

NEVADA POWER CO.

IBLA 77-338

Decided June 30, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting appellant's application for modification of its coal lease, Utah 0101153.

Affirmed.

1. Applications and Entries: Vested Rights -- Coal Leases and Permits:
Applications -- Coal Leases and Permits: Leases -- Words and Phrases

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

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

A decision rejecting an application for modification of a coal lease will be affirmed where the additional acreage requested exceeds the limit imposed by the Federal Coal Leasing Amendments Act of 1975 notwithstanding the fact that the application was filed prior to enactment of the amendment.

APPEARANCES: M. Gene Matteucci, Esq., Chief Counsel, Nevada Power Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from a decision of the Utah State Office, Bureau of Land Management (BLM), rejecting application

for modification of coal lease Utah 0101153. The application, filed by Nevada Electric Investment Company on March 12, 1975, requested that its lease be amended to include an additional 880 acres of land contiguous to approximately 1,000 acres already under lease. Lessee asserted in its application that modification of the lease to include the additional acreage is necessary for the purpose of "adding to existing reserves to firm up a coal mining operation which will supply fuel for * * * steam-electric generating plants."

Appellant's application for modification was filed under section 3 of the Mineral Lands Leasing Act, 30 U.S.C. § 203 (1970) (amended 1976). This statute authorized 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 below was based on section 13(b) of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (West Supp. 1977), which altered the statutory authority for modification of coal leases. This was implemented by a revised regulation, 43 CFR 3524.2-1(a), 42 FR 4453 (1977). The statutory amendment provides 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 (West Supp. 1977). This statutory amendment was expressly made subject to "valid existing rights." P.L. No. 94-377, § 13(b), 90 Stat. 1090 (1976).

Counsel for appellant asserts in the statement of reasons for appeal that the lease modification is necessary to carry out a mining plan for orderly and efficient development of the coal resources in the area. Appellant contends that approval of the modification of the lease is in the best interests of the United States.

The survey plat in the case file confirms that the lands sought for inclusion in appellant's application for modification amount to a total of 880 acres. The application for modification of coal lease in this case was filed under the statute authorizing lease modifications prior to enactment of the amendment restricting modifications to 160 acres. Therefore, the issue raised by this appeal is whether the application constitutes a valid existing right which is excepted from the acreage limitation.

[1, 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, 32 IBLA 13, 16 (1977); Estate of Malcolm N. McKinnon, 31 IBLA 290, 293-94 (1977). 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 application for modification of the lease because the acreage described therein exceeded the limit provided in the amended statute.

Subsequent to receipt of this appeal by the Interior Board of Land Appeals, BLM has forwarded an additional lease modification application filed by the appellant on August 29, 1977, with respect to coal lease Utah 0101153. This application has not been adjudicated initially and is not the subject of this appeal. Accordingly, we make no ruling on the application in this appeal. Upon return of the record in this case, the BLM may proceed to process and adjudicate the application in accordance with the normal procedure.

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.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

James L. Burski
Administrative Judge

