

GARLAND COAL & MINING CO.

IBLA 80-636

Decided September 5, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, readjusting coal lease BLM-C 030953/031215 (OK).

Affirmed.

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

Under 43 CFR 3451.1(a)(2) and 3473.3 2, BLM is required during readjustment of coal leases to impose a minimum royalty of 12 1/2 percent as a term of all leases subject to readjustment. Once the rate is imposed, the lessee may seek its reduction by application for relief to the Geological Survey under 43 CFR 3473.3 2(d).

2. Appeals--Coal Leases and Permits: Leases--Coal Leases and Permits: Royalties--Rules of Practice: Appeals: Generally

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3 2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

APPEARANCES: J. F. Porter III, Vice President, Garland Coal & Mining Co.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 5, 1980, the New Mexico State Office, Bureau of Land Management (BLM), notified the Garland Coal & Mining Co. (Garland), that the terms and conditions of its coal lease, BLM-C 030953/031215 (OK), dated September 1, 1958, would be readjusted effective as of May 1, 1980. The readjusted terms would provide for a royalty rate of 12 1/2 percent of the value of coal produced from the leased lands. BLM's notice allowed Garland 60 days in which to file objections to these new terms and conditions.

On February 19, 1980, Garland filed a letter objecting to the imposition of the 12 1/2 percent royalty rate, stating that it would make the mining of coal from the leased land uneconomical, effectively denying it of the benefit of the lease, the Government of revenue, and the public of the production from it. Garland also stated that, if it abandoned mining the lease, it was likely that the coal there would be lost, as it would be uneconomical for another miner to bring necessary large equipment to the site to mine the reserves which would be left.

On April 23, 1980, BLM issued a decision reaffirming that the terms of the lease, including the royalty provision, would be readjusted to impose the 12 1/2 percent royalty rate. BLM held that 43 CFR 3451.1(a)(2) provides that any lease subject to readjustment must conform to the minimum royalty prescribed in 43 CFR 3473.3 2. BLM advised Garland that relief from this minimum royalty could be sought under 43 CFR 3473.3 2(d)(1), by application to the Geological Survey (GS), and noted that Garland had already filed a request for a reduction of royalty with GS. Garland appealed this decision and has filed a statement of reasons why the royalty rate should be reduced.

[1] We are satisfied that BLM acted correctly in imposing the 12 1/2 percent royalty rate in the readjusted lease. Under 43 CFR 3451.1(a)(2), BLM is expressly directed to readjust all leases subject to readjustment to conform to the minimum royalty set out at 43 CFR 3473.2. This section establishes a minimum royalty of 12 1/2 percent for surface mines. BLM's actions were consistent with these provisions.

While BLM properly included the minimum royalty term in the readjusted lease, the inclusion of this term is not a final decision to impose this royalty rate on Garland. Rather, under 43 CFR 3473.3 2(d), a lessee may request a reduction of the royalty rate where the lease cannot be successfully operated or where conservation and developmental interests would be served. Garland has apparently availed itself of this opportunity by applying to GS for a reduction.

[2] It would, however, be premature for this appeals Board to consider whether Garland has shown adequate cause for reducing the royalty rate, as it maintains in its statement of reasons that it has. It is possible that GS will grant such relief, in which case, no appeal will be necessary. Of course, Garland will have the right to appeal any adverse determination on this application for relief, but it must wait until such determination is actually rendered and then pursue its appeal through normal procedures.

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.

---

Edward W. Stuebing  
Administrative Judge

We concur:

---

Joseph W. Goss  
Administrative Judge

---

Douglas E. Henriques  
Administrative Judge

