

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest of a notice of intent to reject preference right coal lease applications WYW-12767, WYW-14390, WYW-14392, and WYW-14355.

Affirmed.

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

The revised regulations governing preference right coal lease applications, first promulgated in 1976 with retroactive effect, apply to BLM's adjudication of pending preference right coal lease applications even though the applicant asserts that he completed the exploration required by his coal prospecting permits in 1970, applied for the preference right coal leases in 1972, and complied with the regulatory standards in effect at the time the applications were filed.

APPEARANCES: Eugene Stevens, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Eugene Stevens has appealed from a November 30, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), dismissing his protest of BLM's September 10, 1990, notice of intent to reject preference right coal lease applications WYW-12767, WYW-14390, WYW-14392, and WYW-14355.

BLM issued coal prospecting permits WYW-12767, WYW-14390, WYW-14392, and WYW-14355 to Stevens, effective June 1, 1970, for a 2-year period pursuant to 30 U.S.C. § 201(b) (1970). 1/ The permits embraced 13,215.15 acres

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1/ On Aug. 4, 1976, Congress enacted the Federal Coal Leasing Act Amendments of 1976, P.L. 94-377, 90 Stat. 1083. Section 4 of the Act repealed 30 U.S.C. § 201(b) (1970), "subject to valid existing rights," thus abolishing coal prospecting permits and preference right leases and requiring all coal leases to be issued on a competitive basis. 90 Stat. 1085.

in Ts. 36, 37, and 38 N., Rs. 74 and 75 W., sixth principal meridian, Converse County, Wyoming.

Stevens completed the required exploration work and filed his applications for preference right coal leases on April 25, 1972, prior to the expiration of the terms of the permits. In his applications he asserted that he had discovered commercial quantities of coal as required by 30 U.S.C. § 201(b) (1970) and the regulations then in effect. Stevens also submitted a copy of the geologic report included with the applications to the U.S. Geological Service (USGS) office in Denver, Colorado.

In 1971 the Secretary of the Interior directed BLM to suspend the issuance of coal leases and prospecting permits. See Utah International, Inc. v. Andrus, 488 F.Supp. 962, 970 (D. Utah 1979). This moratorium was relaxed in 1973 and remained in effect with respect to preference right leasing until May 7, 1976. Id.

As a result of this moratorium, BLM suspended action on Stevens' lease applications. However, while further processing of the applications was being held in abeyance, in memoranda dated March 14, 1975, the Director, USGS, informed BLM of its determinations that Stevens had discovered commercial quantities of coal during the terms of the permits and recommended that the leases be issued.

On May 7, 1976, the Secretary promulgated regulations substantially revising the Department's long-term coal leasing program. 41 FR 18845 (May 7, 1976). These regulations, which defined commercial quantities and established procedures for processing preference right coal lease applications, were expressly made applicable to pending applications. 43 CFR 3520.1-1(d) (1976); see also 43 CFR 3520.1-1(c), 3521.1 (1976). 2/

By decision dated June 10, 1976, BLM advised Stevens of the amended regulations and the new 2-phase application process. Since, under the initial phase, 43 CFR 3521.1-1(b) (1976) of the revised regulations required applicants for preference right coal leases to support their applications with significantly more material and information than previously necessary, BLM notified Stevens that he needed to provide the information requested under that regulation. Stevens subsequently sought and received an extension of time to June 29, 1977, in which to submit the required data.

On September 29, 1976, BLM approved Stevens' assignment of the prospecting permits and preference right lease applications to Western Fuels Association, Inc. (Western Fuels), effective October 1, 1976. Stevens retained a one and one-half percent overriding royalty interest on the value of production from any coal lease issued on the lands covered by the prospecting permits and the right to reacquire the permits or leases if Western Fuels decided to surrender the permits or leases in whole or in part.

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2/ The regulations governing preference right coal leases are currently codified at 43 CFR Subpart 3430.44 FR 42628 (July 19, 1979).

BLM continued to process the applications, requesting and receiving necessary information from Western Fuels and preparing an initial environmental assessment of the effects of lease issuance. BLM also approved additional assignments of various overriding royalty interests in the leases.

After receipt of Western Fuel's final showing and supplemental information, BLM conducted preliminary geologic and economic evaluations of the submitted data and additional material in its files. By notice dated September 10, 1990, BLM concluded that Western Fuel's final showing and supplemental information did not provide sufficient factual information to establish a discovery of commercial quantities of coal on the permit areas. BLM explained that an applicant's failure to clearly meet the commercial quantities test warranted issuance of a notice of intent to reject the applications. BLM granted Western Fuels 60 days to show cause and provide additional information as to why the applications should not be rejected, advising that failure to provide such information would lead to rejection of the applications.

On November 19, 1990, Stevens filed an "appeal" of BLM's notice of intent to reject the preference right lease applications, asserting that as the original owner of the coal prospecting permits and as a present royalty owner, he had a right to challenge BLM's notice. Stevens contended that he had fulfilled all the requirements pertaining to commercial quantities of coal in effect at the time he obtained his prospecting permits, performed his discovery work, filed his preference right lease applications, and that the USGS had determined that he had met these requirements. Therefore, Stevens objected to BLM's denial of the applications based on the 1976 revised regulations which he believed changed the definition of commercial quantities.

In its November 30, 1990, decision, BLM considered Stevens' "appeal" as a protest. <sup>3/</sup> In dismissing Stevens' protest, BLM determined that it had the authority to subject pending preference right lease applications to the requirements established by the regulations promulgated in 1976.

As his appeal to this Board, Stevens has submitted a copy of his November 19, 1990, submission.

In its answer, BLM contends that it properly applied the law existing at the time the pending preference right coal lease applications were adjudicated. BLM also argues that, contrary to Stevens' allegations, the 1976 regulations did not change the definition of commercial quantities, nor was the USGS determination that commercial quantities of coal had been discovered on the leases binding on BLM.

[1] The courts and this Board have previously considered and disposed of the issues raised by Stevens' appeal. In Utah International, Inc. v.

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<sup>3/</sup> We find that BLM properly treated Stevens' submission as a protest because BLM's Sept. 10, 1990, notice was not a final decision subject to appeal. See Randall J. Gerlach, 90 IBLA 338, 339-40 (1986).

Andrus, supra at 968, 969, the court rejected the claim that upon compliance with the pre-1976 standards, an applicant acquired a vested right to a preference right coal lease, and specifically held that the 1976 regulations correctly construed the term "commercial quantities" and applied to pending applications. Id. The Board has similarly held that the 1976 regulations govern the adjudication of pending preference right coal lease applications, notwithstanding the applicant's asserted compliance with the standards in effect at the time the application was filed. Kin-Ark Corp., 45 IBLA 159, 87 I.D. 14 (1980).

Furthermore, a USGS determination that commercial quantities of coal exist on the lease areas is not binding on BLM and does not vest the applicant with a right to a coal lease. Utah International, Inc. v. Andrus, supra at 967; see also Jesse H. Knight, 53 IBLA 300, 304 (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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John H. Kelly  
Administrative Judge

I concur:

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Kathryn A. Lynn  
Administrative Judge  
Alternate Member

