

MELVIN E. LESLIE

IBLA 2001-35

Decided March 17, 2004

Appeal from a decision of the Utah State Office, Bureau of Land Management, readjusting a phosphate lease. UTU-026255.

Reversed.

1. Mineral Leasing Act: Rentals--Mineral Leasing Act: Royalties--Phosphate Leases and Permits: Leases

Departmental regulation 43 CFR 3511.25 provides that BLM will “notify” lessees of solid minerals other than coal or oil shale of proposed readjusted lease terms before the end of each 20-year period of the lease, and further provides: “If we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions.” Where a lessee received the terms of a phosphate lease readjustment 5 days after the 20-year term of the lease had expired, BLM failed to “timely notify” the lessee of the readjusted terms, and the lease is properly administered for another 20-year period under the same terms and conditions, even though BLM transmitted the terms of the readjustment prior to the end of the lease term.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Melvin E. Leslie has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated September 26, 2000, denying his objections to its June 28, 2000, notice that his phosphate lease, UTU-026255, would be readjusted effective July 1, 2000. Leslie was assigned the lease on December 17, 1973, by Yuba

Industries, Inc.^{1/} The lease was originally issued to John H. Morgan, Jr., on July 1, 1960, with a right of readjustment reserved to the United States at 20-year intervals (Lease, Sec. 3 ¶ (d)), pursuant to pertinent provisions of the Mineral Leasing Act of 1920, as amended, currently codified at 30 U.S.C. §§ 211-214 (2000). BLM waived the 1980 readjustment pursuant to 43 CFR 3511.4(a).^{2/} (Letter dated April 28, 1987, from Robert Lopez, BLM, to Leslie.)

The lease terms require rental payments of \$1.00 per acre to be credited against minimum royalties paid during the same year, also assessed at \$1.00 per acre. (Lease, Sec. 2 ¶¶ (c) and (d).) The original lease encompassed 1,806.88 acres, but a modification effective May 1, 1968, added 400 acres, which increased the total area of the lease to 2,206.88 acres. Thus, Leslie has paid approximately \$2,207 annually to continue to hold the lease.

On October 22, 1998, BLM issued a letter to Leslie in which it notified him that “in accordance with 43 CFR 3511.4(a) (1998), the terms and conditions of phosphate leases are subject to readjustment at the end of every 20-year period,” and it identified the leases subject to readjustment and the dates the current lease terms would expire, including lease UTU-026255. Leslie received that letter on October 23, 1998.

On June 28, 2000, BLM sent a copy of the lease readjustment terms to Leslie, and by decision letter under the same date, notified him that, under the readjusted terms, Leslie’s minimum annual payment to hold the lease would increase to \$6,621,^{3/} and the amount of bond required would be increased from \$5,000 to

^{1/} That assignment was approved by BLM effective Apr. 1, 1975.

^{2/} Former Departmental regulation 43 CFR 3511.4(a) (1998) provided, in pertinent part: “Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.” That regulation was enacted on Apr. 22, 1986, and remained in effect through Nov. 1, 1999. See 51 FR 15222 (Apr. 22, 1986); 64 FR 53512 (Oct. 1, 1999), emphasis supplied.

^{3/} The lease readjustment requires Leslie to either “produce on an annual basis a minimum equivalent amount of 12 tons of phosphate per acre or fraction thereof or pay annually in advance a minimum royalty of \$3.00 per acre * * *.” (Serial No. UTU-026255, Phosphate Lease Readjustment, Part II, Terms and Conditions, Sec. 2 ¶ (b), attached to BLM decision dated June 28, 2000.) This amount, rounded up to the nearest dollar, equals \$6,621.

\$7,000.^{4/} The June 28 letter granted Leslie 60 days within which to “file objections to the terms and conditions or relinquish the lease.” A certified mail receipt attached to BLM’s file copy of that decision indicates that Leslie received that decision on July 5, 2000.

On September 1, 2000, Leslie filed an objection to the readjustment on the ground that BLM had failed to timely notify him of the readjusted terms pursuant to the requirements of 43 CFR 3511.25(a). That regulation provides, in pertinent part:

Sec. 3511.25 What is meant by lease readjustment * * * ?

(a) If your lease is issued subject to readjustment, BLM will notify you of the readjusted terms before the end of each 20-year period. If we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions.
[Emphasis supplied.]

Leslie stated that he had not received notice of the readjusted terms until July 5, 2000, and argued that BLM had therefore failed to notify him of the readjusted terms prior to the end of the 20-year term of the lease, as required by 43 CFR 3511.25.

In the September 26, 2000, decision responding to Leslie’s objections, the subject of this appeal, BLM rejected Leslie’s argument, providing the following explanation:

BLM transmitted Mr. Leslie’s proposed readjusted terms and conditions on June 28, 2000, which is within the two-year period as required under 43 CFR 3511.25. In Coastal States Energy Company, 85 IBLA 510, 1986, IBLA stated that “the Board has consistently ruled that where BLM transmits a notice of intent to readjust a coal lease for the lessee prior to the 20-year lease anniversary date, the notice satisfies the statutory requirement for timely readjustment and BLM may, within the time provided, subsequently provide the specific terms and conditions for readjustment. The Department’s practice of sending a notice prior to the end of the anniversary period, and the proposed lease terms within 2 years thereafter, with an opportunity for the coal lessee to object to the terms, comports with the Mineral Leasing Act and Department

^{4/} The lease readjustment forwarded with the June 28, 2000, decision permits an acceptable statewide or nationwide bond in lieu of the \$7,000 bond amount. (Part II, Terms and Conditions Sec. 4.)

regulations.” ^{5/} Accordingly, the readjustment is considered to have been transmitted timely.

