

COASTAL STATES ENERGY CO., ET AL.

IBLA 85-510, et al.

Decided December 1, 1986

Appeals from four decisions of the Utah State Office, Bureau of Land Management, dismissing objections to the readjustment of coal leases U-053995, U-0142235, U-0147570, and U-044076.

Affirmed as modified in part; set aside and remanded in part.

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

When BLM gives a notice of intent to readjust a coal lease to the lessee prior to the 20-year lease anniversary date, the notice satisfies the statutory requirement for timely readjustment and BLM may, within the time provided in 43 CFR 3451.1, subsequently provide the specific terms and conditions for readjustment.

2. 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 that Act. All terms and conditions of the lease are subject to readjustment.

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

BLM's decision 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.

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

In accordance with 30 U.S.C. § 207(a) (1982), the Secretary has determined by regulation that the royalty for coal mined will be not less than 12-1/2 percent of the value of coal removed from a surface mine and not

less than 8 percent of the value of coal removed from an underground mine. However, the authorized officer may determine a lesser amount is appropriate for an underground mine, but in no case less than 5 percent. In addition, the Secretary may, in accordance with 43 CFR 3473.3-2(d), reduce the royalty obligation.

APPEARANCES: Kevin L. Yocum, Esq., Midvale, Utah, Brian McGee, Esq., Denver, Colorado, John E. Merli, Esq., Houston, Texas, Ben E. Rawlings, Esq., Salt Lake City, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Coastal States Energy Company (Coastal States), et al., appeal four decisions of the Utah State Office, Bureau of Land Management (BLM), each decision overruling in part objections to the terms of a proposed readjusted coal lease. The appeals are docketed as: IBLA 85-510 (lease U-053995), 1/ IBLA 86-596 (lease U-0147570), 2/ IBLA 85-743 (lease U-0142235), 3/ and IBLA 85-930 (lease U-044076). 4/ Because of the commonality of parties 5/ and issues, the Board has consolidated the appeals. 6/ For purposes of convenience, throughout this decision appellants will be referred to in the singular as Coastal States.

Under the terms of the leases and section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1958), the coal leases were subject to readjustment "at the end of each twenty year period succeeding the date of the

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1/ The chronology of events is: Lease issuance, Mar. 1, 1962; BLM notice of readjustment, Oct. 28, 1981; notice of readjusted terms and conditions, Oct. 25, 1983; objections filed Dec. 19, 1983; BLM decision, Mar. 8, 1985.

2/ The chronology of events is: Lease issuance, May 1, 1966; BLM notice of readjustment, May 31, 1984; notice of readjusted terms and conditions, Sept. 9, 1985; objections filed Nov. 6, 1985; BLM decision, Feb. 5, 1986.

3/ The chronology of events is: Lease issuance, Oct. 1, 1964; BLM notice of readjustment, Nov. 14, 1983; notice of readjusted terms and conditions, July 26, 1984; objections filed Sept. 24, 1984; BLM decision, June 6, 1985.

4/ The chronology of events is: Lease issuance, Sept. 1, 1965; BLM notice of readjustment, Jan. 25, 1984; notice of readjusted terms and conditions, Feb. 15, 1985; objections filed Apr. 18, 1985; BLM decision, Aug. 14, 1985.

5/ In IBLA 85-510 the appellants are Coastal States and the Malcolm N. McKinnon Residual Trust. In the other three appeals, Coastal States appeals on its own behalf as lessee of record, and on behalf of Getty Minerals Marketing, Inc., which has been assigned an undivided 50-percent interest in coal leases U-0142235, U-0147570, and U-044076.

6/ Nearly identical statements of reasons have been filed for each of the appeals. Except where specifically noted otherwise, the issues raised are common to each appeal. For simplification, all quotations and references to statement of reasons, unless otherwise noted, are to the statement of reasons for the appeal docketed as IBLA 85-510.

lease." <sup>7/</sup> The first issue Coastal States raises concerns the time requirements for readjustment.

