

SPRING CREEK COAL CO.  
BRIDGER COAL CO.

IBLA 83-756, 83-941

Decided October 10, 1984

Appeals from separate decisions by the Montana State Office and Wyoming State Office, Bureau of Land Management, rejecting a term crediting rental against the royalty obligation for modified Federal coal leases M 69782 and W 2728.

Affirmed.

1. Coal Leases and Permits: Generally -- Coal Leases and Permits: Leases -- Coal Leases and Permits: Readjustment -- Coal Leases and Permits: Rentals

A Federal coal lease which is modified subsequent to enactment of the Federal Coal Leasing Amendments Act must be conformed to the terms required by that statute. 30 U.S.C. § 203 (1982). The crediting of rental payments against the royalty obligation due under a Federal coal lease is not authorized by the Act.

APPEARANCES: Jerome H. Simonds, Esq., and John S. Lopatto III, Esq., Washington, D.C., for appellants; R. Timothy McCrum, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Spring Creek Coal Company appeals from a decision rendered May 2, 1983, and modified May 27, 1983, by the Montana State Office, Bureau of Land Management (BLM), concerning Federal coal lease M 69782. <sup>1/</sup> Bridger Coal Company appeals a July 21, 1983, decision by the Wyoming State Office, BLM, concerning Federal coal lease W 2728. Both decisions concluded that rental payments for each lease may not be credited against royalties due thereunder since each has been modified subject to section 13(b) of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), as amended, 30 U.S.C. § 203 (1982), and implementing regulations. Since both appellants are subsidiaries of Northern Energy Resources Company (NERCO), the parent company has provided joint representation. Because the primary legal issue involved is identical,

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<sup>1/</sup> Spring Creek Coal Company's original inquiry on the issue was answered in a notice dated May 2, 1983, which contained no language of finality. BLM responded to this oversight in a May 27, 1983, notice holding that the former decision was its final decision regarding the protest and recognizing the right of appeal from the latter decision.

these appeals were consolidated by the Board on the motion of counsel for appellants. 2/

Federal coal lease M 69782 for 2,503 acres in Montana was issued effective July 1, 1965. After several prior assignments, the lease was transferred to Spring Creek Coal Company by assignment approved effective September 1, 1978. An application for modification of the lease was filed with BLM on December 10, 1979. After several amendments of the application, modification of the lease to add 18 acres was approved effective August 1, 1980. Another request for modification filed June 7, 1982, adding 20 acres was approved effective December 1, 1982.

Federal coal lease W 2728 for 1,280 acres in Wyoming was issued effective October 1, 1969. Assignment of the lease to Bridger Coal Company was approved effective September 1, 1974. In a notice from BLM dated May 11, 1972, the lessee of W 2728 was ordered to mine a contiguous tract of 160 acres which BLM had determined would be lost to production if not mined with the operations conducted under W 2728. In 1979, NERCO filed an application to modify W 2728 to include this 160-acre parcel and the lease was accordingly modified effective April 1, 1981.

After both leases were modified, NERCO inquired of the respective BLM offices concerning the crediting of rental payments against royalty obligations with respect to each lease. Both BLM offices responded negatively to NERCO's question in decisions which led to the present appeals. BLM based its decision primarily on the terms of 30 U.S.C. § 203 (1982) governing coal lease modification subsequent to enactment of FCLAA which provides that the terms and conditions of the lease as modified shall be consistent with the statute as amended. As the FCLAA repealed the authority for crediting rental payments against royalties, BLM refused to allow the credit on the modified leases.

NERCO, in its statement of reasons, challenges BLM's conclusion on the grounds that the leases were merely modified and not readjusted. It asserts that until each lease is readjusted according to law and the terms of the lease, it is not affected by the terms and conditions imposed by FCLAA or its implementing regulations. It further argues that modification of W 2728 was conducted at the order of BLM and any adverse consequences resulting from BLM's order should be stricken under general contract rules governing construction of contracts of adhesion.

Section 7 of the Mineral Leasing Act of 1920, ch. 85, 41 Stat. 439, prior to amendment by FCLAA provided that "rental for any year shall be credited against the royalties as they accrue for that year." Section 7 further provided for periodic readjustment of lease terms:

[Coal] [l]eases shall be for indeterminate periods upon condition \* \* \* that at the end of each twenty-year period succeeding the

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2/ Since both appellants are represented by the parent corporation in this appeal, they are collectively referred to as NERCO or appellant in most instances.

date of the lease such readjustment of terms and conditions may be made as the Secretary may determine, unless otherwise provided by law at the time of expiration of such periods.

Section 6 of FCLAA, 90 Stat. 1087, enacted August 4, 1976, repealed the provision authorizing crediting of rental payments against royalty obligations. In promulgating regulations to implement FCLAA, the Department provided in 43 CFR 3473.3-1 that for "leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties." Thus, the issue raised by these appeals is whether rental payments may be credited against the royalty obligation for a coal lease issued prior to FCLAA but modified after enactment of FCLAA even though it has not yet been readjusted at the end of its initial 20-year term.

