

NEVADA ELECTRIC INVESTMENT CO.

IBLA 77-335

Decided November 14, 1977

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting appellant's applications for modification of coal leases: Salt Lake 064507, Utah 060746, Utah 065012, Utah 083072, and Utah 098705.

Affirmed.

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

An application for modification of a coal lease which exceeds the acreage limitation provided by the Federal Coal Leasing Amendments Act of 1975 is properly rejected notwithstanding the fact that the application was filed prior to enactment of the amendment.

2. Coal Leases and Permits: Applications -- Coal Leases and Permits: Leases -- Constitutional Law: Due Process -- Regulations: Applicability

The filing of an application for modification of an existing coal lease does not give rise to a vested property right. Thus, such an application qualifies as neither a valid existing right excepted from application of the acreage limit on lease modifications set by the Federal Coal Leasing Amendments Act of 1975 nor a right protected by the Fifth Amendment from application of subsequently amended statutes or regulations.

APPEARANCES: M. Gene Matteucci, Chief Counsel, for appellant.



T. 40 S., R. 6 W., SLM, Utah  
 Sec. 8, SE 1/4 NE 1/4;  
 Sec. 9, SW 1/4 NE 1/4, NE 1/4 NW 1/4,  
 S 1/2 NW 1/4.

Appellant asserted in its applications that modification of the leases to add the additional acreage is necessary for the purpose of "adding to existing reserves to firm up a coal mining operation."

Appellant's applications for modification were filed under section 3 of the Mineral Lands Leasing Act, 30 U.S.C. § 203 (1970) (amended 1976). This statute provided for modification of coal leases under certain circumstances by inclusion of additional coal lands contiguous to those embraced in existing leases. No acreage limitation was placed on the lands added by such modification except that the total area embraced in any modified lease shall not exceed 2,560 acres.

The decision of the BLM below was based on Section 13(b) of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977) (P.L. 94-377, 90 Stat. 1090 (1976)), which altered the statutory provision for modification of coal leases. This was implemented by a revised regulation, 43 CFR 3524.2-1(a), 42 F.R. 4453 (1977). The statutory amendment provides in pertinent part that "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." 30 U.S.C.A. § 203 (Supp. 1977) (P.L. 94-377, § 13(b), 90 Stat. 1090 (1976)). <sup>1/</sup> The plats in the case records disclose that in the case of each of the lease modification applications the land sought to be added by the modification exceeds 160 acres.

The statement of reasons for appeal filed by appellant asserts that the lease modifications are necessary to carry out a mining plan for orderly and efficient development of the coal resources in the area.

The applications for modification of coal leases in this case were filed under the statute authorizing lease modifications prior to enactment of the amendment restricting modifications to 160 acres. The issue raised is whether the applications constitute valid existing rights which are excepted from the acreage limitation.

[1] This question has been dealt with previously by this Board. Intermountain Exploration Company, 32 IBLA 170 (1977); Gulf Oil Corporation, 32 IBLA 13 (1977); Estate of Malcolm N. McKinnon, 31 IBLA

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<sup>1/</sup> This amendment was expressly made subject to "valid existing rights." Federal Coal Leasing Amendments Act of 1975, P.L. 94-377, § 13(b), 90 Stat. 1090 (1976).

290 (1977). We find these cases dispositive of this appeal. The Department has no authority to grant an application under the public land laws contrary to a statute of Congress. Gulf Oil Corporation, supra at 16; Estate of Malcom N. McKinnon, supra at 293. Thus, rejection of the applications is required unless they constitute valid existing rights excepted from application of the new acreage limit.

[2] The filing of an application for modification of a coal lease creates no vested property right which constitutes a "valid existing right" excepted from the acreage limitation within the meaning of the Federal Coal Leasing Amendments Act of 1975. Gulf Oil Corporation, supra at 16; Estate of Malcolm N. McKinnon, supra at 293-94. Further, the filing of an application for modification of a coal lease does not create a vested right protected by the Fifth Amendment from operation of the amended statutory provision. Gulf Oil Corporation, supra at 16-17; Estate of Malcolm N. McKinnon, supra at 294. Therefore, the BLM properly rejected appellant's applications for modification because they exceeded the acreage limitation provided in the amended statute. 2/

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.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joan B. Thompson  
Administrative Judge

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2/ Subsequent to receipt of this appeal by the Interior Board of Land Appeals, the BLM has forwarded additional lease modification applications filed by the appellant on August 29, 1977, with respect to the following coal leases: Salt Lake 058575, Utah 060746, Utah 0101153, Salt Lake 064507, Utah 098705, Utah 083072. These applications have not been adjudicated initially and are not the subject of this appeal. Accordingly, we make no ruling on them in this appeal. Upon return of the record in this appeal, the BLM may proceed to process and adjudicate the applications in accordance with their normal procedure.

