

MID-CONTINENT COAL & COKE CO.

IBLA 83-520

Decided October 19, 1983

Appeal from decision of Colorado State Office, Bureau of Land Management, imposing certain readjusted terms and conditions in coal lease C-0125456.

Affirmed in part; set aside and remanded in part.

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

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

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

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

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

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

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

It is proper to include a provision in a readjusted coal lease which reserves to the United States the

right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

APPEARANCES: Robert Delaney, Esq., Glenwood Springs, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mid-Continent Coal & Coke Company (Mid-Continent) appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 8, 1983, overruling, in part, Mid-Continent's objections to proposed terms and conditions of coal lease C-0125456 and readjusting the terms of that lease effective June 1, 1981. The lands included in this lease were originally part of coal lease C-030345, dated April 1, 1961, and issued to the United States Steel Corporation under the provisions of section 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), which provides that the United States may readjust the terms of the lease at the end of 20 years. United States Steel assigned 80 acres from that coal lease to Mid-Continent, which assignment was serialized as C-0125456 and approved effective July 1, 1965. On August 8, 1980, BLM notified Mid-Continent that the lease was subject to readjustment. On March 25, 1981, BLM sent the proposed readjustment of the lease and Mid-Continent timely filed objections to certain proposed readjustment terms. BLM's decision sustaining certain objections and overruling others is the subject of this appeal.

At the time the lease was issued, section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1958), provided:

Leases shall be for indeterminate periods upon condition \* \* \* that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods.

Section 7 of the Mineral Leasing Act of 1920 was amended by section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207(a) (1976), to read in pertinent part as follows: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended."

[1] Consistent with the readjustment authority reserved to the United States by statute, the Department may promulgate regulations prescribing new terms and conditions to be included in coal leases upon readjustment. A decision by BLM to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation or where such provisions are in accordance with the proper administration of the

public lands. Gulf Oil Corp., 73 IBLA 328 (1983); Coastal States Energy Co., 70 IBLA 386 (1983). 1/

Appellant refers to the requirement for diligent development and continued operation set forth in section 3 of the proposed readjusted lease which provides that "[a]fter diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on leased lands." Appellant notes that the terms "diligent development" and "continuous operation" are defined in the regulations. In connection with the diligent development requirement, appellant sets forth the terms of section 11 of the readjusted lease which provides as follows:

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU. This LMU may be enlarged, adjusted or diminished in accordance with the applicable regulations in Titles 10, 30 and 43 of the Code of Federal Regulations. The mining plan for the LMU shall require that the reserves of the LMU will be mined within a period of 40 years in accordance with 30 CFR 211 and 43 CFR 3400.0-5. The definition of LMU and LMU reserves and other applicable conditions are set forth in the regulations in 43 CFR 3400.0-5 and 3475, 30 CFR 211, and Title 10 of the Code of Federal Regulations.

Appellant notes that the regulation dealing with logical mining units (now 43 CFR 3475.6) has been revised. Considering the changes in the regulations, appellant argues that the readjusted coal lease has no fixed or applicable standard from which an operator can establish his rights and duties. Appellant contends that instead of following the statutory mandate of readjustment of terms at the end of the primary term and at specified intervals thereafter, in this situation the Secretary is readjusting the terms at the end of the primary term and continuously thereafter. Appellant asserts that this is at variance with the Mineral Leasing Act of February 25, 1920, as amended, supra, with FCLAA, as amended, supra, and with the requirements of 43 CFR 3451.2 requiring that "the authorized officer shall, within the time specified in the notice that the lease shall be readjusted, notify the lessee of the proposed readjusted terms."

Where readjusted lease terms or conditions are addressed by statute or regulation, BLM is required to impose those terms and conditions. Likewise, this Board must apply those provisions imposed by law, and we are without authority to waive or disregard legal obligations merely because a lessee challenges their imposition in the administrative appeals process. Coastal States Energy Co., supra at 391; Lone Star Steel Co., 65 IBLA 147, 150 (1982). Section 3 -- Diligence, Section 5 -- Rental, Section 6 -- Production Royalty, Section 10 -- Mining Plan, and Section 24 -- Readjustment of Terms and Conditions, all involve statutory or regulatory requirements. Decisions by BLM imposing statutory or regulatory requirements will be affirmed.

