

GULF OIL CORP.
THE PITTSBURGH & MIDWAY COAL MINING CO.

IBLA 85-460, IBLA 85-461

Decided March 13, 1986

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting objections to the readjustment of coal leases NM 065466 and NM 554844.

Affirmed.

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

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and the Bureau of Land Management may subsequently provide the specific terms or conditions for readjustment.

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

The Secretary is vested with broad discretionary authority to readjust every term or condition of a coal lease. A lessee of a pre-Federal Coal Leasing Amendments Act lease has no vested rights to the indefinite continuation of existing lease terms. Terms and conditions which are mandated by statute and regulation or are necessary for proper administration of public lands must be included in a readjusted lease.

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

The Federal Coal Leasing Amendments Act, 30 U.S.C. §§ 201-209 (1982), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the Act.

4. Coal Leases and Permits: Leases--Coal Leases and Permits:
Readjustment--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 public lands.

APPEARANCES: James A. Cunningham, Esq., The Gulf Companies, Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Gulf Oil Corporation (Gulf) and the Pittsburgh & Midway Coal Mining Company (P&M) appeal from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated February 19, 1985, rejecting their objections to the readjustment of coal leases NM 065466 and NM 554844.

The record shows coal lease NM 065466 was originally issued to Spencer Chemical Company, effective January 1, 1964, for 2,560 acres in T. 16 N., R. 20 W., New Mexico Principal Meridian. An assignment of the lease to Gulf was approved by BLM effective October 1, 1964. A Gulf sublease to its subsidiary, P&M, involving a portion of lease NM 065466 was approved effective February 1, 1981. Coal lease NM 554844, consisting of 540.49 acres in Tps. 16 and 17 N., R. 20 W., New Mexico Principal Meridian, was issued to Gulf, effective November 1, 1964.

By notice dated June 13, 1983, and received by Gulf on June 16, 1983, BLM informed Gulf that the terms and conditions of NM 065466 would be readjusted under the provisions of 43 CFR 3451. A copy of the notice was sent to and received by P&M on July 19, 1983. A similar notice of BLM's intent to readjust NM 554844, dated March 19, 1984, was received by Gulf on March 24, 1984. These notices did not include any proposed terms and conditions, but indicated that another notice containing the readjusted terms and conditions would be forwarded to Gulf within 2 years of the date of receipt of the initial notices.

By notice dated October 2, 1984, BLM tendered the proposed readjusted terms and conditions for NM 065466 to Gulf, citing section 3(d) of the lease and the regulations under 43 CFR 3451.2 as a basis for the readjustment. The October 2, 1984, notice gave January 1, 1985, as the effective date for the readjusted terms and conditions of the lease and provided 60 days from the date of receipt of the readjustment terms for filing objections to the proposed readjustment. Gulf received the notice on October 5, 1984. A copy of the notice was sent to and received by P&M on December 14, 1984. A similar notice for NM 554844, dated October 30, 1984, was received by Gulf on October 31, 1984. That notice also gave January 1, 1985, as the effective date for the proposed readjusted terms and conditions and provided a 60-day period for filing objections. Gulf and P&M jointly filed objections on December 3 (NM 065466) and 10 (NM 554844), 1984. Their objections were largely directed to those readjusted terms which incorporate amendments found in the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. §§ 201-209 (1982). BLM rejected these objections in separate decisions dated February 19, 1985.

At the time of issuance of the original leases, section 7 of the Mineral Lands Leasing Act of 1920 (MLA), 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 MLA was amended by section 6 of FCLAA, 30 U.S.C. § 207(a) (1982), to read in pertinent part: "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."

Section 3(d) of each lease specifically provides:

The lessor expressly reserves * * *:

* * * * *

(d) Readjustment of terms. The right reasonably to readjust and fix royalties payable hereafter 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.