Under 43 CFR 3451.1(c)(1) BLM must notify the lessee of its intention to readjust the lease terms prior to the expiration of the readjustment period or waive its right to readjust the lease. BLM is required by 43 CFR 3451.1(c)(2) to transmit to the lessee the proposed readjusted lease terms within the time prescribed by the notice of readjustment but not longer than 2 years after the notice is transmitted.

Coastal States argues that the terms of the original leases and section 7 of the Mineral Leasing Act require BLM to effectuate the readjustment by the end of the 20-year period and that, if BLM fails to do so, it will waive its right to readjust pursuant to the holding of the Court of Appeals for the Tenth Circuit in Rosebud Coal Sales Co. v. Andrus (Rosebud), 667 F.2d 949 (1982). Coastal States contends that 43 CFR 3451 is arbitrary and capricious because, according to Coastal States, "BLM is unilaterally claiming the right to readjust a lease at any indeterminate time after the 20-year period which it may choose" (Statement of Reasons (SOR) at 37).

[1] This Board has consistently held that where BLM transmits a notice of intent to readjust a coal lease to the lessee prior to the 20-year lease anniversary date, the notice satisfies the statutory requirement for timely readjustment and BLM may, within the time provided in 43 CFR 3451.1, subsequently provide the specific terms or conditions for readjustment. Consolidation Coal Co., 86 IBLA 60, 64 (1985), and cases cited therein. The Department practice of sending a notice prior to the end of the anniversary period, and the proposed lease terms within 2 years thereafter, with an opportunity for the coal lessee to object to the terms, comports with the Mineral Leasing Act and Department regulations. Moreover, this practice is not contrary to Rosebud, supra, as Coastal States asserts. We agree with the United States District Court in Gulf Oil Corp. v. Clark, 631 F. Supp. 29, 31 (D.N.M. 1985), which stated that Rosebud only requires the Department to give notice of readjustment before the 20-year anniversary date to preserve its right to readjust the lease. See Rosebud, 667 F.2d at 953. In the instant appeals, BLM did transmit notices of readjustment prior to the end of the 20-year period. Accordingly, the readjustments were timely.

In addition, 43 CFR 3451 does not permit indeterminate readjustment of the lease, as appellant argues. To the contrary, this regulation expressly limits the time for notifying the lessee of the intent to readjust the lease and limits the time to submit the actual terms and conditions of the readjusted lease.

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<sup>7/</sup> Section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) amended this provision to provide for the issuance of coal leases with a 20-year term to be subject to readjustment at the end of that 20 years and at the end of each 10-year period thereafter. 30 U.S.C. § 207(a) (1982).

[2] Coastal States asserts the FCLAA, 30 U.S.C. §§ 201-209 (1982), only applies prospectively to leases issued after its passage, and, therefore, the leases in issue should not be imposed with FCLAA terms and conditions. On numerous occasions the Board has rejected this contention. Consolidation Coal Co., 86 IBLA at 65; Sunoco Energy Development Co., 84 IBLA 131, 132-33 (1984); Mid-Continent Coal & Coke Co., 83 IBLA 56, 64-65 (1984); Coastal States Energy Co., 81 IBLA 171, 173 (1984). See also Gulf Oil Corp. v. Clark, 631 F. Supp. at 29, and Solicitor's Opinion, 88 I.D. 1003 (1981). Furthermore, in Coastal States Energy Co., 70 IBLA 386, 391 (1983), we stated, "Regardless of whether readjustment creates a new lease or merely adjusts terms and conditions, the same requirements exist." <sup>8/</sup> Thus, FCLAA is applicable to readjusted leases. In addition, readjustment is expressly provided for in the subject leases.

Coastal States asserts that the exercise of BLM's authority to readjust the leases must be reasonable and BLM's attempts to impose entirely new leases is at odds with the existing commercial and contractual relationship of the parties and constitutes a taking of the lessee's vested property rights. To the contrary, we have held the lessee has no vested rights, property or otherwise, to the indefinite continuation of existing lease terms. To hold otherwise would negate the statutory reservation of the right to readjust. Coastal States Energy Co., 81 IBLA at 173.

