

LONE STAR STEEL CO.

IBLA 84-216

Decided December 5, 1984

Appeal from decision of the Tulsa District Office, Bureau of Land Management, rejecting appellant's objections to the imposition of readjusted terms on coal lease BLM-C 018820 OK.

Remanded.

1. Coal Leases and Permits: Leases -- Coal Leases and Permits:  
Readjustment -- Mineral Leasing Act: Generally  
The operation and production requirement imposed on a coal lease may be suspended in the interest of conservation if it is not economically feasible to mine the coal because of current market conditions. Where the record is insufficient to determine whether lease suspension is warranted, the case will be remanded to BLM to determine whether or not the lease qualifies for suspension.

APPEARANCES: Virgil D. Medlin, Esq., Oklahoma City, Oklahoma, for appellant; R. Timothy McCrum, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals from a decision of the Tulsa District Office, Bureau of Land Management (BLM), dated September 26, 1983, rejecting objections to the imposition of readjusted terms and conditions on coal lease BLM-C 018820 OK.

First, it is necessary to trace the history of the lease, which has been the subject of prior cases before this Board. The subject lease was originally issued on May 1, 1962. On July 1, 1981, the lease was modified by the addition of 50 acres pursuant to section 3 of the Mineral Leasing Act of 1920, as amended by section 13(b) of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 203 (1982). The lease, as modified, expressly provided that Lone Star must achieve diligent development and maintain continued operations as mandated by the regulations. 1/

1/ Section 3 of the modified lease provides:

"The lessee shall engage in diligent development of the coal resources subject to the lease. After diligent development is achieved, the lessee

On October 30, 1981, BLM notified Lone Star that its lease would be readjusted upon its twentieth anniversary in 1982. Section 3(d) of the original lease provides:

Readjustment of terms. 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. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms. [Emphasis in original.]

On March 18, 1982, a second notice was sent to Lone Star explaining that the readjusted lease would become effective on June 1, 1982. Lone Star appealed to this Board contesting the imposition of the readjusted lease terms. See Lone Star Steel Co., 71 IBLA 92 (1983). In that appeal, Lone Star argued that sections 3 and 11 of the lease were "simply unreasonable." This Board noted that Lone Star had previously raised the same issues with respect to different leases in Lone Star Steel Co., 65 IBLA 146 (1982). See Lone Star Steel Co., 71 IBLA at 93. This Board held that where readjusted lease terms or conditions are addressed by statute or regulations, BLM is required to impose those terms or conditions. Id.

When BLM attempted to implement this Board's decision in Lone Star Steel Co., 71 IBLA 92, Lone Star appealed again, raising yet another issue not addressed in its previous appeal involving the terms of readjustment of the same lease. Lone Star Steel Co., 77 IBLA 96 (1983). This Board dismissed that appeal noting that we "cannot entertain successive appeals in the same readjustment case simply because Lone Star elects to select one provision after another to complain of on a piecemeal basis." 77 IBLA at 97.

In the instant case, Lone Star appeals BLM's decision subjecting the lease to the diligent development requirements on July 1, 1981, when the lease was modified. On March 26, 1984, Lone Star filed a civil action in U.S. District Court seeking judicial review of BLM decisions concerning a number of its leases. Lone Star Steel Co. v. Clark, No. 84-173-C (E.D. Okla. Mar. 26, 1984). The subject lease, BLM-C 018820 OK, and the decision appealed from herein, were listed in Lone Star's complaint as a basis for the civil action, although Lone Star had not exhausted its administrative remedies. On June 29, 1984, Lone Star's civil action was dismissed without prejudice due to the failure of Lone Star's counsel to attend a litigation conference.

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shall maintain continued operation of the mine or mines on the leased lands. The terms diligent development and continued operations are defined in the applicable regulations in Titles 10, 30, and 43 of the Code of Federal Regulations."

The issues presented in the instant appeal arose when Lone Star was informed on February 2, 1983, by the District Mining Supervisor of its production requirements under this lease, are as follows:

A review of our records indicates that coal lease BLM-C-018820 has met the diligence requirements of section 3 of your readjusted lease, and is required to maintain continued operation by producing 1% of the recoverable reserves. If production from this lease is not anticipated for the lease year beginning May 1, 1983, an application for suspension of continued operations, or the payment of advance royalty in lieu of continued operation should be made by May 1, 1983. The regulations of 30 CFR 211.22 and 23, page 33187 and 33188 cover the suspension of operations and advance royalty. [Emphasis added.]