Gulf and P&M have appealed, asking this Board to vacate BLM's decisions and remand the cases to BLM so that the leases may be continued under the terms and conditions of the 1964 leases for another 20-year period. Appellants argue the Secretary is barred by statute and the contractual provisions of the leases from readjusting the terms and conditions of the leases and by the Secretary's failure to render a final decision readjusting the lease terms and conditions prior to the end of the initial 20-year period. They also argue the provisions of FCLAA were intended to be prospective and should not be applied to pre-FCLAA leases. Appellants assert readjustment of a coal lease should constitute a continuation of the original lease, as amended, pursuant to the readjusted terms and conditions, and that it does not effectuate the termination of the original lease and issuance of a "new" lease between the parties. They further argue readjustment must be reasonable and a failure to consider the unique conditions of the leased lands and the lessee's situation during the readjustment process is arbitrary, capricious, and an abuse of discretion, which constitutes a taking of property without due process. Appellants further argue the readjustment of the specific terms and conditions of the leases breaches their contractual rights, is factually unsupported, and is arbitrary, capricious, and an abuse of discretion.

[1] This Board has repeatedly addressed the central issues of the authority of BLM to readjust and the applicability of FCLAA and its implementing regulations to pre-FCLAA leases. In every instance we have recognized BLM's right to readjust is preserved if a lessee is notified of the

intention to readjust prior to the deadline for doing so. Since the decision in Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), reversing California Portland Cement Co., 40 IBLA 339 (1979), the Department has consistently taken the position that the readjustment process does not have to be finalized so long as a notice of intention to readjust was provided prior to the end of the then current lease term. The specific provisions of the readjusted lease may be submitted at a later date, even following the expiration of the term. 43 CFR 3451.1(c)(2); Ark Land Co., 90 IBLA 43 (1985); Ark Land Co., 86 IBLA 153 (1985); Consolidation Coal Co., 86 IBLA 60 (1985); 1/ Sunoco Energy Development Co., 84 IBLA 131 (1984); Coastal States Energy Co., 81 IBLA 171 (1984); 2/ Kaiser Steel Corp., 76 IBLA 387, 90 I.D. 470 (1983); Gulf Oil Corp., 73 IBLA 328 (1983); 3/ Coastal States Energy Co., 70 IBLA 386 (1983), *aff'd* Coastal States Energy Co. v. Watt, C-83-730J (D. Utah, Aug. 2, 1985 and Jan. 17, 1986) (Memorandum opinions granting summary judgment for defendants); Blackhawk Coal Co., 68 IBLA 96 (1982); Lone Star Steel Co., 65 IBLA 147 (1982). 4/ *Cf.* Consolidation Coal Co., 87 IBLA 296 (1985); Pitkin Iron Corp., 81 IBLA 81 (1984) (Readjustment waived for failure to serve timely notice).

Appellants argue the Board has misconstrued the Rosebud decision and contend the readjustment process must be final prior to the end of the lease term. They specifically state: "The Tenth Circuit did not hold that simply notifying a lessee of the BLM's intent to readjust the lease at a future time satisfies either the requirements of the statute or the terms of the lease" (Statement of Reasons at 11). Appellants are correct in noting the court in Rosebud did not specifically decide whether the notice of intent to readjust or the notice of the proposed terms must be given prior to the 20-year anniversary date. However, the court's language in Rosebud has been viewed in subsequent Board and judicial decisions in a manner which does not support the interpretation advanced by appellants. In FMC Wyoming Corp. v. Watt, 587 F. Supp. 1545, 1547 (D. Wyo. 1984), the United States District Court for Wyoming observed: "It is clear from the ruling in Rosebud and the explanations set forth by the court therein, that notice prior to the anniversary date made readjustment in the present case timely." In FMC Wyoming Corp., as in the present situation, the readjusted terms were not submitted to the lessee and the readjustment was not finalized until after the 20-year anniversary date. *Id.* at 1546. Appellants' assertion that readjustment must be finalized by the anniversary date in question is not favorably supported by the decisions which have addressed the issue. See also Gulf Oil Corp. v. Clark, *supra*, Memo Op. at 4-5 (Apr. 1, 1984) (Relied on FMC decision to reach

1/ Appeal pending, Consolidation Coal Co. v. Hodel, No. CV 85-36 Bldg. JFB (D. Mont. filed Dec. 2, 1985).

