

GULF OIL CORPORATION

IBLA 77-282

Decided August 29, 1977

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting application to modify an existing coal lease, Wyoming 0220516.

Affirmed.

1. Applications and Entries: Filing--Coal Leases and Permits:  
Applications--Coal Leases and Permits: Leases

An application for modification of an existing coal lease to include an additional 361.52 acres is properly rejected under section 3 of the Mineral Leasing Act, since it seeks to add more than the 160-acre maximum allowed thereunder, notwithstanding the fact that the application was filed prior to the enactment of this acreage limitation.

2. Applications and Entries: Filing--Applications and Entries: Vested Rights--Coal Leases and Permits: Applications--Coal Leases and Permits: Leases--Constitutional Law: Due Process

The filing of an application for modification of an existing coal lease is a hope or expectancy rather than a vested property right, and, as such, does not fall within a "valid existing rights" exception and is not protected by the Fifth Amendment.

APPEARANCES: Donald E. Willson, Esq., Gulf Oil Corp., Denver, Colorado.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gulf Oil Corporation appeals from decision, dated March 9, 1977, wherein the Wyoming State Office, Bureau of Land Management, rejected its application to modify Federal coal lease Wyoming 0220516 by the addition of 361.52 acres.

On February 24, 1976, Gulf filed application to modify its existing lease of 1,571.13 acres by the addition of a tract of 361.52 acres to eliminate a corridor 1/4- to 1/2-mile in width between the two tracts under lease, and to create a more workable, logical mining unit and allow a more timely, orderly, efficient, economical and conservation-wise development of the Federal coal resources.

The Geological Survey had reported that the 361.52-acre tract applied for does not form a logical unit and could be mined only in connection with the existing lease held by Gulf, and that it would be to the advantage of the United States and of the lessee, both, for the tract to be added to lease Wyoming 0220516, but since the Federal Coal Leasing Amendments Act of 1975 (FCLAA) limits the modification of a lease to a maximum of 160 acres, Survey recommended the application of Gulf be rejected and the tract offered at a competitive lease sale.

Thereafter, BLM issued its decision of March 9, 1977, stating:

Since the enactment of the Federal Coal Leasing Amendments Act of 1976, the maximum acreage which may be considered for a lease modification is 160 acres. Therefore, we cannot consider this application as a modification to your existing lease inasmuch as the acreage limitation is exceeded, and are hereby rejecting your application.

Additionally, the decision set out the Department's short term coal leasing criteria and solicited an application for a competitive lease sale.

Gulf asserts that the 160-acre limit of the Federal Coal Leasing Act Amendments of 1975 is not applicable to its application because the application was filed before the amendments became law; a proper construction of section 13 of the FCLAA, amending section 3 of the Mineral Leasing Act; does not limit the modification of Gulf's lease to 160 acres, and that all conditions precedent to modification of of the lease Wyoming 0220516 have been met.

Gulf correctly states the statute in effect when it filed the subject application allowed modification of coal leases by inclusion of additional lands provided the aggregate area did not exceed 2,560 acres. However, during the pendency of Gulf's application before BLM, the Federal Coal Leasing Amendments Act of 1975 was approved August 4, 1976, 90 Stat. 1083, 30 U.S.C. § 181 et al. (Supp. 197 ), and on January 25, 1977, implementing regulations were published.

Section 13(b) of FCLAA, 90 Stat. 1090, 30 U.S.C. § 203 (Supp. 197 ), amended the controlling statute as follows:

Subject to valid existing rights, section 3 of the Mineral Lands Leasing Act (30 U.S.C. 203) is amended to read as follows:

Sec. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this Act may with the approval of the Secretary of the Interior, upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous to those embraced in such lease but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this Act and applicable to all of the acreage in such modified lease. (Emphasis supplied.)

On January 25, 1977, at 42 F.R. 4442, regulations conforming to the requirements of FCLAA were adopted, and 43 CFR 3524.2-1(a), 42 F.R. 4453, was amended to provide as follows:

Application. A lessee may obtain 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 would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification. (Emphasis supplied.)

It is clear that the new statute and regulations prevent favorable action by BLM on the application for modification of existing coal leases by the addition of more than 160 acres. In this case, Gulf sought the addition of 361.52 acres.

[1] The Department has no authority to grant an application under the public land laws contrary to a statute of Congress. Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (1972). An application which does not comply with the clear and unequivocal requirements of the Department's regulations must be rejected. Leonard E. Simmons, 12 IBLA 196 (1973); Frank Allison, 3 IBLA 317 (1971). Applications for modification of existing coal leases must be rejected where the acreage limit set out in section 3 of the Mineral Leasing Act, 30 U.S.C. § 203 (1970), is exceeded. Estate of Malcolm N. McKinnon, 31 IBLA 250 (1977); Peabody Coal Co., 4 IBLA 303 (1972); Malcolm N. McKinnon, A-30778 (December 13, 1967).

Accordingly, we hold that the State Office correctly applied the limitations set out in section 3 of the Mineral Leasing Act, as amended, supra, and that it properly denied Gulf's application.

The arguments raised by Gulf in its statement of reasons that its application is not subject to the limitations of an amended statute effected after filing of its application have been considered and disposed of in many similar situations, each involving the applicability to an application of provisions which have been enacted or changed during the pendency of the application. It has been held consistently in these cases that an application must be adjudicated under the changed provision, notwithstanding the fact that this provision was not in effect when the application was filed. Hunter v. Morton, 529 F.2d 645 (10th Cir. 1976); Hannafin v. Morton, 444 F.2d 200 (10th Cir. 1971); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963); Raymond N. Joeckel, 29 IBLA 170 (1977); Walt's Racing Association, 18 IBLA 359 (1975); Marvin E. Weaster, 10 IBLA 277 (1973); Clarence E. Felix, A-30197 (January 7, 1965).

[2] The filing of an application is a hope or expectation rather than a vested property interest or property right. Hunter v. Morton, supra; Hannafin v. Morton, supra; Thomas E. Gaynor, 24 IBLA 320 (1976); William F. Martin, 24 IBLA 320 (1976); Walt's Racing Assn., supra; Clarence E. Felix, supra. Therefore, the filing by Gulf of its application for modification created no right or interest and so does not fall within the "valid existing rights" exception in section 13(b) or FCLAA, supra. Nor by filing this application did Gulf acquire a vested right protected by the Fifth Amendment which would preclude subjecting it to the operation

of the amended provision of FCLAA. See, e.g., Udall v. Tallman, 380 U.S. 1 (1965); McDade v. Morton, 494 F.2d 1156 (D.C. Cir. 1974), Raymond N. Joeckel, supra.

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 affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

