

KANAWHA & HOCKING COAL & COKE CO.

IBLA 88-315

Decided January 19, 1990

Appeal from that part of a decision of the Utah State Office, Bureau of Land Management, setting royalty at lease readjustment for coal recovered by underground mining operations on Federal coal lease U-073120.

Set aside and remanded.

1. Coal Leases and Permits: Readjustment--Coal Leases and Permits: Royalties--Mineral Leasing Act: Royalties

Where, in accordance with Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987), the Board has remanded a case to BLM for a determination of the proper royalty to be applied to coal recovered by underground mining operations on a Federal coal lease, and BLM's decision and the accompanying case record fail to disclose a rational basis for BLM's conclusion that conditions do not warrant a royalty rate lower than 8 percent, the decision will be set aside and the case remanded for a new determination and inclusion of BLM's analysis in the record.

2. Administrative Practice--Administrative Procedure: Decisions

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision.

APPEARANCES: John S. Kirkham, Esq., Salt Lake City, Utah, for Kanawha & Hocking Coal & Coke Company; Brian E. McGee, Esq., Denver, Colorado, for Coastal States Energy Company and Getty Minerals Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On November 3, 1987, the Board issued an order in Kanawha & Hocking Coal & Coke Co., IBLA 86-8, setting aside that part of the August 27, 1987, coal lease readjustment decision of the Utah State Office, Bureau of Land Management (BLM), establishing a royalty of 8 percent for coal recovered by

underground mining operations on Federal coal lease U-073120 and remanding the case to BLM with instructions to determine whether conditions warranted a royalty rate of less than 8 percent, but not less than 5 percent. 1/ On February 17, 1988, BLM issued a decision in which it readjusted the lease terms and conditions effective May 1, 1984; clarified a lease stipulation concerning cultural and paleontological resources; and declined to reduce the royalty below 8 percent. Kanawha & Hocking Coal & Coke Company (K&H) filed a timely appeal, on its own behalf and on behalf of its sublessees, Coastal States Energy Company and Getty Mineral Resources Company, seeking review only of the royalty issue. 2/

The BLM decision stated in relevant part:

[I]n accordance with the IBLA order of November 3, 1987, a review has been made to determine whether conditions would warrant a royalty rate of less than 8 percent, but not less than 5 percent, and the review concluded that the existing conditions do not warrant lowering the royalty rate below 8 percent.

There was no explanation of that review in the decision, and the only evidence of a "review" in the case file is a memorandum dated January 8, 1988, from the Moab District Manager to the Utah State Director, the complete text of which states:

This office has reviewed, by your request of December 16, 1987, the readjustment of the 8 percent royalty rate on Federal coal lease U-073120.

The geologic conditions present are not significantly more adverse than those of other leases in the area, and, therefore, it has been determined that the existing conditions do not warrant the lowering of the royalty rate below 8 percent.

On appeal, K&H asserts that the BLM decision does not comply with the Board's remand order because that order contemplated that K&H would have the opportunity to furnish evidence in support of a royalty of less than 8 percent prior to BLM making a determination on that issue. K&H contends that it should be allowed to present to BLM lease-specific factors, including geologic, engineering, geographic, and climatic limitations, which would warrant a royalty rate of less than 8 percent. 3/ K&H

---

1/ On Dec. 2, 1987, Kanawha & Hocking Coal & Coke Company filed a petition for reconsideration and a request that the Board stay the effectiveness of its Nov. 3, 1987, order, pending resolution of the petition for reconsideration. By order dated Jan. 19, 1988, the Board denied both requests.

2/ We note that the BLM decision failed to include an appeals paragraph notifying the recipient of the decision of its right to appeal that decision to this Board within the time established by regulation. See 43 CFR 4.410(a); 43 CFR 4.411(a). Despite that error, K&H filed a timely appeal.

3/ With its statement of reasons (SOR), K&H has submitted the affidavit of Douglas Johnson, General Production Superintendent for Utah Fuel Company, a

states that it had no such opportunity, and it requests that it be granted one. <sup>4/</sup> K&H also contends that the decision must be overturned because there is absolutely no support in the record for the action taken by BLM. BLM has filed no answer in the present case.