Citing the rule of construction eiusdem generis, Coastal States argues that under section 3(d) of the original leases, only lease terms concerning royalties may be readjusted. The principle of eiusdem generis provides that general words are not given their widest meaning where they follow words of specific meaning but are to be limited in meaning by specific words. Section 3(d) provides the United States reserves the right "reasonably to readjust and fix royalties payable hereunder and other terms and conditions." We have previously rejected this argument. Kanawaha & Hocking Coal & Coke Co., 93 IBLA 179, 182 (1986), and cases cited.

[3] Coastal States also objects to imposition of FCLAA provisions arguing that they are not in accordance with the contractual relationship established by the leases. The Board has held that BLM's decision to readjust a coal lease will be affirmed where the readjusted provisions are mandated by statute or regulation or are in accordance with the proper administration of the public lands. Gulf Oil Corp., 91 IBLA 93, 98-99 (1986).

Coastal States charges that BLM used boilerplate language in the readjusted coal leases. BLM's use of a standard form for coal lease readjustments is reasonable and justifiable. The proposed form provides space for the insertion of information which is specifically applicable to the lease in question. Consolidation Coal Co., 86 IBLA at 66.

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<sup>8/</sup> This decision was affirmed on judicial review. Coastal States Energy Co. v. Watt, 629 F. Supp. 9 (D. Utah 1985), appeal docketed Coastal States Energy Co. v. Hodel, No. 86-1031 (10th Cir. Feb. 24, 1986).

Coastal States contends that BLM's determination of the "effective date" is arbitrary. It argues the date cannot be set until a final decision is issued, or until conclusion of the review process by the Attorney General of the United States, or until the appeal process is exhausted. We reject this argument, as we did in Gulf Oil Corp., 73 IBLA 328, 334 (1983). See also Consolidation Coal Co., 86 IBLA at 66; Sunoco Energy Development Co., 84 IBLA at 133-34.

Coastal States objects to the respective lease provisions which provide the lessee is not only subject to regulations currently in force but also subject to regulations "hereafter in force." It argues the "hereafter" clause renders the leases as nothing more than an agreement to agree. This argument must be rejected. Consistent with the statutory right to readjust the lease terms and conditions, the Department may promulgate regulations prescribing new terms and conditions for the readjusted lease. Therefore, both FCLAA and the regulations implementing that Act apply to leases issued prior to FCLAA and readjusted after that Act. Consolidation Coal Co., 87 IBLA 296, 298 (1985); Sunoco Energy Development Co., 84 IBLA at 133; Coastal States Energy Co., 81 IBLA at 173; Coastal States Energy Co., 70 IBLA at 390. Furthermore, an objection to the "now or hereafter in force" language is conjectural since harm would depend upon a change in the regulations adversely affecting the lessee. Lone Star Steel Co., 77 IBLA 96, 97-98 (1983); see also Kaiser Steel Corp., 87 IBLA at 231.

Coastal States points out a possible conflict between sections 1 and 6 of lease U-053995. Section 6 of that readjusted lease provides that the value of coal shall be determined as set forth in the regulations. Section 1 provides the lease is subject to all Department regulations now or hereafter in force, but that "no amendment to the regulations made subsequent to the effective date thereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease." (Emphasis added.) Coastal States argues:

If the Secretary can change the method of determining the value of the coal in a lease which provides for the royalty to be payable on a percentage of that value, then, in effect, the Secretary, by changing the method of determining value, can accomplish the same purpose as if the royalty rate had been changed.

(SOR at 64). We interpret sections 1 and 6 to mean that during the readjustment period the method of calculating the value of coal for royalty purposes shall not be amended by regulation, so as to alter the royalty requirements.

