

EVANS COAL CO.

IBLA 94-247

Decided December 7, 1995

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, terminating the McCurtin Mine logical mining unit. OKBLM 022012 et al.

Reversed.

1. Coal Leases and Permits: Termination

A BLM decision is reversed because it terminated a logical mining unit composed of four Federal coal leases without first affording the Federal lessee concerned a 30-day notice of termination, contrary to provision of the LMU.

APPEARANCES: Edward F. Simmons, Esq., and Robert W. Cole, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Evans Coal Company (Evans) has appealed from a November 17, 1993, decision by the New Mexico State Office, Bureau of Land Management (BLM), that terminated the McCurtain Mine logical mining unit (LMU) covering Federal coal leases OKBLM 022012, OKBLM 028799, OKBLM 032224, and OKBLM 017564 because Evans had failed to submit a revised resource recovery and protection plan (R2P2). On January 27, 1994, the effect of the BLM decision was stayed pending a decision on the merits.

On December 13, 1990, BLM approved the LMU here at issue; as approved, the LMU, at stipulation A, provided that Evans would submit a revised R2P2 containing "all information required by 43 CFR 3482" not later than May 8, 1993 (see LMU Decision at 2). Evans did not submit the required revision within the time allowed by stipulation A, and on November 17, 1993, without prior notice, BLM terminated the LMU effective May 8, 1993, for failure to timely submit the revised R2P2. As a consequence, BLM determined that each of the four leases subject to the LMU would be developed separately. Evans appealed.

On appeal to this Board, Evans contends that BLM failed, prior to termination of the LMU, to give 30-days notice as required by stipulation F of the LMU. Concerning this issue Evans also argues that, in 1983 when ARMCO (Evans' predecessor-in-interest) was late in providing an R2P2 for the same leases, BLM allowed ARMCO a 90-day notice period for curative action

to take place, thereby establishing a pattern of agency conduct concerning planning proposals that should equally be applied to the situation in which Evans now finds itself. On January 21, 1994, as a supplement to a statement of reasons filed on appeal, Evans submitted an R2P2 for operations by Evans at the McCurtain LMU.

Evans defends the delay taken to prepare a revised R2P2 by citing bankruptcy proceedings affecting the LMU, concluding that the automatic stay provided by 11 U.S.C. § 362 (1994) in such cases should apply in this case to suspend the requirement to submit an amended R2P2. It is further alleged that action to implement the LMU was suspended under 30 U.S.C. § 209 (1988), while BLM, Evans, and the bankruptcy trustee negotiated a settlement agreement establishing the degree of interest held by the petitioner in bankruptcy in the leases comprising the LMU. Evans also avers that termination of the LMU is contrary to public policy and the interests of the Federal lessor in this case; Evans states that retention of records by the bankruptcy trustee made timely submission of a revised R2P2 impossible, and that, in any event, an R2P2 previously furnished by ARMCO provided protection for the resource and the Federal lessor. BLM has not responded to these arguments.

Stipulation F of the LMU provides that "[f]ailure by the operator/ lessee to comply with these stipulations * * * will subject this LMU to administrative termination." The BLM decision terminating the LMU cited 43 CFR 3487.1(h)(3), which requires operators and lessees to comply with LMU stipulations, as the authority for the action taken. BLM thereby effectively terminated the LMU because Evans did not meet the deadline for R2P2 revision set by stipulation A. Nonetheless, the second sentence of stipulation F conditions the authority of BLM to terminate the lease by providing that, prior to administrative termination, "[t]he operator/lessee would be afforded 30 days to submit justification and evidence and to why the McCurtain Mine LMU should not be terminated" (LMU Decision at 3).

[1] Under stipulation F of the LMU decision, therefore, Evans was entitled to 30-days notice that BLM intended to terminate the LMU for failure to fill a revised R2P2. Since the required notice was not given, Evans was not allowed to present to BLM the contentions made here on appeal that impediments to R2P2 revision were created by bankruptcy proceedings involving the leases comprising the LMU. Regardless whether those arguments would ultimately have been sufficient to warrant a suspension of the timetable imposed by stipulation A, it is clear that the required 30-day notice was not given, Evans was not afforded the opportunity to explain why a revised R2P2 had not been filed, and the LMU was not properly terminated in accordance with stipulation F.

In an analogous case involving cancellation of a geothermal lease, we found in George M. Wilkinson, 124 IBLA 171, 175 (1992), that denial of a 30-day notice required before cancellation could be ordered was properly corrected by allowing the lessee 30 days following receipt of our decision reversing lease cancellation in which to comply with diligent exploration requirements that were there at issue. Since it is clear BLM did not give

Evans the 30-day notice required prior to termination in this case, a similar action allowing Evans 30 days to submit a revised R2P2 would be appropriate here, were it not for the fact that Evans submitted a revised R2P2 to this Board during the pendency of this appeal. Since we do not customarily issue decisions before BLM has had an opportunity to take action in the first instance, we have not reviewed the submitted R2P2 to determine whether it complies with 43 CFR 3482 (enumerating data required to be included in an R2P2) so as to be in conformity with stipulation A of the LMU decision; nonetheless, when the record is returned to BLM, the R2P2 can be evaluated by BLM and, if appropriate, further action required for administration of the LMU can then be taken. If it should be determined that more data is required, Evans will then be entitled to 30 days to supply that data under stipulation F of the LMU.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision terminating the McCurtain LMU is reversed.

Franklin D. Arness
Administrative Judge

I concur.

James L. Burski
Administrative Judge