2/ Appeal pending, Coastal States Energy Co. v. Hodel, No. C 85-06656 (D. Utah, filed June 3, 1985).

3/ Appeal pending, Gulf Oil Corp. v. Clark, No. 84-0157-C (D.N.M., filed Feb. 7, 1984). In a memorandum opinion dated Apr. 1, 1985, the court denied the plaintiff's motion for summary judgment. However, the court favorably supported the Department's position on the timeliness of the readjustment question and the application of FCLAA terms issue.

4/ Appeal pending, Lone Star Steel v. Clark, No. CIV 84-583 (E.D. Okla., filed Oct. 4, 1984).

same conclusion). Relying upon Rosebud and FMC, the United States District Court for Utah granted the defendants' motion for summary judgment in Coastal States Energy Co. v. Watt, C-83-730 J, Memo Op. 5-6, 32 (D. Utah Aug. 2, 1985), on the issue of timeliness of readjustment where the notice of intent was received prior to the 20-year anniversary date but the notice of readjusted terms was not tendered until after the 20-year period had expired. See also Kaiser Steel Corp., supra at 390-91, 90 I.D. at 472.

Notice of intent to readjust NM 065466 was given to Gulf, as lessee, and P&M, as sublessee, more than 5 months prior to the 20-year anniversary date of the lease. Notice of intent to readjust NM 554844 was received by Gulf more than 6 months prior to the 20-year anniversary date. ^{5/} BLM's notices conformed to Departmental regulations and satisfied the minimum requirements of the law. Accordingly, based upon the current judicial decisions, we conclude that BLM's readjustment of appellants' leases was timely under the statutes and regulations.

[2] Appellants contend BLM's action abrogated the contractual relationship by terminating the original leases and effectuating new ones, and deprived them of a valuable property right. The following discussion from Ark Land Co., 90 IBLA at 46-47, sufficiently explains the basis for readjustment:

In Coastal States Energy Co., 81 IBLA at 173, we held that BLM may readjust coal leases in conformance with FCLAA and its implementing regulations. It also has the right to readjust a coal lease even though such adjustment is not pursuant to a specific statutory or regulatory mandate. See Coastal States Energy Co., 70 IBLA at 394. A lessee has no vested right to the indefinite continuation of existing lease terms, as the initial lease contains no limitation regarding contract terms subject to readjustment. To hold otherwise would negate the statutory right to readjust. Coastal States Energy Co., 81 IBLA at 173.

Ark's main arguments against the BLM readjustment of the lease terms ignore the great body of precedent established by the cases affirming similar readjustments of coal leases. We find no reason to overturn our conclusions in previous cases that the Secretary is not barred by statute or contract from making such coal lease adjustments. As we stated in Gulf Oil Corp., [73 IBLA] at 330-31:

The power to readjust extends to every term of a lease. The only limitation on this authority is

^{5/} Appellants argue that P&M, as sublessee, did not timely receive copies of any notices. First, Departmental regulation, 43 CFR 3451.1(c)(1), states that only the lessee must receive timely notice. Second, the record does not show a request for approval of a sublease of NM 554844 to P&M was filed with BLM (or any other notice of the purported sublease). Accordingly, P&M is not considered a sublessee of record for NM 554844.

that the Department must notify the lessee of its intent to readjust the lease prior to the end of each 20-year period succeeding the date of the last readjustment, unless otherwise provided by law at the time of the expiration of such period. 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 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.

