

**Editor's note: Appealed – reversed, sub nom. Peterson v. Dept. of the Interior, Civ. No. C 78-463 (D.Utah March 23, 1981) and sub nom. Hiko Bell Mining and Oil Co. v. Andrus, Civ.No. C 78-465 (D.Utah March 23, 1981); 510 F.Supp. 777 (cases were consolidated)**

VIRGIL V. PETERSON  
AND  
HIKO BELL MINING AND OIL CO.

IBLA 78-89

IBLA 78-90      Decided September 12, 1978

Appeals from decisions of the Utah State Office, Bureau of Land Management, rejecting applications for extension of coal prospecting permits U 4738, U 4739, U 5296, U 5297, U 9901, and U 11898.

Affirmed.

1.      Applications and Entries: Valid Existing Rights–Coal Leases and Permits:  
         Applications–Coal Leases and Permits: Permits: Generally

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant Peterson; Gerald E. Nielson, Esq., Yano & Nielson, Salt Lake City, Utah, for appellant Hiko Bell; Lawrence G. McBride, Esq., Office of the Solicitor, for the Government.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Virgil V. Peterson and Hiko Bell Mining and Oil Co. have appealed from separate decisions of the Utah State Office, Bureau of Land Management (BLM), dated October 17, 1977, rejecting their applications

for extension of coal prospecting permits, respectively, U 4738, U 4739, U 5296, and U 5297, and U 9901 and U 11898. Due to a similarity of issues, we have consolidated both appeals.

Both appellants held coal prospecting permits issued for 2-year terms. Appellant Peterson's permits were to expire May 31 and June 30, 1970. Appellant Hiko Bell's permits were to expire June 30, 1972.

Prior to the expiration dates, appellants filed applications for the extension of their permits pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970). In both cases, the Geological Survey recommended extension of the permits. The applications, however, were suspended pending implementation of the new "long-term" coal leasing policy announced by the Secretary of the Interior on February 17, 1973. While they remained in suspended status the Federal Coal Leasing Amendments Act of 1975 (FCLAA), 30 U.S.C.A. § 201(b) (Supp. 1977), was enacted.

By separate decisions dated October 17, 1977, the BLM State Office held that:

[T]he Federal Coal Leasing Amendments Act of 1975, which amended section 2(b) of the Mineral Leasing Act of 1920, as amended, terminated the Secretary's authority to grant extensions of outstanding coal prospecting permits because the holder of a permit has no right to an extension, and the Act only preserved the Secretary's authority to grant "valid existing rights."

Appellants' applications were rejected.

[1] Section 4 of the Federal Coal Leasing Amendments Act of 1975, supra, repealed the authority of the Secretary to grant extensions of coal prospecting permits pursuant to the Mineral Leasing Act of 1920, as amended, supra, "subject to valid existing rights."

In their statements of reasons for appeal, appellants contend that their applications for extension were not subject to the provisions of section 4 of the FCLAA because, except for the Secretary's moratorium on such applications, they would have been considered prior to the enactment of that Act. As appellant Hiko Bell asserts, "The alternative is to reward the Secretary for his procrastination by extending his prerogatives as a result of that procrastination."

The Secretary was well within his powers in suspending applications for extension pending implementation of the new "long-term" coal leasing policy. Thomas C. Woodward, 35 IBLA 262 (1978); Island Creek Coal Co., 35 IBLA 247 (1978) (and cases cited).

Moreover, as we have held on several recent occasions, the FCLAA does apply to applications for extension pending on the date of its enactment. Thomas C. Woodward, supra; Island Creek Coal Co., supra; Peabody Coal Co., 34 IBLA 139 (1978). The public lands must be administered "in accordance with existing law." Island Creek Coal Co., supra at 252 (and cases cited). Accordingly, the State Office properly rejected appellants' applications for extension.

As an alternative theory, appellants contend that they had a right to an extension under the Mineral Leasing Act of 1920, as amended, supra, because the granting of an extension was subject only to compliance with the requirements of section 2(b) of the Act. <sup>1/</sup> Appellants assert that they complied with the requirements of the Act, spending considerable time and money on exploration, and "earned" the right to an extension at that time. They point to the fact that extensions were "routinely granted" as supporting their interpretation of the Act. They conclude that this right was a "valid existing right" preserved by the savings clause of the FCLAA.

Again, as we have recently held, pending applications for extension are not "valid existing rights" within the meaning of section 4 of the FCLAA because they were subject to the discretion of the Secretary. Thomas C. Woodward, supra; Island Creek Coal Co., supra; Peabody Coal Co., supra. Section 2(b) of the Mineral Leasing Act of 1920, as amended, supra, clearly provides that extension is dependent upon the exercise of discretion by the Secretary as well as compliance with the various requirements of the Act. Applications "dependent upon an exercise of administrative discretion [can] not be considered as \* \* \* vested or 'valid existing' right[s]." Peabody Coal Co., supra at 144. Furthermore, the allegation that extensions

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<sup>1/</sup> Section 2(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970), provides that:

"[A] coal prospecting permit \* \* \* may be extended by the Secretary \* \* \* if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension." (Emphasis added.)

were "routinely granted," even if it could be proved, gives the applicant no greater rights. Island Creek Coal Co., *supra*. Discretionary acts are not metamorphosized into ministerial transactions by their mere repetition, nor are the rights of one applicant enlarged by the treatment of other applicants in an unrelated application.

Therefore, 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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James L. Burski  
Administrative Judge

We concur.

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Joan B. Thompson  
Administrative Judge

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Frederick Fishman  
Administrative Judge

