

**Editor's note: Errata dated Jan. 25, 1983 -- See 63 IBLA 368A & B below.**

IBLA 79-466	KAISER STEEL CORP.
IBLA 79-467	UNITED STATES STEEL CORP.
IBLA 79-469	FRANKLIN REAL ESTATE CO.
IBLA 79-519	BEAVER CREEK COAL CO.
IBLA 80-16	NEVADA ELECTRIC INVESTMENT CO.
IBLA 80-444	UTAH INTERNATIONAL, INC.
IBLA 80-593	KANAWHA & HOCKING COAL CO.
IBLA 80-729, 81-347	WESTERN SLOPE CARBON, INC.
IBLA 81-280	WESTERN FUELS-UTAH, INC.

Decided April 29, 1982

Appeals from decisions of the Utah and Colorado State Offices, Bureau of Land Management, readjusting coal lease royalties and other terms and conditions. Salt Lake 069291, Utah 02785; Salt Lake 068754, Utah 01215; Salt Lake 048442-050115, Salt Lake 071737, Utah 025485; Salt Lake 064903; Salt Lake 058575; Colorado 07518, Colorado 07519; Utah 017354; Denver 056724; Denver 047201; Denver 042921.

Decisions vacated; cases remanded.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in

the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979), overruled.

APPEARANCES: M. William Tilden, Esq., San Bernardino, California, for Kaiser Steel Corp.; Hugh C. Garner, Esq., Salt Lake City, Utah, for Franklin Real Estate Co.; Thomas R. Lloyd, Esq., Pittsburg, Pennsylvania, for United States Steel Corp.; Russell S. Jones, Esq., Denver, Colorado, for Beaver Creek Coal Co.; Ann Victoria Scott, Esq., Donald L. Humphreys, Esq., San Francisco, California, for Utah International, Inc., and Nevada Electric Investment Co.; John S. Kirkham, Esq., Salt Lake City, Utah, for Kanawha & Hocking Coal Co.; Fredrick D. Palmer, Esq., Washington, D.C., for Western Fuels-Utah, Inc.; Steven W. Dougherty, Esq., Salt Lake City, Utah, for Western Slope Carbon Co., Lawrence W. McBride, Esq., Kenneth G. Lee, Esq., Ann Vance, Esq., Donald C. Barr, Esq., Linda Agerter, Esq., Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee, Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

These are appeals from decisions of the Utah and Colorado State Offices, Bureau of Land Management (BLM), to readjust the terms and conditions of existing coal leases. <sup>1/</sup> As each appeal involves the same issue, we have, sua sponte, consolidated the appeals for consideration.

BLM, by various decisions, purported to readjust the rental and royalty terms of these leases, and to impose other conditions consonant with the Coal Leasing Amendments Act of 1976. P.L. 94-377 (Aug. 4, 1976), 90 Stat. 1087.

Appellants generally argue that the decision dates of the purported adjustments are contrary to the terms of the leases. Each appellant concedes that its leases were issued with a provision that the Secretary of the Interior could readjust the lease terms at the end of each 20 year period. The complaint of appellants, however, is that BLM gave them no notice of a proposal to readjust the lease terms prior to the end of the 20-year period and is now trying to readjust the lease terms at a date long after the end of the 20-year period when the lease permitted such adjustments.

In California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979) cases involving the same issues on coal leases in Utah and Wyoming, this Board originally held that BLM could subsequently readjust the coal lease terms even if no notice of a proposed readjustment had been given to the lessee before the end of the 20-year term.

[1] The lessees in California Portland thereafter each brought suit in the appropriate United States District Court in Wyoming and Utah for

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<sup>1/</sup> See Appendix.

review of the Board's decision. In each case the United States District Court ruled against the Government, and on appeal to the Tenth Circuit each decision of the lower courts was affirmed. Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982); California Portland Cement Co. v. Andrus, 667 F.2d 953 (1982). Judge Seth, speaking for the appeals court, stated in Rosebud:

Coal leases at that time [1935] were issued for an indeterminate term and contained a provision that at the end of each twenty-year period succeeding the date of the lease the Secretary of the Interior could readjust the terms, royalties and conditions.

