

CHEVRON U.S.A. INC.
THE PITTSBURGH AND MIDWAY COAL MINING CO.

IBLA 87-277

Decided March 29, 1989

Appeal from a notice of the Wyoming State Office, Bureau of Land Management, that the terms and conditions for coal lease W-075206 are to be readjusted January 2, 1989.

Affirmed.

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

Any coal lease issued prior to enactment of sec. 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. | 207 (1982), whose 20-year readjustment period expires after Aug. 4, 1976, is automatically converted at that time to a 10-year readjustment interval.

2. Administrative Authority: Estoppel--Coal Leases and Permits: Leases--Coal Leases and Permits: Readjustment--Estoppel--Federal Employees and Officers: Authority to Bind Government

Employees of the executive branch, including BLM, have no authority to depart from the requirements of statutes dealing with public lands. All citizens are deemed to have knowledge of such statutes. Thus, even though a coal lessee was erroneously advised by BLM that his coal lease would be subject to readjustment in 1999 rather than in 1989, the Government is not estopped from readjusting the lease in 1989 as provided by statute.

APPEARANCES: John H. Miller, Esq., Englewood, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Chevron U.S.A., Inc. (Chevron), and the Pittsburgh and Midway Coal Mining Company (P & M) have appealed from the December 29, 1986, notice from the Wyoming State Office, Bureau of Land Management (BLM), that Federal coal lease W-075206 would be readjusted as of January 2, 1989. Appellants contend that the lease is not subject to readjustment until January 2, 1999.

Effective January 2, 1959, the subject lease was issued to Kemmerer Coal Company (Kemmerer) for an indeterminate period upon condition that "at the end of each 20-year period succeeding the dates 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." 30 U.S.C. | 207 (1958). This statutory provision is reflected in section 3(d) of appellants' lease.

Chevron and P & M came into ownership of the lease when Gulf Oil Corporation and P & M acquired part of the capital of Kemmerer in 1981. By decision dated March 30, 1983, BLM approved the assignment of the lease to Gulf and the sublease to P & M. In 1985, Gulf merged with Chevron.

On February 7, 1979, after the expiration of the first 20-year lease period, Kemmerer was notified that the terms and conditions of the lease were subject to readjustment. However, by letter dated August 18, 1982, BLM rescinded the notice because it had not notified Kemmerer of the readjustment until after the expiration of the first 20-year lease period. Under the ruling in Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), BLM waived its right to readjust in these circumstances.

BLM's letter of August 12, 1982, also advised Kemmerer that the lease would be subject to readjustment after 10 years, that is, on January 2, 1989. By letter dated August 27, 1982, Gulf responded that the readjustment date should be January 2, 1999. By letter dated October 18, 1982, BLM responded that the next readjustment date for the subject lease is January 2, 1999. This indication was contrary to the position later adopted in BLM's December 29, 1986, notice (which is presently under appeal) that appellants' lease would be ripe for readjustment on January 2, 1989.

BLM's determination that the lease would be subject to readjustment 10 years after the expiration of its first 20-year term was based on a provision of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), P.L. 94-377, 90 Stat. 1083 (1976), that a coal lease "would be subject to readjustment at the end of its primary term of 20 years and at the end of each 10-year period thereafter if the lease is extended." 30 U.S.C. | 207(a) (1982). That statute imposed other new or additional requirements on Federal coal leases when issued or readjusted, including an increased royalty due to the United States from lessees for coal produced from the lease.

This appeal raises the question of whether a coal lease whose initial 20-year period for readjustment expired after the passage of section 6 of FCLAA on August 4, 1976, but was not then readjusted, thereafter becomes subject to readjustment at 10-year intervals, in accordance with that statute, or whether the lease gets another 20-year interval after the last readjustment had been waived. Appellants contend that the provisions of FCLAA are only prospective and do not apply to leases issued before that date. Appellants characterize BLM's action as retroactive and contend that it would breach their contractual rights.

These general arguments concerning the applicability of FCLAA to pre-FCLAA leases have been rejected in FMC Wyoming Corp. v. Hodel, 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 772 (1988), and Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987). Appellants make the more specific argument that if the 10-year provision of FCLAA is applicable, their lease could not be made subject to that provision until its next readjustment date of January 2, 1999, because BLM waived lease readjustment at the expiration of the first 20-year period on January 2, 1979.