Coastal States argues that section 2 of the readjusted leases eliminates the right to manufacture coke or other coal products on the leased area or to use the lands for employee housing and welfare. This, it contends, constitutes a breach of its contractual rights and is arbitrary, capricious, and an abuse of discretion (SOR at 64-65). Coastal States filed objections with BLM respecting these section 2 lease revisions for each lease, except U-053995. BLM sustained Coastal States' objections and stated that it did

not appear the activities suggested by Coastal States would be precluded. BLM also stated it would revise the lease language, "to insure certainty." Coastal States charges that BLM made no attempt to revise the language, and it states it is not sure what BLM meant when BLM stated it would revise the language to insure certainty. Coastal States objects to BLM's failure to revise the lease language. No answer was filed by BLM to any of the statements of reasons; therefore, BLM's intent remains a mystery. However, we find in this case BLM is not required to revise the lease language since we have previously upheld BLM's authority to readjust the terms of the lease to include the language to which Coastal States objects. Gulf Oil Corp., 91 IBLA at 100; Consolidation Coal Co., 86 IBLA at 67. This holding applies as well to IBLA 85-510, wherein Coastal States raised these objections for the first time in the appeal before the Board. While we uphold BLM's authority to include the language, this does not mean BLM is precluded from revising it to meet Coastal States' objections.

In an objection to section 3 of lease U-053995 and section 4 of the other leases, Coastal States contends that "production," not "production in commercial quantities," needs to be commenced by the end of the 10-year period following readjustment. Both the statute and regulations require production to be not less than "commercial quantities." The applicable lease provision is valid. Gulf Oil Corp., 91 IBLA at 102; Consolidation Coal Co., 86 IBLA at 67. Furthermore, the diligent development period begins on the effective date of the first readjustment. Gulf Oil Corp., 91 IBLA at 102.

Coastal States raises three objections regarding the lease bond provision. First, Coastal States challenges the basis for BLM's determination of bonding recommendations, which are Minerals Management Service guidelines, dated April 23, 1980, requiring a bond sufficient to cover 3 months of estimated production and a 1-year rental. See Coastal States Energy Co., 81 IBLA at 175. Coastal States challenges these guidelines on procedural grounds, *i.e.*, the failure to provide notice and an opportunity for public comment prior to adopting the guidelines. It also argues there is no factual basis for the Department's determination that the bonds cover a projected 3-month royalty payment period. Finally, it objects to the provision allowing the Department to unilaterally increase the bond amount when additional coverage is deemed appropriate.

We addressed these arguments in Kanawha & Hocking Coal & Coke Co., 93 IBLA at 184. Therein, we noted that although the statute and regulations do not outline a specific formula for calculating the bond amount, the regulation defining "lease bond," 43 CFR 3400.0-5(s), sets out standards for measuring the sufficiency of a bond as follows:

"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 exploration plan. [Emphasis supplied.]

See Coastal States Energy Co., 81 IBLA at 175. Furthermore, the bond amount required by 43 CFR 3474.2(a) must be adequate to assure compliance with all terms and conditions of the lease, except reclamation. Sunoco Energy Development Co., 84 IBLA at 135. Coastal States' objections to the bonding requirements of the leases are rejected.

Increase in rental rates from \$1 to \$3 per acre is improper, Coastal States contends, because section 2(b) of the original leases provides the rate will apply "during the continuance of the lease." Therefore, BLM may not readjust this rate. The same objections have previously been considered by the Board and rejected. See Gulf Oil Corp., 91 IBLA at 100; Consolidation Coal Co., 86 IBLA at 68; Mid-Continent Coal & Coke Co., 83 IBLA 56, 62 (1984); Coastal States Energy Co., 81 IBLA at 175.

[4] Coastal States advances a number of objections to various provisions in the readjusted leases regarding royalty payments. Under the original leases the lessee was required to pay a royalty to the United States of set amounts between \$0.15 and \$0.20 per ton of coal mined. <sup>9/</sup> The readjusted leases provide for royalty of 12-1/2 percent of the value of coal mined by strip or auger mining methods and 8 percent of the value of coal mined underground. Coastal States contends the substantial increase in royalty rates is patently unreasonable and unjustified.

The 12-1/2 percent of the value of coal production royalty for coal recovered by other than underground mining methods is the minimum royalty prescribed by statute, 30 U.S.C. § 207(a) (1982), and regulation, 43 CFR 3473.3-2(a)(2). The lease properly reflects the statutory and regulatory surface mining requirements.

