

NORTHERN MINERALS CO.
NORTHERN COAL CO.

IBLA 82-181

Decided March 7, 1983

Appeal from decision of the Colorado State Office readjusting coal lease royalties and other terms and conditions. D-044240.

Decision vacated; case 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.

APPEARANCES: Theodore E. Worcester, Esq., Thomas F. Reese, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On September 21, 1979, the Colorado State Office, Bureau of Land Management (BLM), gave Northern Minerals Company notice of proposed readjustment, effective December 1, 1979, of the terms of coal lease D-044240. This lease was issued effective January 12, 1933. Appellant objected to the proposed readjustment and on November 4, 1981, BLM overruled the objections and readjusted the lease terms effective December 1, 1979.

The decision states that the lease contains a provision allowing the United States to readjust the lease at the end of each 20-year period, and that it became subject to its second readjustment of terms and conditions on January 12, 1973.

Appellant contends essentially that the purported readjustment is in error because BLM did not readjust the terms of the lease at the end of the 20-year term, but 6 years thereafter.

The issues before us here are identical to those considered in Kaiser Steel Corp., 63 IBLA 363 (1982). BLM 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, 30 U.S.C. § 207 (1976) (section 6, P.L. 94-377 (Aug. 4, 1976), 90 Stat. 1087).

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. That decision was specifically overruled in Kaiser Steel Corp., supra.

[1] The lessees in California Portland each brought suit in the appropriate United States district court for review of the Board's decision. In each case the court ruled against the Government, and on appeal to the Tenth Circuit, the decisions of the lower court were affirmed. In Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982); and California Portland Cement Co. v. Andrus, 667 F.2d 953 (10th Cir. 1982), 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 the 20-year period. 1/

Accordingly, since 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 hold that BLM had no authority belatedly to readjust the terms in this coal lease as the decision appealed from attempted to do. Franklin Real Estate, 71 IBLA 13 (1983); Sunoco Energy Development Co., 65 IBLA 323 (1982).

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 is vacated and the case remanded to the Colorado State Office for further action consistent with this opinion.

Gail M. Frazier
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ We note that the holding of the court pertained to readjustments of the lease terms after the close of a 20-year period where notice of intent to make adjustment was not given prior to the end of the period. We are bound by this holding. It must be recognized, however, that the court did not foreclose readjustment after the end of a 20-year term where notice of a proposed readjustment is given prior to the end of the 20-year term. Coastal States Energy Co., 70 IBLA 386 (1983); Rosebud Coal Sales Co. v. Andrus, supra at 953; Kaiser Steel Corp., 63 IBLA 363, 367 (1982).