[1] The Board has previously considered and rejected this argument. In Franklin Real Estate Co., 93 IBLA 272 (1986), we held that, for any coal lease issued prior to the enactment of FCLAA, whose 20-year readjustment period expires after August 4, 1976, the coal lease automatically converted to a 10-year readjustment interval in accordance with the intent of Congress in passing section 6 of FCLAA. We based our conclusion on the words of Representative Patsy T. Mink, Chairman of the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs and one of the chief sponsors of H.R. 6721, which ultimately became FCLAA. She had stated that existing leases would be unaffected by the bill "except to the extent its provisions are made applicable upon the periodic 10-year readjustment of lease terms." Id. at 279 (quoting from 122 Cong. Rec. 489 (1976)) (emphasis omitted). We found that her statement was a "clear expression of Congressional intent that pre-FCLAA leases be subjected to the periodic ten-year readjustment of lease terms." Id.

More recently, the Board followed Franklin in an appeal which raised arguments very similar to those raised by appellants in the instant appeal:

After carefully reviewing appellants' arguments and our decision in Franklin, we are not persuaded that Franklin was erroneously decided. Thus, we conclude that, following passage of FCLAA, appellants' leases automatically became subject to readjustment at the end of each 10-year period following the end of the initial 20-year readjustment period. That occurred by operation of law. It is immaterial that BLM was not able to readjust the terms and conditions of appellants' leases at the end of the initial 20-year period.

General Electric Holdings, Inc., 103 IBLA 366, 369-70 (1988).

[2] Appellants next argue that BLM is estopped from readjusting the lease on January 2, 1989, on the basis of BLM's letter dated October 18, 1982, stating that the next readjustment date would be January 2, 1999. Appellants also assert that there was a "consistent course of conduct by the BLM during the eight years following the 1979 waiver of adjustment," that there was "detrimental reliance by the lessee," and that "the basic elements of fairness and equity" would require the application of estoppel in this case. Appellants assert that the letter was an action "committed by a Government agent acting within the scope of that agent's authority" (Statement of Reasons at 11).

We recently noted in Terra Resources, Inc., 107 IBLA 10, 13 (1989), that claims of estoppel are considered on the basis of four elements, which are described in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970): (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his conduct shall be acted on or must so act that the party asserting estoppel has a right to believe that it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. We further noted that estoppel is an extraordinary remedy, especially as it relates to public lands; that estoppel must be based upon affirmative misconduct by BLM; and that, while estoppel may lie if reliance on BLM's statements deprived an individual of a right which he could have acquired, it does not lie if the effect of such action would be to grant an interest not authorized by law.

Appellants' claim of estoppel fails for several reasons. First, appellants are attempting to enforce estoppel to afford them favorable treatment (delaying readjustment to the higher royalty rates for 10 years) that is simply not authorized by law. Although appellants assert the contrary, we have held above that the readjustment provisions of FCLAA provide for a 10-year readjustment interval where a lease's 20-year adjustment period expires after August 4, 1976. Thus, BLM was not acting consistent with Congress' intentions when it issued the letter in October 1982 stating that the next readjustment date for appellants' lease would be January 2, 1999. BLM has no authority except what is provided by statute and, thus, was simply not authorized to delay readjustment until 1999.

In Kidd v. U.S. Department of the Interior, 756 F.2d 1410, 1411-12 (9th Cir. 1985), the court stated:

Article 4, Section 3, Clause 2 of the Constitution, provides:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.

As a result, Congress' constitutional power over the proper administration and disposition of the public lands is without limitation. Once Congress has acted in that regard, both the courts and the executive agencies have no choice but to follow strictly the dictates of such statutes. United States v. California, 332 U.S. 19, 27, 67 S.Ct. 1658, 1662, 91 L.Ed. 1889 (1947).

Inasmuch as Congress enacted FCLAA with the intent that previously issued leases be subjected to periodic 10-year readjustment of lease terms, it is clear that BLM's October 1982 letter stating otherwise was not in concert with the authority granted to BLM by Congress.