The 8 percent royalty for underground mining is also consistent with statutory and regulatory requirements. Section 6 of FCLAA provides that the Secretary may set a royalty for coal mined underground at less than 12-1/2 percent of the value of coal. 30 U.S.C. § 207(a) (1982). Department regulations provide: "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 authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." 43 CFR 3473.3-2(a)(3). The validity of the regulation establishing the 8-percent- production royalty on underground mining was upheld by the United States District Court of Utah in Coastal States Energy Co. v. Watt, supra. After a thorough review of the Department's rulemaking record the district court concluded the regulation was rationally based and not arbitrary and capricious.

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<sup>9/</sup> The royalty rate in effect was: \$0.15 per ton, for coal leases U-053995 and U-0142235, and \$0.15 per ton for underground mining and \$0.175 per ton for surface mining, including the auger method, for the first 10 years; and \$0.175 per ton for underground mining and \$0.20 per ton for surface mining, including the auger method, for the second 10 years, for coal leases U-014750 and U-044076.

Coastal States asserts that when 43 CFR 3451.1(a)(2) is read in conjunction with 43 CFR 3473.3-2(a)(3), the regulations provide the readjusted royalty rate for coal mined underground is 5 percent. 43 CFR 3451.1(a)(2) provides: "(2) Any 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." (Emphasis supplied.) 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 authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant." 10/ (Emphasis supplied.)

This interpretation was considered and rejected by the district court in Coastal States Energy Co. v. Watt, 629 F. Supp. at 25, as being "without merit." It is clear the "minimum royalty prescribed" refers to the standard minimum royalty for coal removed by underground mining, 8 percent, not the 5 percent rate which applies only in cases of economic hardship. Kanawha & Hocking Coal & Coke Co., 93 IBLA at 186.

Coastal States, citing 43 CFR 3473.3-2(a)(1), which provides "[r]oyalty rates shall be determined on an individual case basis prior to lease issuance," states BLM must consider royalty rates on a case-by-case basis. BLM has not considered a number of factors particular to these leases including adverse geologic circumstances, and dislocation from available rail transportation, according to Coastal States. In Coastal States Energy Co. v. Watt, 629 F. Supp. at 32, the court considered the same argument stating:

Faced with the prospect of individually reviewing many leases up for readjustment, charged with a mandate to develop coal reserves while preserving the environment, and burdened with increasing demands on decreasing resources (both fiscal and manpower), the Secretary exercised considerable skill and judgment in formulating a procedure to accommodate all of those competing concerns. The imposition of a blanket 8 percent rate upon lease readjustment, with the possibility of a lower rate on a showing of economic hardship, reflects a careful balancing of the relevant factors. \* \* \* This court therefore finds that the challenged regulations are substantively valid.

See also Blackhawk Coal Co., 68 IBLA 96, 99 (1982). Thus, BLM acted in accordance with its authority under the FCLAA and Department regulations in establishing the royalty rates for the leases in question.

Our holding is made notwithstanding FMC Wyoming Corp. v. Watt (FMC), 587 F. Supp. 1545 (D. Wyo. 1984), wherein the United States District Court

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10/ On Mar. 4, 1985, 43 CFR 3473.3-2(a)(3) was amended to reflect the transfer of onshore management functions from the Minerals Management Service to the Bureau of Land Management. At that time the previous designation of "Minerals Management Service" was amended to the present "authorized officer." 50 FR 8627 (Mar. 4, 1985).

for Wyoming held that the Department could not apply the statutorily mandated rate of 12-1/2 percent to the leases subject to readjustment in that case without consideration being given to the specific factual circumstances of each lease. The Board's instant holding recognizes that the Department has appealed FMC to the Tenth Circuit Court of Appeals, FMC Wyoming Corp. v. Clark, No. 84-2175 (Aug. 29, 1984). See Gulf Oil Corp., 91 IBLA at 102. <sup>11/</sup>

Coastal States objects to the change in royalty due dates from quarterly to monthly. It also complains that the new basis of the royalty formula, percent of sales price, is inappropriate because the price varies and, therefore, under the readjusted lease the lessee cannot project operating expenses with certainty. Further, a new provision concerning advance royalties is ambiguous, Coastal States asserts.