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1/ Appeal pending, Coastal States Energy Co. v. Watt, No. C83-0730J (D. Utah filed June 1, 1983).

Appellant is confused as to which regulations are applicable because of the revisions in the coal leasing regulations dealing with the diligence requirement and LMU's. Regulations in effect at the time of readjustment are applicable to leases subject to readjustment. Coastal States Energy Co., *supra* at 391.

However, subsequent to BLM's March 25, 1981, final notice of readjustment in this case the diligence requirement was changed. In final rulemaking published in the Federal Register on July 30, 1982, "diligent development" was defined as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." 30 CFR 211.2(a)(13), 47 FR 33180. The rulemaking further defined "diligent development period" as "a 10-year period which: (i) For Federal leases shall begin on \* \* \* (b) The effective date of the first lease readjustment after August 4, 1976, for leases issued prior to August 4, 1976 \* \* \*." 30 CFR 211.2(a)(14); 47 FR 33180-81 (July 30, 1982).

In the preamble to this rulemaking the Department states:

The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal lease term (see Solicitor's Opinion M-36939 dated September 17, 1981 [88 I.D. 1003 (1981)]). It should be noted that if an operator/lessee elects to be subject to the rules of this Part prior to Federal lease readjustment, he may apply to the District Mining Supervisor in accordance with 30 CFR 211.20 and 30 CFR 211.24.

47 FR 33157 (July 30, 1982).

The regulation dealing with LMU's has been revised and reads as follows:

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied by the Minerals Management Service in accordance with 30 CFR 211.80.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorizing officer.

47 FR 33151 (July 30, 1982).

Due to the change in the diligence requirement and the revision in the LMU regulation, BLM's decision as it relates to these requirements must be set aside and remanded so that the lease may be conformed to the new regulations.

Appellant's argument that application of a new regulation is inconsistent with 43 CFR 3451.2 requiring that the authorized officer shall, within the time specified in the notice that the lease shall be adjudicated, notify the lessee of the proposed readjusted terms, is without merit. Notice of intent to readjust is all that is necessary on or prior to the anniversary date of the lease. Rosebud Coal Sales Co., Inc. v. Andrus, 667 F.2d 949, 953 (10th Cir. 1982).

Appellant objects to section 5 which imposes a rental of \$3 per acre and provides that rental may not be credited against royalties. Appellant notes that section 2(b) of its lease of May 1, 1961, imposes a rental of \$1 per acre and allows rental to be credited against royalties. Appellant contends that while section 3(d) of the original lease reserves the right "reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period," the right was not reserved to make these changes with respect to rental during the "continuance of the lease," which "continuance" extends into successive periods of the lease following readjustment. Further, appellant asserts that the right was not reserved to deny the application of rental against royalties.

Section 5, concerning the rental term, is specifically required by 43 CFR 3473.3-1(a), which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3. The amount of the rental will be specified in the lease." Section 5 of the readjusted lease provides for a rental of \$3 per acre or fraction thereof. BLM properly imposed the new rental to comport with the regulatory requirement.

BLM correctly stated in its decision that there is no longer authority allowing rentals to be credited against royalties since the FCLAA deleted the applicable section from the former section 7 of the Mineral Leasing Act of 1920 (cf. 30 U.S.C. § 207(a) (1976) with 30 U.S.C. § 207 (1958, 1970)). 43 CFR 3473.3-1(d) provides: "Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties."

