

**Editor's note: Reconsideration granted; decision affirmed -- 114 IBLA 246 (May 8, 1990)**

AMCA COAL LEASING, INC.

IBLA 88-104

Decided november 29, 1989

Appeal from a decision of the Moab District Office, Utah, Bureau of Land Management, requiring payment of advance royalties in lieu of con-tinued operation on coal lease SL-063058.

Affirmed.

1. Coal Leases and Permits: Generally--Coal Leases and Permits: Diligence

A BLM decision holding that a pre-Aug. 4, 1976, Federal coal lease became subject to the diligence requirements of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(b) (1982), upon lease modification in 1981, will be upheld where the record shows that, upon modification, the lease became a logical mining unit and under 43 CFR 3480.0-5(a)(13)(ii)(A), the diligent development period commenced on that date.

APPEARANCES: John S. Kirkham, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

AMCA Coal Leasing, Inc. (AMCA), has appealed from a decision dated April 17, 1987, by the Moab District Office, Utah, Bureau of Land Management (BLM), notifying AMCA that lease production requirements for Federal coal lease SL-063058 had not been met for the continued operation year (COY) running from October 1, 1984, through September 30, 1985, and requiring AMCA to pay advance royalties on 4,724 tons of coal, the amount by which production fell short of the commercial quantities requirement for that COY. 1/

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1/ BLM's decision took the form of a letter, and, although not styled as such, was referred to therein as a notice of noncompliance issued in accordance with 43 CFR 3486.3.

The lease in question originally issued on August 3, 1942. BLM modified the lease on October 26, 1981, at the request of AMCA, to include an additional 160 acres, bringing the lease acreage total to 400 acres. BLM readjusted the lease, effective March 1, 1984, and BLM's decision rejecting AMCA's challenge to that readjustment was affirmed by this Board in AMCA Coal Leasing, Inc., 86 IBLA 21 (1985). 2/

BLM concluded in the April 17, 1987, decision that the lease became subject to diligence on the date of the modification; diligent development had to be achieved by October 26, 1991; the lease contained 3,668,000 tons of recoverable coal when it became subject to diligence; the commercial quantities requirement for diligent development and continued operation was 36,668 tons; diligent development was achieved in September 1983; the lease became subject to continued operation on October 1, 1983; commercial quantities had to be achieved for each COY for the life of the lease; production for COY-2 fell below the required amount; and AMCA was required to submit advance royalty for that production shortage. 3/

On appeal of that decision, AMCA does not dispute that its lease became subject to the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. §§ 201-209 (1982), upon its modification; however, it contends that BLM's production timetable for the lease is in error because BLM found the lease to have become subject to diligence on the date of lease modification (Oct. 26, 1981), rather than lease readjustment (Mar. 1, 1984). AMCA asserts that a clear distinction must be drawn between lease modification and lease readjustment and that the diligent development and continued operation requirements are controlled by the effective date of readjustment, not modification. AMCA requests that the case be remanded to allow BLM to recalculate recoverable reserves as of March 1, 1984, and to credit production toward diligent development and continued operation from that date.

The issue before us is whether BLM correctly determined the date on which the lease became subject to the diligence requirements. We hold that it did.

[1] The statutory provision controlling modification of coal leases is section 13 of FCLAA, as amended by section 3 of the 1978 Amendments to the Mineral Leasing Act, 30 U.S.C. § 203 (1982), which provides, in pertinent part:

The Secretary shall prescribe terms and conditions which shall be consistent with this chapter and applicable to all of the acreage in such modified lease except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of sections 202(a)(2) and 207(c) of this title. The

2/ The Board's decision was sustained on judicial review. AMCA Coal Leasing, Inc. v. Hodel, No. 85-C-730W (D. Utah June 20, 1985).

3/ The BLM decision incorrectly referred to the date of readjustment as Aug. 2, 1982.

minimum royalty provisions of section 207(a) of this title shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired.

Therefore, under this provision the Secretary is required to conform all the acreage in the modified leases to the terms and conditions prescribed by FCLAA, with certain exceptions. First, the section states that there is no requirement that the Secretary impose the production and mining plan criteria on the modified lease. Second, the section prohibits the Secretary from imposing the minimum royalty provisions on those lands covered by the lease prior to the modification.

In a regulation promulgated in 1979 to implement 30 U.S.C. § 203 (1982), the Secretary provided:

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

43 CFR 3432.3(a) (published at 44 FR 42632 (July 19, 1979)). Thus, while the statutory language allowed the Secretary discretion in determining whether to impose certain production and mining plan requirements on modified leases, the Secretary exercised his discretion through rulemaking to impose them, the only exception being the statutory one prohibiting the application of the minimum royalty provision to lands covered by the lease prior to its modification.

The modified lease, dated October 26, 1981, contained a section on diligent development and continued operation (section 3) and a section requiring a mining plan (section 10). The diligent development provision of the lease provides that the terms "diligent development" and "continued operation" are defined in the applicable regulations.

The regulation at 43 CFR 3480.0-5(a)(12) defines diligent development as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." It is AMCA's position that the definition of diligent development period is controlling in this case, and that the mere act of modification of the lease does not trigger the diligence requirements.

AMCA cites to 43 CFR 3480.0-5(a)(13)(i)(B), quoting the language therein that the diligent development period means a 10-year period which for Federal leases begins on "[t]he effective date of the first lease readjustment after August 4, 1976, for Federal leases issued prior to August 4, 1976." It argues that "[i]t is clear and specific in the regulations that the diligent development period begins on the effective date of

the first lease readjustment not upon the occurrence of a lease modification as would appear to be the position taken by the BLM" (Statement of Reasons at 12 (emphasis in original)).

We accept AMCA's argument that there is a distinction between modification of a lease and readjustment thereof; modification is undertaken pursuant to 30 U.S.C. § 203 (1982) and the regulations in 43 CFR Subpart 3432, while readjustments are governed by 30 U.S.C. § 207(a) (1982) and the regulations in 43 CFR Subpart 3451. <sup>4/</sup> Moreover, we agree with AMCA that the definition of diligent development period rules the outcome of this case, and if the language cited by AMCA were applicable in this case, its argument would be well taken. However, the crucial language of that definition has not been cited by AMCA. It is contained in 43 CFR 3480.0-5(a)(13)(ii)(A), which provides that the term means a 10-year period, which for logical mining units (LMU's), begins on "[t]he effective approval date of the LMU, if the LMU contains a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval."

In this case section 11 of the modified lease provided that "[t]his lease is automatically considered to be an LMU." Thus, the date of its modification and the date of approval of the LMU are the same, October 26, 1981. <sup>5/</sup> The LMU contained a lease which was issued prior to August 4, 1976, and which was not readjusted after August 4, 1976, until after LMU approval. Therefore, BLM correctly concluded that the diligence requirements commenced on October 26, 1981.

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.

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Bruce R. Harris  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge

<sup>4/</sup> In AMCA Coal Leasing, Inc., supra at 22, the Board stated that "[a] coal lease modification is a readjustment," except that a lease modification cannot serve to impose the minimum royalty provision on those lands in the lease prior to modification. See also Spring Creek Coal Co., 83 IBLA 159 (1984). Therefore, although modification of a lease and readjustment thereof are similar in many respects, they are not the same, and AMCA is correct that a modification is not a readjustment.

<sup>5/</sup> There is no evidence in the record that AMCA challenged the designation of SL-063058 as a LMU at the time of lease modification.