We affirm BLM's authority to require monthly royalty payments. The scope and nature of the changes BLM may impose upon coal lease readjustment are not limited so long as the changes are in accordance with the proper administration of the land. Rosebud, 667 F.2d at 951. Readjustment of the timing of royalty payments is well within the scope of BLM's broad based authority to readjust the terms of the coal lease. Ark Land Co., 86 IBLA 153, 159 (1985). Moreover, the change in basis for royalty payments from cents per 2,000 pounds mined to percent of value of coal produced is within the scope of BLM's readjustment authority. Ark Land Co., 86 IBLA at 159. Finally, the advance royalty lease provision which authorizes the coal lessee to make royalty payments in lieu of production for up to 10 years, is not ambiguous when read in conjunction with the regulations which establish the amount of royalty payment due. See 43 CFR 3473.3-2(b) and 43 CFR 3483.4.

With respect to coal lease U-053995, Coastal States submits that under past and present Department practice increased royalty payments accrue but are not payable pending an appeal of a readjusted lease but, according to Coastal States, the proposed lease at section 22(c) indicates the increased royalty payment is payable while an appeal is pending. 43 CFR 3451.2(e) provides in relevant part that the lessee's royalty and rental obligation is suspended during an appeal; however, "during the pendency of the appeal, royalties and rentals shall accrue under the readjusted lease terms and shall be payable if the decision is upheld on appeal, plus interest at the rate specified for late payments \* \* \*." We interpret the lease provision and the regulation to mean that royalty payments accrue but are not payable during the pendency of an appeal, but if the lessee opts to pay royalties during the appeal, the lessee will receive a credit for any excess royalties paid.

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<sup>11/</sup> Coastal States urges that we set aside the BLM decisions as they relate to the production royalty, citing Ark Land Co., 90 IBLA 43, 51-53 (1985). In that case the Board set aside the BLM decision as to the production royalty stating that the rate should be set following the decision of the United States Court of Appeals for the Tenth Circuit in FMC Wyoming Co. v. Watt, *supra*. The Board, however, has granted a petition for reconsideration filed by BLM in that case.

Coastal States asserts that the leases which restate the employment practices provisions of 30 U.S.C. § 187 (1982) fail to provide that the provisions are subject to state law in the event of conflict, as provided by that statute. BLM is not required to include this provision in the leases since the statute governs the lease terms.

With respect to coal lease U-053995, Coastal States objects to the indemnification provision (section 25) which it argues subjects it to liability without fault. BLM, in its March 8, 1985, decision, sustained the objections on this point, citing Sunoco Energy Development, 84 IBLA at 137, and Coastal States Energy Co., 81 IBLA at 178, involving the same indemnification provisions. Because BLM has sustained Coastal States' objection no further relief is warranted for lease U-053995. Coastal States also objects to the indemnification provision in the remaining three leases which provides in toto: "Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease." This is the exact language of section 25(b) of lease U-053995. This provision may, as well, subject the lessee to strict liability. Based on the authority set out above, inclusion of this provision in the three leases is set aside and the cases remanded to BLM to make this provision comport with its intent.

The lease provisions permitting Government inspection of lessee's books and records at any reasonable time, Coastal States submits, should be clarified and limited as to frequency of access and, where the Government requires copies of records, the lessee should be reimbursed for the copying expense. Department regulations, 30 CFR 721 and 43 CFR 3486, provide guidelines on inspecting lessee's operations. The lease provisions are not inconsistent with these regulations. 12/ The request for further specificity is denied.

Coastal States objects to the inclusion of special stipulations in the coal leases, arguing that BLM may not impose entirely new terms and conditions in the readjusted leases and arguing that the stipulations should be found in the exploration plans or mining plans, not the leases. Coastal States further asserts that the special stipulations "were imposed or sanctioned, in part, upon an application of certain of the BLM's unsuitability related criteria or the provisions of the Surface Mining Control and Reclamation Act (SMCRA)" (SOR at 92). It states that while 43 CFR 3451.1(a)(3), promulgated on July 19, 1979, provided that "each lease shall be readjusted to provide that it is subject to the unsuitability criteria set out in subpart 3461 of this title," this regulation was removed in its entirety on July 30, 1982.