(BLM September 26, 2000, decision at 2; emphasis in original.)

In his Statement of Reasons on appeal (SOR), Leslie maintains that 43 CFR 3511.25 contains nothing suggesting that BLM is permitted a two-year period within which to transmit readjusted lease terms. (SOR at 3.) Leslie argues that BLM has erroneously applied regulations pertaining to coal lease readjustment, particularly 43 CFR 3451.1, to his phosphate lease. (SOR at 4.) He contends that BLM failed to timely notify him of the terms of the lease readjustment, as he received the readjusted lease terms on July 5, 2000, five days after the current lease term expired. (SOR at 5.)

[1] Pursuant to section 10 of the Mineral Leasing Act, as amended, 30 U.S.C. § 212 (2000), phosphate leases

shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable readjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. [Emphasis supplied.]

In 1998, the regulations provided, in pertinent part:

Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived * * * . [Emphasis supplied.]

Thus, under 43 CFR 3511.4(a) (1998), BLM was only required to transmit proposed readjusted terms before the end of the lease term. However, 43 CFR 3511.4(a) (1998) is no longer in effect.

^{5/} The correct citation for this quotation is Coastal States Energy Co., 94 IBLA 352, 354 (1986).

Effective November 1, 1999, the regulations in 43 CFR Group 3500 were amended. See 64 FR 53512-56 (October 1, 1999). BLM issued its Final Rule amending regulations governing the leasing of solid minerals other than coal and oil shale in response to President Clinton's "government-wide regulatory reform initiative to * * * streamline and rewrite necessary regulations in plain English," and to "clarif[y] the responsibility of interested parties." 64 FR at 53512. Regulation 43 CFR 3511.25(a) eliminated all references to "transmitting" proposed lease readjustment prior to expiration of the 20-year period, and instead stated that BLM would notify lessees of the readjusted terms prior to expiration of the 20-year period. The current regulation, which is virtually identical to the explanation in the preamble to the final rule, now provides: "If your lease is issued subject to readjustment, BLM will notify you of the readjusted terms before the end of each 20-year period." It further provides that "[i]f we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions." 43 CFR 3511.25(a), emphasis supplied.

The "plain English" could not be more definitive, as the emphasized regulatory language shows: the Department must not only transmit, it must actually notify the lessee of the proposed new lease terms or conditions, and it must do so before the current lease term expires. "Transmission" of a document prior to the end of a lease term does not constitute receipt of proper notice by the lessee prior to the end of the lease term. To the contrary, the regulation requires BLM to ensure that the lessee receives notice of the readjusted terms and conditions prior to the end of the 20-year period, failing in which 43 CFR 3511.25(a) prohibits BLM from readjusting the lease terms for the ensuing 20-year period. In this case, the record indicates that Leslie did not receive notice of the readjusted terms of the lease until July 5, 2000, after the 20-year lease term ending June 30, 2000, had expired. Accordingly, BLM did not properly "notify" appellant of the readjusted lease terms pursuant to 43 CFR 3511.25(a), and therefore may not readjust the terms for the 20-year period that began on July 1, 2000.

In passing, we note that the rationale for BLM's September 26, 2000, decision is erroneously premised upon 43 CFR 3451.1(c), which pertains to coal lease readjustments.^{6/} The provisions in 43 CFR 3451.1(c)(1) provide that, prior to expiration of the current lease term, BLM will notify the coal lessee that it intends to readjust the lease terms. 43 CFR 3451.1(c)(2) provides:

In any notification that a lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the

^{6/} 43 CFR Group 3400 pertains to coal management. See Table of Contents, 43 CFR Subtitle B, Chapter II, Subchapter B, Group 3400, entitled "Coal Management."

readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as soon as possible after the notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

“Transmit,” as used in 43 CFR 3451.1(c)(2), means “to send.” Kanawha & Hocking Coal & Coke Co., 93 IBLA 179, 181 (1986). In that case, the Board held that BLM had not waived its right to readjust a coal lease where it forwarded the terms to the lessee within 2 years of the date it notified the lessee that it intended to readjust the terms, but the lessee did not receive the terms until after the two-year period had expired.

However, as appellant has pointed out, his lease is not a coal lease; it is a phosphate lease. Departmental regulations found at 43 CFR Group 3500 pertain to the management of solid minerals other than coal and oil shale.^{2/} The language in 43 CFR 3451.1(c)(2) therefore does not govern appellant’s lease.

Accordingly, 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 reversed.

T. Britt Price
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

^{2/} In its letter to Leslie dated October 22, 1998, BLM conceded that, at that time, the provisions of 43 CFR 3511.4(a) governed Leslie’s lease. BLM’s June 28, 2000, decision conceded that the provisions of 43 CFR 3511.25 apply.