* * * * *

* * * With respect to contract rights, this Board held in Mid-Continent Coal & Coke Co., [83 IBLA 56, 65 (1984)], that the lessee of a pre-FCLAA lease has no vested rights to the indefinite continuation of existing lease terms, since the original agreement specifically provided that all the terms and conditions were made subject to periodic readjustment. Moreover, the Court of Appeals in Rosebud noted the scope or nature of the changes that BLM could impose was not limited to specific statutory provisions. The Secretary retained a very broad power to make changes considered by him to be in accordance with the proper administration of the lands. 667 F.2d at 951. Consistent with this holding, on several occasions this Board has stated that a decision by BLM to readjust a coal lease will be affirmed where the readjusted provisions are mandated by statute or regulation, or where such provisions are in accordance with the proper administration of the public lands. Mid-Continent Coal & Coke Co., supra at 59, and cases cited therein. [Emphasis in original.]

In Coastal States Energy Co., 81 IBLA at 174, we stated: "Insofar as a coal lease readjustment is concerned, a lessee has only one existing right: the right to accept or reject the continuation of a coal lease beyond a 20-year period under such reasonable terms as the Secretary deems proper." (Emphasis in original.)

Appellants complain that automatic imposition of certain terms required by FCLAA is not a reasonable readjustment of the existing lease as required by the lease itself, i.e., "The lessor expressly reserves: * * * The right reasonably to readjust" (section 3, emphasis added). This Board has stated on several occasions that 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. Ark Land Co., 86 IBLA at 156; Mid-Continent Coal & Coke Co., *supra* at 59. We have stated that those sections of the lease mandated by statute or regulation must be included in the lease. Consolidation Coal Co., 86 IBLA at 66. Thus, in order for the Department to reconsider its position on the readjusted provisions of the lease appellant must demonstrate that a protested term or condition is not in accordance with statute, regulation, or proper administration of public lands.

[3] The argument that the provisions of FCLAA may not be applied to pre-FCLAA leases has been rejected by this Board on numerous occasions. Ark Land Co., 90 IBLA at 46, and cases cited therein. In Coastal States Energy Co., 70 IBLA at 390-91, we stated:

That general lease language cannot serve to negate the statutory authority of the Secretary to readjust lease terms and conditions. Regulations in effect at the time of readjustment are applicable to leases subject to readjustment. Coastal would have us believe that only regulations in effect at the time its leases were issued govern the readjustment process. This is clearly incorrect. Just as the statute authorizes readjustment of terms and conditions, so too may the procedures for implementation be adjusted. Those procedures were revised pursuant to FCLAA. We find no ban to applying those regulations to readjustment of Coastal's leases.

Accordingly, the FCLAA readjustment provisions are applicable to pre-FCLAA coal leases.

Appellants also suggest that mandatory imposition of FCLAA provisions is not in accordance with the contractual relationship. They claim automatic application of FCLAA provisions is a deprivation of property without due process if the readjusted terms and conditions are unreasonable. Although lease readjustment is discretionary, if the Secretary readjusts a lease, he is obligated by law to impose certain lease terms and conditions on all pre-FCLAA leases at the time of readjustment in order to conform to the provisions of FCLAA. Gulf Oil Co., *supra* at 328. The provisions of FCLAA must be applied if the leases are to continue.

[4] Appellants' remaining arguments focus upon individual lease terms and repeatedly pose the question whether the readjustment breaches Gulf's contractual rights, is factually supported and reasonable, and/or is arbitrary, capricious, or an abuse of discretion. Since the same issues raised by appellants have been addressed in numerous decisions by the Board, we will deal with them summarily with appropriate citations.

Appellants complain that Part I of the readjusted lease improperly shortens the readjustment periods to 10 years. FCLAA provides, 30 U.S.C. § 207(a) (1982), 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. *See* 43 CFR 3451.1(a)(1); Gulf Oil Co., *supra*

at 332. Thus, the 10-year readjustment period is mandated and cannot be ignored.