[1] Modification of coal leases since 1976 is governed by section 13 of FCLAA, 30 U.S.C. § 203 (1982), which provides in part: "The Secretary shall prescribe terms and conditions which shall be consistent with this Act [FCLAA] and applicable to all of the acreage in such modified lease." Subsequent to enactment of FCLAA, the House Report on what became the 1978 Amendment to the Mineral Leasing Act noted that lessees with leases issued before FCLAA were reluctant to apply for modifications of their leases after FCLAA because "they would be faced with having to accept the more stringent requirements of the [FCLAA] for the entire lease area." H.R. Rep. No. 1635, 95th Cong., 2d Sess. 3, reprinted in 1978 U.S. Code Cong. & Ad. News 4736, 4737. Consequently, in 1978 Congress amended the modification provisions by granting relief from the FCLAA-established minimum royalty provision and from production or mining plan requirements for modified leases. 92 Stat. 2074, 30 U.S.C. § 203 (1982). Relief from application of other FCLAA-mandated terms and conditions, including deletion of the rental crediting provision, was not afforded to modified leases by the 1978 amendment.

In 1979, the Department promulgated rules governing post-FCLAA lease modifications and the resultant subsection describing which terms and conditions are applicable after modification appears as follows:

The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of [FCLAA] (30 U.S.C. 207; 43 CFR 3473.3-2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

43 CFR 3432.3(a) (published at 44 FR 42632 (July 19, 1979)). Therefore, all of the acreage in a modified lease becomes subject to the prevailing statutes and regulations except with regard to the minimum royalty provision.

NERCO argues that BLM incorrectly employs the regulation at 43 CFR 3432.3(a) as a vehicle for an early readjustment. It asserts that the terms and conditions in an existing lease cannot be altered before readjustment. In specific reference to the issue, it cites 43 CFR 3473.3-1(b): "Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the production or advance royalties for that

year." (Emphasis added.) In support of its position, it refers to Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), and Solicitor's Opinion, 88 I.D. 1003 (1981), and states the proposition that FCLAA amendments are not retroactive and have no effect on pre-FCLAA leases until readjustment.

It must be conceded that the rental credit provision found in pre-FCLAA leases cannot be unilaterally deleted from the lease terms without proper authority. However, the authority cited by appellant supporting application of the statutory provisions of FCLAA to existing coal leases upon readjustment simply does not support a finding that such terms are not properly incorporated upon modification of an existing lease. A modification of a coal lease involves the entry into a new or modified lease contract by mutual intent of the parties no less than does a readjustment of a coal lease. Indeed, incorporation in the modified lease of the terms required by FCLAA is mandated by statute and regulation with the exception of the minimum royalty term and production or mining plan requirements. 30 U.S.C. § 203 (1982); 43 CFR 3432.3(a).

Where the adjustments to lease provisions are mandated by statute or Departmental regulation, BLM is required to impose those terms and conditions and such decisions will be affirmed by the Board. Mid-Continent Coal & Coke Co., 76 IBLA 312 (1983); Lone Star Steel Co., 65 IBLA 147 (1982). 30 U.S.C. § 203 (1982) and 43 CFR 3432.3(a) provide that a lease, when modified, is subject to FCLAA. The legal authority for crediting rental payments against the royalty obligation was repealed by FCLAA. 30 U.S.C. § 207 (1982). Accordingly, the law supports the BLM decisions not to apply the rental credit provision to M 69782 and W 2728.

With respect to the modification of lease W 2728, NERCO asserts that "Bridger was forced by the District Supervisor in 1972 to take a modification." Indeed, in a May 11, 1972, letter the district mining engineer, Geological Survey, ordered mining of the northeast quarter of sec. 10, T. 21 N., R. 101 W., sixth principal meridian, in order that this isolated coal outcrop would not be lost to production. See Exhibit A to Answer filed by BLM. However, the 1972 order did not direct the lessee to obtain a lease on the 160 acres, but purported to constitute authority itself to mine the coal pursuant to 30 CFR 211.51(b), (d) (1972). Any doubt as to this is resolved by reference to the earlier letter of February 29, 1972, from the district mining engineer to the lessee. Exhibit B to Answer. The coal deposits in the subject 160-acre tract remained intact when 30 CFR 211.51 was rescinded by a 1976 revision of 30 CFR Part 211. 41 FR 20252, 20261 (May 17, 1976); 40 FR 41122 (Sept. 5, 1975).

In 1978, NERCO approached BLM to obtain a coal lease for the 160 acres in the northeast quarter of sec. 10. It expressly acknowledged the need for an appropriate Federal coal lease prior to mining that area. The record does not indicate that this was anything other than a voluntary application for lease modification by appellant.

Although appellant characterizes the modified coal lease as a contract of adhesion, this is no more a contract of adhesion than any other Federal mineral lease which is required to conform to the terms of the statutory

authority existing at the time of lease issuance. Even assuming that this is a contract of adhesion, we find no ambiguity in the modified lease terms regarding rental and royalty which might support an interpretation of the lease to allow credit for rental payments against the royalty obligation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Gail M. Frazier  
Administrative Judge