

THE KEMMERER COAL COMPANY

IBLA 71-6

Decided April 14, 1972

Appeal from decision (Wyoming 055246) by Wyoming land office, rejecting application for modification of coal lease.

Affirmed.

Words and Phrases

The word "contiguous," used in relation to the public land laws, means directly abutting or adjoining. Lands which merely corner each other, or which do not touch at any point, are not "contiguous."

Coal Leases and Permits: Leases

Under 30 U.S.C. § 203 (1970) an application for a modification of a coal lease which includes non-contiguous lands cannot be approved for such lands.

Statutory Construction: Generally

A statute, Act of February 25, 1920, c. 85, 41 Stat. 439, 30 U.S.C. § 203 (1970) which requires that lands included in an application for modification be contiguous to the original lease, must be followed, despite assertions that considerations of public interest indicate otherwise.

APPEARANCES: C. E. Sorenson, President, the Kemmerer Coal Company, for the appellant.

OPINION BY MR. FISHMAN

The Kemmerer Coal Company has appealed from a decision of the Wyoming land office, dated July 16, 1970, which rejected its application to modify coal lease Wyoming 055246, containing 2400.63 acres, to include an approximately additional 164.81 acres. 1/

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1/ Described as Tract 98, T. 21 N., R. 116 W., 6th P.M. and embracing virtually all of the SE 1/4 sec. 17.

The land office decision recited that "\* \* \* since the land (164.81 acres) is not contiguous to its lease Wyoming 055246, the application for modification is hereby rejected. A report from the Geological Survey states that the land is available for competitive leasing."

The appellant stated in its application for modification that "[w]hile 98, in Section 17, and Lease W-055246 are not contiguous, they would both become part of one mining operation."

In its appeal the appellant asserts as follows:

1. Tract 98 is surrounded by private or State lands and such lands adjoin lands of the appellant which are to the south and west of Tract 98, and upon which the company has an operating unit and is equipped to mine the coals on Tract 98 in conjunction with its present operation.
2. The modification of the coal lease to include Tract 98 would comply with the provisions of Section 54(a), of the operating regulations embodied in the third printing (1968).
3. The coal in Tract 98 has a high moisture content, low B.T.U. and cannot be marketed at any great distance from a mine and is not competitive with coal from surrounding areas.
4. Appellant has a present market for its coal and has an open pit mine that is available for operation on lands adjoining Tract 98 to the south, and this open pit could be easily expanded to include said Tract 98.
5. The best estimate of the appellant from projection of information on its lands adjoining Tract 98 is that there is approximately 845,000 tons of recoverable coal on Tract 98. Such an amount of coal would not be sufficient to make this an independent economic operation nor would such an amount of coal stimulate a competitive interest in said property. If the appellant were to mine said coal in conjunction with its own operation on adjoining lands, it is estimated that the coal that might then be recovered from said Tract 98 would amount to approximately 1,800,000 tons, which would more than double the amount of recoverable coal if operated as an independent mining unit and such a joint operation would be of benefit both to the United States and to the appellant from revenues derived therefrom.
6. That if the application of the appellant to include Tract 98 of coal lease Wyoming 055246 were granted, such modification

would be in compliance with 43 CFR 3131.1, 2/ 3132.1-2, 3/ and 3132.4-1 (1970).  
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We proceed to consider the basis of the rejection of the application, i.e., that the lands applied for are not contiguous to the existing lease.

The applicable law, the Mineral Leasing Act of February 25, 1920, § 3, 30 U.S.C. § 203 (1970), provides:

Any person, association, or corporation holding a lease of coal deposits under this chapter may, with the approval of the Secretary of the Interior, upon a finding by him that it will be for the advantage of the lessee and the United States, secure modifications of his or its original lease by including additional coal lands or coal deposits contiguous to those embraced in such lease, but in no event shall the total area embraced in such modified lease exceed in the aggregate two thousand five hundred and sixty acres. [Emphasis supplied.]

The implementing regulation, 43 CFR 3524.2-1(a) 5/ (1972), provides:

(a) Under section 3 of the Act -- (1) Application. Under section 3 of the Act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification.

(2) Availability--(i) Noncompetitive. Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(ii) Competitive. If however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in subpart 3520. [Emphasis supplied.]

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2/ Relating to acreage limitations, now 43 CFR 3501.1-4 (1972).

3/ Relating to leasing of additional coal deposits, now 43 CFR 3524.2-1 (1972).

4/ Relating to offers for coal leasing by competitive bidding, now 43 CFR 3521.2-2 (1970).

5/ Formerly 43 CFR 3131.1-2(a) (1970).

As indicated above, the appellant asserts that it has an open pit on the land immediately to the south of Tract 98. But this assertion, together with other assertions of the appellant, does not vitiate the fact that Tract 98 is approximately 1 1/4 miles from the existing coal lease.

In Mrs. M. H. Wildermuth, A-27409 (January 30, 1947), the Department stated:

"[T]he word [contiguous] . . . used in relation to public land laws . . . means directly 'adjoining' or 'abutting.' Thus, it has been held repeatedly by the Department that lands which merely corner each other are not contiguous. Hugh Miller, 5 L.D. 683 (1887); Svang v. Tofley, 6 L.D. 621 (1888); Henry Petz et al., 62 I.D. 33 (1955); cf. Ehle v. Tenny Trading Co., 107 P. 2d 210, 212 (Arizona 1947). Obviously, if lands which merely touch at one point are not contiguous, lands which do not touch at all cannot be said to be contiguous." See Malcolm McSwain, A-26593 (February 4, 1953); Lawrence D. Keeler, A-26212 (December 19, 1951); Ruth Cynthia Kress, A-25349 (August 6, 1948); Hales and Symons, 51 L.D. 123, 125 (1925). Cf. Coddington v. Northern Pacific Railway Co. et al., 45 L.D. 94 (1915). 6/

Appellant's assertion that it is operating a mine on land adjacent to the lands applied for and can probably benefit the coal deposits on a more economic basis do not vitiate the fact that its application does not meet the statutory and regulatory criterion of being "contiguous" to the lands in the base lease. Although the appellant contends that it can recover 1,800,000 tons of coal as against 845,000 tons for any other developer, this assertion is not buttressed by any facts which would afford a basis for an informed judgment of its merits.

Appellant also suggests that the lands applied for do not constitute an independent economic viable unit. It is to be noted, however, that the Geological Survey recommended competitive leasing of the tract. Although the appellant urges that its application is in accordance with the operating regulations, we find no support in such regulations for a modification of a coal lease, under 30 U.S.C. § 203 (1970), to include a non-contiguous tract.

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6/ The appellant implicitly is suggesting that the term 'contiguous' be construed as synonymous with "in a reasonably compact body" which may permit lands to be taken in the same township. See Helen F. Curns, 50 L.D. 353 (1924); William J. O'Haire, 50 L.D. 262 (1924). These are discrete terms. Even cornering lands are not regarded as contiguous. Charles F. McCuskey et al., A-27247 (January 20, 1956); George W. Altfillisch, Montana 013459 (S.D.) (August 23, 1957). Even lands separated by only 30 feet have been deemed not to be contiguous. Leonard and Geneva Pritikin et al., Arizona 019518 (February 12, 1960).

In any event, it is crystal clear that a coal lease may not be modified to include additional lands where approval or the application therefor would violate a statutory requirement. Peabody Coal Company, 4 IBLA 303 (February 4, 1972); Colowyo Coal Company, 76 I.D. 112 (1969).

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

Frederick Fishman, Member

We concur:

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Douglas E. Henriques, Member

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Martin Ritvo, Member