\* \* \* \* \*

\* \* \* A time is thus stated when the Government can "readjust" the royalty and other terms--at the end of each twenty-year period. \* \* \* The scope or nature of the changes is not limited and there thus exists a very broad power to make changes considered to be in accordance with the proper administration of the lands. This opportunity comes at intervals albeit long but so prescribed by Congress. The Secretary, of course, need not take any action at all under the lease provisions.

\* \* \* [T]he lease adopted the statutory language of the Mineral Lands Leasing Act (30 U.S.C. § 207). \* \* \*

The regulations applicable to coal leases before and on April 5, 1975, which date marked the end of the second twenty-year period of the lease, had a like provision (43 CFR § 3522.2-1 1974): \* \* \* The time set for readjustment of the regulations was thus again "at the end of each 20-year period." \* \* \* The "anniversary date" as used herein means the end of each twenty-year period following the date of the lease.

The lease agreement was entered into by the Department in administering the public lands. \* \* \* The lease and the transactions in connection therewith created a commercial relationship. \* \* \* We must consider the entire contract in the context of the Mineral Leasing Act and the regulations. \* \* \*

In so considering all the contract provisions, and in an application of the ordinary meaning to the terms, it is not difficult to reach the conclusion that the readjustment was to be when each twenty-year period expired, on that date and not at a later time. \* \* \* Since such broad discretion is given, and considering the nature of the mining business, it might be expected that the time to act was precisely fixed and set at infrequent intervals. \* \* \* It was a provision selected by Congress and repeated from time to time.

\* \* \* [T]he answer would appear to be clear by an application of typical doctrines of contract law in a typical business context. \* \* \*

\* \* \* \* \*

The time for readjustment of coal lease terms comes so infrequently that it must be assumed that timely consideration is given in the ordinary administrative process. If no action is taken by the Government for an extended time it is reasonable to assume that a decision was made not to take advantage of the opportunity provided by the Mineral Lands Leasing Act. Thus a continuation of the old royalty rate and other lease provisions can be considered a choice then made by the administrators. When such a choice was made we find no provisions in the Act nor in the regulations permitting the Department to reverse the position it took originally at the prescribed time.

\* \* \* \* \*

The Government urges as an added factor that there were changes in the Mineral Lands Leasing Act provisions as to coal in August 1976 (90 Stat. 1087). These in Section 7 are not particularly significant as to the issues except there is a repetition of the readjustment option "at the end of its primary term of twenty years and at the end of each ten-year period thereafter." \* \* \* There is no suggestion whatever that the amendment was to be retroactive and the contrary is indicated.

\* \* \* \* \*

Following the amendment to Section 7 in 1976 the Department undertook to change the regulations by publication in December 29, 1976. (43 CFR 3451.I(c)). This change was directed to coal leases which were subject to readjustment before August 4, 1976, and which had not been readjusted. It provided that these leases be readjusted "to conform to the requirements of the Federal Coal Leasing Amendments Act." \* \* \* As mentioned, the trial court held that this readjustment came too late -- some two and one-half years after the expiration of the twenty-year period -- and the new regulations were not within the terms of the statute. We must agree.

\* \* \* The failure to give notice in 1975 without a reason to demonstrate it was not "feasible" must constitute a failure by the Department to follow its own regulations had an adjustment been contemplated. \* \* \*

Thus we must conclude that the Department's attempt by retroactive regulations and by a belated notice to readjust the coal lease in issue was outside of the statutory authority of the

Department and contrary to the terms of the lease. The opportunity to adjust the lease pursuant to the Mineral Leasing Act was presented but the Department chose to forego it.

Id. at 950-53.

The circuit court held that the time for readjusting the royalty, and other terms and conditions of a coal lease, is only at the expiration of a 20-year period. Therefore, we expressly overrule our previous decision in California Portland Cement Co., Rosebud Coal Sales Co., supra.