[2] Appellant objects to section 6 of the readjusted lease, contending that the production royalty rate on the Federal coal to be extracted from this lease should be established at 5 percent rather than 8 percent because of the high costs of recovering the coal, taking into account the cover, faulting, distance from the portals, elevation, and other conditions. In Blackhawk Coal Co., 68 IBLA 96, 99 (1982), the Board responded to similar arguments:

Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12-1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a) (1976) and provide that a rate as low as 5 percent may be determined at lease issuance. Alternatively, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209 (1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of lease, provides appellant some relief from statutory 12-1/2 percent rate, yet affords appellant an opportunity for further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). Lone Star Steel Co., 65 IBLA 147 (1982); Garland Coal and Mining Co., 49 IBLA 400 (1980).

See also Coastal States Energy Co., *supra* at 393 (1983). We find that section 6 of the readjusted lease terms, concerning royalty obligations, was properly imposed by BLM.

Appellant objects to section 10 of the readjusted coal lease requiring submission of a mining and reclamation plan "not more than 3 years after the effective date of this readjustment." Appellant requests that this requirement be revised so that it is allowed 3 years after the determination of the appeal in which to comply. This requirement is mandated by the FCLAA, 30 U.S.C. § 207(c) (1976), and 30 CFR 211.10(b). 47 FR 33185 (July 30, 1982). This Board has no authority to waive the requirement.

[3] Appellant notes that section 24 of the readjusted lease provides for readjustment of terms of conditions "on the 10th year after the effective date hereof and on each 10th year thereafter." Appellant points out that section 3(d) of its original lease provided a reservation of

[t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.

Appellant contends that while the FCLAA requires readjustment at 10-year intervals after the first 20 years, there is no such requirement as to readjustments of existing leases. Appellant also asserts that the phrase "otherwise provided by law" refers to the readjustment of royalties and other conditions, not the readjustment period.

The Board responded to these contentions in Gulf Oil Corp., 73 IBLA 328, 332 (1983) stating:

Although lease readjustment is discretionary, if the Secretary readjusts a lease, he must impose certain lease terms and conditions on all pre-FCLAA leases at the time of their readjustment to conform to the provisions of FCLAA. One of these mandatory provisions is the periods at which readjustment may be undertaken. The FCLAA provides, 30 U.S.C. § 207(a) (1976), that each lease shall be issued for a primary term of 20 years and shall be subject to readjustment every 10 years thereafter so long as production continues. Coastal States Energy Co., supra at 394.

We note that the phrase "unless otherwise provided by law" in former section 7 gave the Secretary discretion to readjust lease terms as he deemed proper, unless at the expiration of the 20-year period the law specifically directed that a term be included in the lease. If at the end of the 20-year period the law directed that a lease contain a new provision, section 7 compelled the Secretary to conform the lease to the new provision upon readjustment. The Solicitor has noted:

Given the strong expressions in the legislative history of the FCLAA of Congress's desire to exact a fair return and ensure that leases are developed and not held for speculative purposes, it is not likely that Congress intended to free the Secretary from any statutory restraints in readjusting pre-FCLAA leases. Since former section 7 no longer exists to govern the exercise of the Secretary's readjustment authority, the only alternative is that the Act as amended by the FCLAA controls. [Emphasis Added.]

Solicitor's Opinion, M-36939, supra at 1009. It follows that the readjusted leases properly provide for further readjustment at the end of 10 years.

The readjustment requirements imposed under sections 4 and 15 are not directly addressed by statute or regulation. 2/ Readjustment of lease terms

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2/ Although the regulations contain no specific formula for computing the amount of a bond, the present regulations do contain a definition of "lease bond." As used in 43 CFR Part 3400, "Lease bond" means "the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or reclamation plan. This is the same as the 'Federal lease bond' referred to in 30 CFR 742.11(a)." 43 CFR 3400.0-5(s). With only a minor difference this definition previously appeared at 43 CFR 3400.0-5(z) (1981).

and conditions, however, is not limited to specific legal requirements. As stated by the court in Rosebud Coal Sales Co., Inc. v. Andrus, *supra* at 951, "The scope or nature of the changes [readjustment] 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."