Lone Star responded by a letter dated April 28 and received April 29, 1983, within the time specified by the District Mining Supervisor for the filing of an application for suspension. In that letter Lone Star first argued that it had not met the due diligence requirements, and therefore was not required at this time to comply with the continued operations regulations. Alternatively, it argued that if it was subject to the continued operations requirements, its past production was sufficient to satisfy that obligation until early 1986 without further production. The letter then stated:

3. Suspension of production would be in the interest of conservation, as contemplated in Section 39 of the statute (41 Stat. L. 437), and should be authorized pursuant to 30 C.F.R. 211.22(b). [Emphasis in original.]

The underground reserves on this tract are a low-volatile bituminous metallurgical coal. Because of its relatively poor combustion characteristics, it is not a very good fuel coal: it is rather a carbon-imparting coal with "coking" properties and therefore peculiarly useful to steelmaking. This coal is probably the rarest metallurgical coal on the market in the United States.

Unfortunately, there is no real market for this type of coal currently. As you know, the steel industry is in a severe state of depression. We are aware of several other producers of this type of coal in the area who have either closed their mines or are attempting to sell them because of their lack of sales to steel companies.

The alternative to suspension of production would be to mine the coal and attempt to sell it for baser applications, such as utility plant fuel (and it might not be acceptable to fuel burners for the reasons stated above). This would be a waste of a relatively rare mineral resource and would require economic sacrificie [sic] in the form of extraordinarily low prices in order to make a poor-burning coal attractive to fuel users.

In the event that the preceding two arguments are ultimately determined to fall short on legal grounds, but without waiving either of them, then we would have you treat this third argument as an application for suspension of production [pursuant to Section 211.22(b)] in order to meet the May 1, 1983 submission deadline. [Emphasis added.]

No reply was made for nearly 5 months, until September 26, 1983, when the Associate District Manager wrote the following to Lone Star:

In reply to your letter of April 28, 1983, Lease BLM-C-018820(OK) became subject to the diligent development regulations July 1, 1981, when the lease was modified to include additional acreage. Section 3 of the modified lease form addresses diligent development. The lease met the diligent requirements on April 1, 1982, and the continued operations requirement for the year ending April 1, 1983. The recoverable reserves as of July 1, 1981, were 1,951,000 tons, diligence development was based on production of 2-1/2% of this amount, with continued operation requiring the production of 1% of this amount. Diligent development is based on lease production and is not related to the method of production.

The Mineral Leasing Act authorizes the Secretary to accept the payment of advance royalty in lieu of continued operation. For this lease, the advance royalty would be 8% of value of 19,510 tons payable in advance for each year that the continued operations requirement is not met.

The Mineral Leasing Act also authorizes the Secretary to suspend the operation and production of a lease in the interest of conservation. Additional data is needed to determine if this lease qualifies for a suspension in the interest of conservation. [Emphasis added.]

If you determine that these decisions are unacceptable, you are allowed 30 days from the receipt of this letter to file a notice of appeal with this office according to 43 CFR 4 Subpart E.

There was no explanation of what "additional data" was needed in order to adjudicate Lone Star's application for suspension, and Lone Star apparently did not inquire. Instead it filed this appeal.

The arguments raised on appeal include: (1) Lone Star has not met the due diligence requirements and is, therefore, not required to comply with the continued operations regulations, (2) the readjustment terms were not reasonable, (3) Lone Star has already satisfied the continued operations requirements, (4) BLM's interpretation of the due diligence and continued operations requirements are arbitrary, capricious, unreasonable, unrealistic, and prejudicial.

Lone Star also contends that surrender of the lease would prejudice its future lease applications. However, neither precedent nor the pertinent regulations support appellant's contention in this regard.

Lone Star's position with respect to lease suspension is ambiguous. In its objections filed with BLM on April 28, 1983, Lone Star requested that its arguments be treated as an application for suspension. Yet, in its statement of reasons it says, "Lone Star Steel Company may apply to the Secretary for a suspension of operations but said suspension is available for only six months which is hardly a workable solution to the development and operation of an underground deep mine." Apparently counsel for Lone Star is unaware that the company has already applied for such a suspension. Moreover, he is mistaken in his reason for his rejection of a suspension as a potential solution. There is no specific period or time limitation on suspensions granted in the interest of conservation. See 43 CFR 3483.3. They can continue for as long as there is a perceived need, until terminated by the authorized officer. Thus, it appears that suspension of the lease would be a viable solution if BLM, after due consideration, finds that such a suspension is warranted.

We therefore remand this matter to the Tulsa District Office, BLM, with instructions to review Lone Star's contentions that an attempt to currently continue production would not be economically feasible or in the interest of conservation. Then BLM should act on Lone Star's request for a suspension, which will be subject to appeal. It is therefore unnecessary for this Board to address appellant's other arguments at this time.

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 remanded to BLM for further action consistent with this decision.

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Edward W. Stuebing  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