Nor may we find that appellants themselves lacked knowledge of actual state of the law on this matter. As we observed in Terra Resources, Inc., *supra* at 14, a Federal mineral lessee

is presumed to have knowledge of the relevant statutes and regulations affecting its lease. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Because of its imputed knowledge, Terra cannot successfully claim ignorance of the material facts without presenting extraordinary circumstances overcoming that presumption. Fuel Resources Development Co., 100 IBLA 37, 43 (1987); Landmark Exploration Co., 97 IBLA 96, 99 (1987); Tom Hurd, 80 IBLA 107, 110 (1984); *see generally*, United States v. Wharton, 514 F.2d 406, 412 (9th Cir. 1975).

Under very similar circumstances, this Board and the courts have not applied estoppel. For example, in Pennzoil Co., 99 IBLA 245 (1987), *aff'd*, Pennzoil Co. v. Hodel, C88-0026-B (D. Wyo. Jan. 13, 1989), we considered an appeal from a decision of BLM holding that an oil and gas lease had expired at the conclusion of the 2-year period following its elimination from a unit. In a letter dated August 3, 1976, BLM had incorrectly advised the lessee that the term of a lease was for so long as oil or gas was produced from a parent lease from which it had been segregated. On August 16, 1984, BLM vacated the 1976 letter, with the result that the lease had already expired. The lessee contended that BLM should be estopped to vacate the letter decision of August 3, 1976, because, in reliance on BLM's earlier misadvice, it had not availed itself of opportunities to extend the lease further by conduct of operations. We responded to these arguments as follows:

Recent decisions of the U.S. Supreme Court have declined to hold that estoppel may not in any circumstances run against the Government. Heckler v. Community Health Services of Crawford, 104 S. Ct. 2218 (1984); Schweiker v. Hansen, 450 U.S. 785, 788, *reh'g denied*, 451 U.S. 1032 (1981). These same cases, however, have refused to find that the traditional elements of estoppel have been met by the party asserting its protection. These cases, we believe, refute any impression of hospitality toward claims of estoppel against the Government that earlier cases may have created, specifically, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975); United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973); and Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970).

Id. at 253.

In Enfield v. Kleppe, 566 F.2d 1139 (10th Cir. 1977), the basis for asserting estoppel was not merely a letter but a published regulation. Nevertheless, the court held that a Departmental regulation misinterpreting 30 U.S.C. | 226(e) (1982) did not give rise to estoppel even though the party seeking to estop the Government apparently relied upon the regulation and refrained from actions that might have succeeded in extending his oil and gas leases. The court concluded that an administrative provision

contrary to statute must be overturned no matter how well settled and how longstanding. Id. at 1142.

Furthermore, Departmental regulation 43 CFR 1810.3(c) provides this warning: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law. This regulation was applied in Burton/Hawks, Inc. v. United States, 553 F. Supp. 86, 92 (D. Utah 1982):

Section 1810.3 establishes the principle that plaintiff's reliance on the erroneous statement of the district engineer could not estop the IBLA from denying a two-year extension of the lease where the lease did not qualify for the extension under the terms of the agreement or the [Mineral Lands Leasing Act]. The proposition that the erroneous statements of its employees do not bind the United States is well accepted in the case law. E.g., Federal Crop Ins. v. Merrill, 322 U.S. 380, 384 (1947); United States v. California, 332 U.S. 19, 39 (1947); [1/] Clair R. Caldwell, et al., 42 IBLA 139, 141 (1979); Paul S. Coupey, 35 IBLA 112, 116 (1978). Thus, despite plaintiff's reliance on assurances made by the USGS district engineer, the IBLA was free to reach an independent decision on whether or not the lease expired by operation of law.

In conclusion, the foregoing cases hold that employees of the executive branch, including BLM, have no authority to depart from the requirements of statutes dealing with public lands. Further, all citizens are deemed to have knowledge of such statutes. Thus, even though appellants were erroneously advised by BLM that their coal lease would not be subject to readjustment until 1999, they have not established that grounds exist for estopping the Government from readjusting the lease in 1989 as provided by statute.

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.

David L. Hughes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

1/ Parallel citations omitted.