Appellants complain that the statutes and regulations in Part I, section 1, of the leases (as readjusted) provide that the readjusted lease may be subject to more extensive statutory and regulatory provisions than existed upon issuance. Appellants specifically state: "It is not clear that a contract can validly incorporate by reference something which is not in existence at the time of contracting without reducing the contract to a mere 'agreement to agree' or 'agreement to reagree' whenever a subsequent statute is enacted" (Statement of Reasons at 21). This Board has previously approved the adoption of section 1 and similarly worded provisions subjecting a lease to future regulations pertaining to coal leases to be within the scope of authority of the Secretary. Ark Land Co., 90 IBLA at 48; Consolidation Coal Co., 86 IBLA at 67. In these cases we found that the lessees were adequately protected from unreasonable application of new or revised regulations and, therefore, the language of section 1 is not unlawful *per se*. In the future, if a decision is rendered adversely applying changed regulations to the leases, appellants may appeal for relief from that decision. ^{6/} Accordingly, the objections to section 1 were properly rejected.

Appellants argue that Part I, section 2, of the readjusted leases represents a significant change from the original provisions of the leases because section 2 of the readjusted leases has eliminated appellants' right to manufacture coke or other coal products on the leased premises and their right to use the lands for the housing and welfare of employees. Appellants request restoration of these rights (Statement of Reasons at 22). This argument again fails to recognize the fundamental readjustment authority expressly contained in the 1964 leases. 30 U.S.C. § 207(a) (1982); Ark Land Co., 90 IBLA at 49; Consolidation Coal Co., 86 IBLA at 67; Rosebud Sales Co. v. Andrus, *supra* at 951; Coastal States Energy Co., 81 IBLA at 173; Gulf Oil Corp., *supra* at 331.

Appellants next object to the language in Part II, section 1, of the readjusted leases. This section requires payment of annual rental of \$ 3 per acre, which may not be credited against royalties. The 1964 leases provided for rent charges at "\$ 1 acre for each succeeding year during the continuance of the lease." However, the rental in section 1 is specifically mandated by current regulation, 43 CFR 3473.3-1(a), which provides: "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of the subpart shall not be less than \$ 3." Moreover, there is no longer authority allowing rentals to be credited against royalties, as FCLAA deleted the applicable authorization from section 7 of the MLA. See 47 FR 33114, 33131 (July 30, 1982); 43 CFR 3473.3-1(c). Appellants' objections to these provisions also have been considered and rejected by the Board in Ark Land Co., 90 IBLA at 50; Consolidation Coal Co., 86 IBLA at 68; Mid-Continental Coal & Coke Co., *supra* at 62, and Coastal States Energy Co.,

^{6/} The amended regulation or statute might be beneficial. It is impossible to predict the effect of a change at this time, and thus it is impossible to show that the decision is adverse to appellant.

81 IBLA at 175. BLM properly included this section as part of the readjusted leases.

Appellants object to the language in Part II, section 2, of the readjusted leases calling for a production royalty equal to 12-1/2 percent of the value of coal produced by strip or auger mining methods, and 8 percent of the value of coal produced by underground methods. The 1964 leases provided for a royalty rate of 22-1/2 cents per ton after April 1, 1971. Appellants assert that the increase, possibly ten-fold, violates BLM's obligation to reasonably readjust.

Departmental regulation, 43 CFR 3473.3-2(a)(2), provides that "[a] lease shall require payment of a royalty of not less than 12-1/2 percent of the value of the coal removed from a surface mine." See 30 U.S.C. § 207(a) (1982). 43 CFR 3473.3-2(a)(3) provides: "A lease shall require payment of a royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the Minerals Management Service may determine a lesser amount, but in no case less than 5 percent if conditions warrant." See Coastal States Energy Co., 81 IBLA at 179. 43 CFR 3451.1(a)(2) provides that "[a]ny lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section." The Board responded to contentions similar to appellants' in Blackhawk Coal Co., 68 IBLA 96, 99 (1982), where we stated:

Appellant contends that it is arbitrary and capricious to designate a royalty rate by regulation without assessing a company's economic capability to support such a rate. Appellant points to 43 CFR 3473.3-2(a)(1) which states that royalty rates shall be determined on an individual case basis prior to lease issuance, citing Rosebud Coal Sales Co. v. Andrus, No. C79-160B, slip op. at 15-16 (D. Wyo. 1980), aff'd, 667 F.2d 949 (10th Cir. 1982). Appellant contends that in proposing the 8 percent production royalty, the Department has given no consideration to variations in mining conditions, geography, labor markets, or transportation.