Appellant objects to section 4 of the coal lease readjustment which establishes a lease bond in the amount of \$5,000. Appellant contends that the existing bond should be apportioned, rather than requiring a new bond. Appellant asserts that the lease is already bonded and that amounts heretofore posted for it should be taken in consideration.

In its decision, BLM explained the imposition of the \$5,000 bond as follows:

Mid-Continent objects to increasing bond amount over previous accepted bond. Sec. 2(a) of original lease C-030345 required maintenance of the bond furnished upon issuance of the lease and "to increase the amount or furnish such other bond as may be required." Lease C-0125456 is subject to the same terms and conditions as C-030345. Lessee originally submitted a \$10,000 U.S. Treasury Bond to cover its bond requirement. This bond, however, was included with certain other Treasury Bonds to comprise a \$25,000 statewide bond which was filed with this office July 31, 1968. The regulations, as revised in 1979, deleted the provision for statewide bonds and require a "separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary" (43 CFR 3474.3 (1980)). The U.S. Geological Survey determined that a bond of \$5,000 was necessary for this non-producing lease. Accordingly, lessee's objection to an increased lease bond is overruled.

Appellant has provided no arguments requiring that the BLM decision relating to the bonding requirement be overturned.

[4] Appellant objects to section 15 of the readjusted coal lease "Authorization of other Uses and Disposition of Leased Lands," which reserves the right "to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, leases, licenses, permits, easements or rights-of-way, including leases for the development of minerals other than coal under the act." Appellant explains that this section revises its original lease and contends that the revision constitutes a substantial enlargement of reserved access or use. Appellant asserts that the Government reserves the right to reduce or impair the lessee's utilization of the leased land by regulations hereinafter imposed that may reduce or take away rights conferred by contract at the time of the original lease issuance and at the time of readjustment.

As far as contractual rights are concerned, the lessee of a pre-FCLAA lease has no vested rights to the indefinite continuation of existing lease terms, since all the terms and conditions were prescribed subject to periodic readjustment. FMC Corp., 74 IBLA 389, 393 (1983). Solicitor's Opinion, M-36939, 88 I.D. 1003, 1008 (1981). However, appellant does have certain

rights in relation to other users of the lands covered by its lease. We find that appellant's objection to that provision invalid because uses authorized by the provision would still be subject to the lessee's rights. Gulf Oil Corp., *supra* at 334; Blackhawk Coal Co., *supra*.

Appellant explains that it has long range plans for developing this lease under very adverse conditions. Appellant states that the original lease was well suited to its particular situation because the provisions of that lease allowed deferred development by payment of reasonable delay rental, or royalty, with the opportunity to consolidate into LMU's of extended duration without incurring uneconomic royalties. Appellant asserts that these provisions formed a contractual basis on which developments have occurred and, within the implicit conditions of the Mineral Leasing Act of 1920, conferred vested contractual rights, upon which appellant has relied.

Under section 3(d) of the original lease, the United States expressly reserved

[t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.  
[Emphasis added.]

The authority for this provision is established by section 7 of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 207 (1976). In Gulf Oil Corp., *supra*, the Board discussed vested rights in relation to section 3(d) of a lease issued pursuant to the Mineral Leasing Act of 1920, *supra*, as follows:

By accepting a lease containing this provision, the lessee has agreed that the Government, upon timely notice of readjustment, may readjust any term of the lease consistent with the law in effect, not at the time the lease is issued, but when it is ripe for readjustment. Therefore, a lessee has no vested right to continue tenure under original lease conditions; to hold otherwise would totally negate this statutory reservation of the authority to readjust those terms and conditions. Thus, in the absence of a showing that a readjusted term is inconsistent with any statutory provision in effect on the readjustment date, there can be no merit to any argument that a readjustment decision affects any vested property right. On the contrary, it is the vested right of the United States as lessor and proprietor to readjust the terms.

Id. at 330-31. We find this language dispositive of the issue.

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 in part, and set aside as to the diligence requirement and remanded.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