The language adopted in 43 CFR 3451.1(a)(3) (1979) was not the exclusive authority for imposing stipulations. We have previously noted the

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12/ Both regulations provide for access to the authorized officers at "reasonable times." See 43 CFR 3486.1(a) and 30 CFR 721.12(b). We interpret the appropriate lease provisions in U-0142235, U-0147570, and U-044076 which provide for access for inspection "at all times" to mean "at any reasonable time." Lease U-053995 provides for access "at any reasonable time."

Secretary has broad authority to make changes when he adjusts coal leases. Rosebud, 644 F.2d at 951; Consolidation Coal Co., 86 IBLA at 63-64. Imposing special stipulations on a coal lease on behalf of the appropriate surface management agency, herein the Forest Service, is within that authority. We reject the assertion of Coastal States that upon the revocation of 43 CFR 3451.1(a)(3) (1979), the Department is without authority to impose special lease stipulations relating to SMCRA concerns.

Coastal States next states that while the Forest Service asserts the right to consent to leasing and to prescribe conditions to insure the use and protection of Forest Service lands, it does not have the right to mandate terms and conditions upon the proposed readjusted leases. Coastal States contends that because the lease is being readjusted, not issued, the operating requirements established by the Forest Service should not be included in the leases, but rather imposed only pursuant to review and approval of exploration or mining plans. Coastal States raises a number of objections to the special operational stipulations in the proposed readjusted leases.

The Forest Service, which has surface jurisdiction over the lands under lease, required the special stipulations in accordance with 43 CFR 3400.3-1. Under that regulation, coal deposits may be leased only with consent of the surface management agency and subject to conditions it prescribes to insure use and protection of the lands for the primary purpose for which they were acquired or are being administered. Because of this authority, BLM may not unilaterally amend the stipulations recommended by the Forest Service.

We have reviewed the objections raised by Coastal States to the special stipulations in each of the four leases. Many of these objections have been considered in previous Board decisions and rejected. See, e.g., Coastal States Energy Co., 81 IBLA at 178-79; Coastal States Energy Co., 70 IBLA 395-96. We have considered the other objections, and except for our discussion below, they are rejected.

Coastal States argues that the stipulations relating to the cultural and paleontological resources and plant/animal inventory are worded in a futuristic sense and ignore the fact that surface disturbance activities have taken place on each of the leases. <sup>13/</sup> Coastal States is concerned that mere acceptance of these stipulations may result in their violation.

It is not clear from the record in these cases what the extent of the claimed surface-disturbing activities has been, and Coastal States has not elaborated on its assertion. However, to the extent such activities have taken place on any or all of the leases, the appropriate changes to the necessary stipulations should be made. See Coastal States Energy Co., 81 IBLA at 178. Moreover, the plant/animal stipulation needs clarification

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<sup>13/</sup> The stipulations are Nos. 4, 5, and 6 of U-053995 and Nos. 5 and 6 of each of the other three leases. In U-053995, cultural resources and paleontological resources are separate stipulations, while in the other leases those two stipulations were combined into one.

for another reason. It includes the language "migratory species of high Federal interest" to which Coastal States objects as being vague and uncertain. As we stated in Kanawha & Hocking Coal & Coke Co., 93 IBLA at 189, "[t]he term 'high Federal interest' should be defined."

One other objection which merits attention is Coastal States' complaint that stipulation 15 of U-053995 requires the lessee to replace or restore "land monuments" in their original location or at other locations that meet the needs of the "land net." The meaning of these terms should be specified. See Kanawha & Hocking Coal & Coke Co., 93 IBLA at 189. 14/

To the extent other arguments raised by Coastal States have not been specifically addressed in this opinion, those arguments have been considered and are rejected.

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 as modified in part and set aside and remanded in part.

Bruce R. Harris  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Anita Vogt  
Administrative Judge  
Alternate Member

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14/ We realize the modification of the above-mentioned stipulations will require consultation between the Forest Service and BLM. See 43 CFR 3400.3-1.