* * * 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 [the] 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., [supra]; Garland Coal & Mining Co., 49 IBLA 400 (1980).

The Board's approach to royalty rate readjustment in a similar case, FMC Corp., 74 IBLA 389 (1983), was reversed by the United States District Court for Wyoming in FMC Wyoming Corp. v. Watt, supra, in which the court held with regard to surface mining operations that the Department could not apply the statutory mandated rate of 12-1/2 percent to all leases subject to readjustment; rather, the royalty rate should be determined on a case-by-case basis with regard for the circumstances of each lease. Id. at 1547-49. The Department has sought review of that determination. FMC Wyoming Corp. v. Clark, No. 84-2175 (10th Cir. appeal filed Aug. 29, 1984). Appellants argue the principle in the FMC decision that FCLAA royalty provisions will not be automatically imposed upon pre-FCLAA leases at the time of readjustment should be applied in this case for not only the royalty rate issue but for all terms and conditions "thought to be mandated" by FCLAA.

On January 17, 1986, the United States District Court for Utah issued a memorandum opinion and order in Coastal States Energy Co. v. Watt, No. C-83-730 J, a judicial appeal from another Board decision in a coal lease readjustment case, Coastal States Energy Co., 70 IBLA 386 (1983). By a previous memorandum opinion and order dated August 2, 1985, the court had granted in part the defendants' motion for summary judgment and dismissed all of the plaintiff's causes of action challenging BLM's lease readjustment practices except the third cause of action concerning the applicability of FCLAA minimum royalty provisions to pre-FCLAA leases. In the January 17, 1986, opinion, the court granted the defendants' motion for summary judgment and concluded the regulations mandating minimum royalty rates are substantively valid and properly promulgated, and do not provide for individual lease considerations when readjusting royalty rates. (Memorandum Opinion and Order at 12, 23). Under these circumstances we decline to apply the Wyoming District Court's decision to a case arising in New Mexico. See Mid-Continent Coal & Coke Co., 83 IBLA at 64. We conclude, on the basis of numerous Board decisions and above-cited judicial determinations, BLM properly imposed the royalty provisions mandated by regulations.

Appellants object to Part II, section 4, of the readjusted leases which provides for diligent development of the leased lands (Statement of Reasons at 25). They argue that if the requirement is made applicable it should be limited to the 10-year period following readjustment and Gulf should not be required under the leases to produce in "commercial quantities." Diligent development period for pre-FCLAA leases means a 10-year period which begins on the effective date of the first readjustment. 43 CFR 3480.0-5(a)(13)(i)(B). Hence, appellants' contention concerning the period for compliance is unfounded. However, both the statutes and regulations require production to be "not less than commercial quantities" at the end of 10 years or the lease will be terminated. 30 U.S.C. § 207(a) (1982); 43 CFR 3483.1. The applicability and intent of the regulations are clear and may not be disregarded. Ark Land

Co., 90 IBLA at 49. Therefore, the diligence requirements, as mandated by statute and regulation, must be included in the readjusted leases. Id.; Consolidation Coal Co., 86 IBLA at 67.

Appellants also object to Part II, sections 5 (logical mining units), 6 (documents inspection), 7 (damages to property and conduct of operations), 8 (protection of diverse interests), 9(b) (relinquishment), 10 (delivery of premises, removal of equipment), 11 (proceedings in case of default), 13 (indemnification), 14 (special statutes), and 15 (special stipulations). Appellants reiterate previous assertions that these provisions violate their contractual rights through presenting new lease terms and conditions, and are unreasonable and arbitrary because there is no basis for deleting their rights under the original lease terms. As we have stated, a lessee has no vested rights to the indefinite continuation of existing lease terms. E.g., Consolidation Coal Co., 86 IBLA at 65. Appellants simply have no contract rights violated by the readjustment of those leases nor are the provisions imposed unreasonable in light of the applicable statutes and regulations.

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 are affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge.

