

FRANKLIN REAL ESTATE CO.

IBLA 82-354

Decided February 10, 1983

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing protest and readjusting coal lease C-012894.

Vacated and 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 date.

APPEARANCES: Hugh C. Garner, Esq., Rosemary J. Beless, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Franklin Real Estate Company appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 3, 1981, dismissing its protest of readjusted lease terms and readjusting lease C-012894 effective November 1, 1979.

Coal lease C-012894 was issued effective December 1, 1956, under the authority of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 207 (1976). By the terms of section 3(d) of the lease, BLM retained the right to readjust and fix royalties and other terms of the lease at the end of 20 years from the date of issuance. On August 8, 1979, appellant received a notice from BLM of the proposed readjusted lease terms. Prior to this notice, the file reveals that appellant was informed by letter of November 8, 1978, that BLM was in the process of readjusting the terms and conditions of lease

C-012894. At no time during the 20-year term of the lease, however, does it appear that appellant was informed of BLM's intention to readjust the subject lease.

Appellant contends that BLM may not readjust the terms of lease C-012894 more than 2-1/2 years after the anniversary date of the lease. In support of this argument, appellant cites Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982). In Rosebud, supra, and in California Portland Cement Co. v. Andrus, 667 F.2d 953 (10th Cir. 1982), the Tenth Circuit held that the time for readjusting the provisions of a coal lease issued pursuant to 30 U.S.C. § 207 was to be "when each twenty-year period expired, on that date and not at a later time." Id. at 951. Following this decision, this Board overruled its prior case law to the contrary, California Portland Cement Co., 40 IBLA 339 (1979), and held that in the absence of notice of readjustment prior to the end of the 20-year lease term from BLM to the lessee, BLM had no authority to belatedly readjust the terms of a coal lease. Kaiser Steel Corp., 63 IBLA 363 (1982). There being no notice of readjustment -- or of intention to readjust -- from BLM to appellant prior to December 1, 1976, BLM's decision to readjust coal lease C-012894 must be vacated. Cf. Lone Star Steel Co., 65 IBLA 147 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is vacated and the case is remanded for action consistent herewith.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

