

PEABODY COAL COMPANY

IBLA 70-207

Decided February 4, 1972

Appeal from decision (W-14929) by Chief, Branch of Mineral Appeals, Bureau of Land Management, rejecting application to modify coal lease.

Affirmed.

Coal Leases and Permits: Leases

Where the lessee applies pursuant to section 3 of the Mineral Leasing Act to modify his lease to include more than 2,560 acres, rejection of the application is required because section 3 imposes a 2,560 acre limitation on the size of a modified lease; the acreage limitation is not repealed by removal of a similar limitation in section 2 of the Act by the amendatory Act of August 31, 1964.

Statutory Construction: Implied Repeals

Repeal by implication is not favored and will not be considered unless there is an irreconcilable conflict between an earlier and a later statute.

APPEARANCES: Joseph M. Touhill for appellant.

OPINION BY MR. RITVO

This is an appeal by Peabody Coal Company from a decision by the Chief, Branch of Mineral Appeals, Bureau of Land Management, dated June 5, 1970, which affirmed a Wyoming land office decision of February 19, 1970. The land office dismissed Peabody's protest against its proposed action to offer the lands covered by Peabody's application for coal lease W-14929 by competitive leasing and denied Peabody's request to modify its existing lease W-0321799 to include the contiguous coal deposits in application W-14929.

The issue in this matter is the interpretation of section 3 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 203 (1970). That section allows a lessee to modify his original lease to include

additional coal deposits contiguous to those embraced in the lease, but limits the total area embraced in such lease to 2,560 acres. Lease W-0321799 contains 11,141.39 acres.

The Act of August 31, 1964, amended sections 2 and 27 of the Mineral Leasing Act, 30 U.S.C. §§ 201, 184 (1970), to remove any limitation on the acreage that may be included in one competitive leasing tract. 43 CFR 3501.1-4(b). The appellant contends that these sections repealed section 3 of the Act by implication, because a lessee who already had a coal lease would be in the position of having to reduce his original lease to 2,560 acres if he applied to modify his lease. Therefore, it contends it should be allowed to modify its present lease and not be limited to 2,560 acres.

As stated in the Bureau of Land Management decision, this question has been decided in Colowyo Coal Company, 76 I.D. 112 (1969). Colowyo held:

We believe that this interpretation of the 1964 act cannot be justified. That act amended only section 2 of the Mineral Leasing Act, not sections 3, 4, or 5. That Congress had only section 2 in mind is evidenced by the references in both the Senate and House committee reports to the fact that the amendment would lift the 2,560-acre limitation on competitive leases. That is the manner of leasing provided for in section 2 although, by reference, it is also the manner of leasing additional lands provided by section 4. Clearly, it is not the method of leasing provided for by section 3 or section 5. A section 3 modification is effected noncompetitively and, of course, a consolidation of leases under section 5 involves no element of competition.

. . . .

Nonetheless, even if it were more clear that the House and Senate committees thought that they were removing the 2,560-acre limitation from all coal leases, and intended to do so, the fact is that they did not amend sections 3, 4, or 5 but left those sections intact. That being the case, this Department cannot ignore the statutory language of those sections and read the acreage limitation out of them. If there was an

absolute inconsistency between these sections and section 2, as amended, if the amendment of section 2 would be completely defeated unless the acreage limitations in those sections were disregarded, a different conclusion might be justifiable. But there is no such irreconcilable conflict between section 2 and the other sections.

We must conclude therefore that section 3 remains intact and that any change in it is to be accomplished by the legislative process and not by unsound administrative fiat. . . . (footnote omitted). 76 I.D. at 116, 117.

The appellant discussed at length the rules for determining whether there has been a repeal by implication. Its discussion is based upon the contention that there is an irreconcilable conflict between sections 2 and 27, as amended, and section 3. However, as the Solicitor pointed out, there is in fact no such conflict; and the sections can each be given effect as they read. 1/

We find therefore that the holding in Colowyo, supra, is correct and that the acreage limitation in section 3 has not been repealed or amended by implication.

1/ The rule is discussed in 1 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 1922, 1913 (3rd ed. F. Horack Jr. 1943).

Section 1922 reads in part:

"Repeal by implication occurs when an act not purporting to repeal any prior act is wholly or partially inconsistent with a prior statute or covers the subject of a prior act or section and is a substitute act. On the basis that the latest declaration of the legislature prevails, the inconsistent provisions of the prior statute, or the whole prior statute if the latter act is intended as a substitute, are treated as repealed. . . . Repeal by implication when only a part of the prior statute is repealed is identical with amendment by implication."

Section 1913 states:

"An implied amendment is an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act. To be effective, an amendment of a prior act ordinarily must be express. Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. The legislature will not be held to have changed a law it did not have under consideration while enacting a later law, unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together." (footnotes omitted.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo, Member

We concur:

Newton Frishberg, Chairman

Edward W. Stuebing, Member