So in these cases, where there was no notice prior to the end of the 20-year period from BLM to the lessee that readjustment of the lease terms was contemplated, we now must hold that BLM had no authority to belatedly readjust the terms in these coal leases as the several BLM decisions attempted to do.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions set out in the appendix are set aside and the cases remanded to the appropriate BLM state offices for further action consistent with this opinion.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Bruce R. Harris  
Administrative Judge

**Editor's note** The table in the Appendix was printed sideways in the original. Each page is split into two pages vertically, instead of horizontally.

IBLA 79-466, etc.

APPENDIX

<u>IBLA Docket</u>	<u>Appellant</u>	<u>Lease Serial</u>	<u>Date of Lease</u>
79-466	Kaiser Steel Corp.	SL 069291 U 02785	4/1/1950 7/1/1952
79-467	United States Steel Corp.	SL 068754 U 01215	6/1/1951 6/1/1951
79-469	Franklin Real Estate Co.	SL 048442- 050115 SL 071737 U 025485	11/21/1930 9/1/1950 9/1/1950
79-519	Beaver Creek Coal Co., formerly Swisher Coal Co.	SL 064903	1/24/1946
80-16	Nevada Electric Investment Co.	SL 058575	10/8/1936
80-444	Utah International, Inc.	C 07518 C 07519	6/1/1958 6/1/1958
80-593	Kanawha & Hocking Coal Co.	U 017354	9/1/1956
80-729	Western Slope Carbon, Inc.	D 056724	7/23/1951
81-280	Western Fuels-Utah, Inc., Successor to Reliable Coal & Mining Co.	D 047201	7/25/1936
81-347	Western Slope Carbon, Inc.	D 042921	2/25/1931

APPENDIX  
(continued from previous page)

<u>Date of Notice</u>	<u>Date of Decision</u>
12/16/1977	4/12/1979
1/25/1978	4/13/1979
7/28/1977	4/23/1979
7/28/1977	4/23/1979
12/14/1977	6/1/1979
12/13/1977	6/1/1979
12/13/1977	6/1/1979
4/4/1979	6/22/1979
7/2/1979	8/17/1979
9/12/1979	2/11/1980
9/12/1979	2/11/1980
8/27/1979	3/26/1980
10/18/1978	5/12/1980
8/2/1979	12/18/1980
3/28/1979	1/5/1981

January 25, 1983

IBLA 79-466. et al., including : SL 048442-050115; SL 071737  
IBLA 79-469 : U 019524; U 25485  
:  
69 [sic 63] IBLA 363 (1982) : Coal Leases  
:  
FRANKLIN REAL ESTATE COMPANY : Errata

ORDER

It has come to the attention of the Board that the Appendix to the opinion in Kaiser Steel Corp., 63 IBLA 363 (1982), lists only SL 048442-050115, SL 071737, and U 025485 as the coal leases of Franklin Real Estate Company included in the appeal IBLA 79-469, decided inter alia, in the Kaiser Steel Corp. decision supra.

The appeal of Franklin Real Estate Company included coal leases SL 048442-050115, SL 071737, U 019254 and U 25485. Omission of reference to lease U 019524 was inadvertent, as was also the identification of lease U 25485 as U 025485.

Accordingly, the Appendix of the decision is amended to read:

IBLA Docket	Appellant	Lease Serial	Date of Lease	Date of Notice	Date of Decision
79-469	Franklin Real Estate Co.	SL 048442- 050115	11/21/30 9/1/50	12/14/77 12/14/77	6/1/79 6/1/79
		SL 071737	9/1/50	12/13/77	6/1/79
		U 019524	6/1/57	4/6/78	6/1/79
		U 025485	9/1/50	12/13/77	6/1/79

In all other respects, the decision Kaiser Steel Corp., 63 IBLA 363 (1982), remains unchanged.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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James L. Burski  
Administrative Judge

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