[1] The pertinent regulation, 43 CFR 3473.3-2(a)(3), calls for a royalty rate at readjustment of not less than 8 percent for coal removed from an underground mine "except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." In our order dated November 3, 1987, we remanded the case "in order that BLM may undertake the necessary review and determine whether conditions warrant a royalty rate of less than 8 percent, but not less than 5 percent." The conclusion to remand was based on the court's decision in Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987). Therein, the court held that it was error for the Department automatically to fix the readjusted royalty at 8 percent for all coal recovered from underground mining operations because to do so ignored the proviso in the regulation that a lesser amount could be set "if conditions warrant." <sup>5/</sup>

In this case, there was apparently a unilateral determination by BLM that conditions did not warrant a royalty rate lower than 8 percent; however, the record does not contain a summary document setting forth the factual data upon which BLM relied to reach its conclusion or an analysis of such data. The determination of whether conditions warrant a royalty less than 8 percent in a specific instance must be based on the facts and circumstances of the particular lease. Certainly, the one most familiar with the circumstances surrounding the lease is the lessee. Although the Board did not specifically direct in the remand that BLM should consult with K&H before making its determination, we envisioned that BLM would

---

fn. 3 (continued)

wholly owned subsidiary of Coastal States Energy Company (SOR, Exh. D). Johnson asserts that high operational costs are required to extract coal from U-073120 because of complex geology, difficulty of access, difficulty of winter operations, and the necessity for a high degree of coordination and planning. He states further that the Skyline Mines, including Skyline Mine No. 3, whose portals are on U-073120, produce far less coal than their design capacity due to the above factors.

<sup>4/</sup> In our previous order, we indicated that based on the record at that time there was some uncertainty whether underground coal mining operations were being conducted on the lease. In its SOR at page 22, K&H states that "U-073120 is included in a current underground mining permit, and underground operations are presently being conducted."

<sup>5/</sup> The court's decision reversed our holding in Coastal States Energy Co., 70 IBLA 386 (1983), that BLM had properly set the royalty rate at 8 percent. It remanded the case to the Board, and, in an order dated May 23, 1988, we remanded the case to BLM to determine whether conditions warranted a royalty rate of less than 8 percent, stating "BLM should allow Coastal States and intervenors the opportunity to present such evidence as they deem appropriate" (SOR, Exh. K).

provide K&H an opportunity to submit information in support of a reduction. <sup>6/</sup> From the record before us, we must conclude that BLM's determination was based entirely on the conclusory memorandum from the District Manager. Such a memorandum is insufficient to support BLM's conclusion. See Wayne D. Klump, 104 IBLA 164, 166 (1988); Soderberg Rawhide Ranch, 63 IBLA 260, 262 (1982).

[2] It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision. Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). The recipient of a BLM decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Southern Union Exploration Co., 51 IBLA 89 (1980). In this case, the decision and case record disclose only BLM's conclusory determination that conditions do not warrant a royalty rate lower than 8 percent. They fail to reveal any reasoned analysis which may be disputed by K&H and reviewed by this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that part of the decision appealed from is set aside and the case file is remanded to BLM for a new determination of whether conditions warrant a royalty rate of less than 8 percent, but not less than 5 percent. In making its determination, BLM shall consider the information submitted by K&H on appeal. In addition, K&H shall have 30 days from receipt of this decision to file with BLM any further information it considers pertinent to BLM's review. Thereafter, BLM shall render a new decision setting forth with particularity the rationale for its determination.

---

Bruce R. Harris  
Administrative Judge

I concur:

---

R. W. Mullen  
Administrative Judge

---

<sup>6/</sup> In another case involving the question of the proper royalty to apply at lease readjustment for coal removed from an underground mine, the Board remanded the case to BLM to determine whether conditions warranted a royalty rate of less than 8 percent, but not less than 5 percent, stating that "BLM may determine the royalty rate based on the evidence now before it and such additional evidence as appellant may submit to BLM in support of its request." Utah Power & Light Co., 80 IBLA 180, 183 (1984).