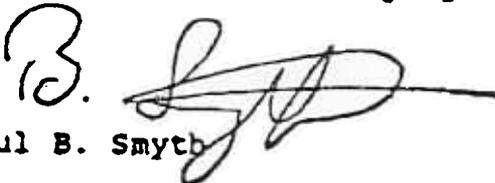
<sup>25/</sup> Blacks Law Dictionary 307 (5th ed. 1979).

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## VII. SUMMARY

Generally, you should not cease your regulatory activities due to a bankruptcy proceeding. Performance should be expected and fines and assessments levied if the same is not forthcoming. You should note, however, that you might not be able to collect money from the debtor and in certain circumstances might not be able to terminate use authorizations. The liabilities of parties other than the one in bankruptcy are not affected.

This memorandum is intended to provide general guidance concerning those areas of bankruptcy that may impact BLM's policies and programs. It is not intended to answer every question that may arise during the course of a specific bankruptcy case. It should be emphasized that many of the general principles outlined in this memorandum may be subject to exception or qualification in specific instances. It is also not unusual to receive various interpretations of the same provision depending upon the court in which the action is filed. We therefore encourage close coordination with the Regional Solicitor when bankruptcy is an issue.

B.   
Paul B. Smyth