



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
324 South State, Suite 301
Salt Lake City, Utah 84111-2303

Belina mine job
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(UT-942)

FEB 24 1993

Mr. Ronald Daniels
Mineral Leasing Task Force
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Dear Mr. Daniels:

For your information, we are providing you with a copy of the Memorandum Opinion and Order issued by Judge Jenkins in Civil No. 91-C-1264J.

This case relates to readjustment of the terms and conditions of coal lease U-020305 dating back to March 1, 1982. The lessee of record for U-020305 is Coastal States Energy Company with Valley Camp of Utah, Inc., as sublessee and operator of the Belina Mine located in Carbon and Emery counties.

Valley Camp of Utah, Inc. filed litigation in December 1991 claiming that they were entitled to notice of, and opportunity to participate in the readjustment process with emphasis placed on the royalty rate of eight percent imposed.

The U. S. District Court has ruled that, as consistently interpreted by the BLM, only the named lessee of record is entitled to notice of, and the opportunity to participate in the lease readjustment process. Further, the court found that BLM's actions met all constitutional, statutory, and procedural requirements.

There is the possibility that Valley Camp of Utah, Inc., will appeal to the Tenth Circuit Court. We will notify you if such action is taken.

Sincerely,

W. R. Papworth
Deputy State Director
Operations

Enclosure
Court Decision

RECEIVED

FEB 25 1993

DIVISION OF
OIL GAS & MINING



U.S. Department of Justice

United States Attorney
District of Utah

RECEIVED

FEB 10 1993

United States Courthouse, Room 478
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Salt Lake City, Utah 84101

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February 9, 1993

David K. Grayson
Office of the Regional Solicitor
6201 Federal Building
125 South State Street
Salt Lake City, Utah 84138

RE: Valley Camp v. Lujan
Civil No.: 91-C-1264J

Dear Dave:

I am enclosing a copy of the Memorandum Opinion and Order issued in the above-captioned matter. As you will note from a review of the decision, the Judge granted the United States' motion for summary judgment and denied Valley Camp's motion.

Although I am pleased with the decision, I found it curious that the Judge never addressed those issues which were raised by the supplemental briefs filed at his request. Instead, the court's opinion focused almost exclusively on the question of whether there was privity of contract between Valley Camp and the BLM.

In any event, we now have a good record in this case, and given the amount of money at issue, I am confident we will need it since Valley Camp will most likely appeal the court's decision.

In the meantime, if you have any questions about the decision, please do not hesitate to contact me.

Sincerely,

DAVID J. JORDAN
United States Attorney



CARLIE CHRISTENSEN
Assistant United States Attorney

enclosure

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SEP - 2 1993

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH

VALLEY CAMP OF UTAH, INC.,
a Utah corporation,

Plaintiff,

vs.

MANUAL LUJAN, Secretary of
United States Department of
the Interior; CY JAMISON,
Director, Bureau of Land
Management, United States
Department of the Interior;
JAMES PARKER, Director, Utah
State Office, Bureau of Land
Management, United States
Department of the Interior;
ROBERT LOPEZ, Chief Minerals
Adjudication Section, Utah
State Office, Bureau of Land
Management, United States
Department of the Interior;
THE UNITED STATES DEPARTMENT
OF THE INTERIOR,

Defendants.

FEB 01 1993

MARKUS B. ZIMMER, Clerk

By

DEPUTY CLERK

MEMORANDUM OPINION

AND ORDER

Civil No. 91-C-1264J

I. Introduction

Plaintiff Valley Camp of Utah, Inc. ("Valley Camp") filed this action pursuant to the Administrative Procedure Act (the "APA"), 5 U.S.C. §§ 701-706 (1988), seeking judicial review of an August 5, 1991 decision by the Interior Board of Land Appeals (the "IBLA"). In its decision, the IBLA determined that Valley Camp, as a "sublessee" of Lease U-020305 (the "Lease"), was not entitled either to notice that the Bureau of Land Management (the "BLM") was readjusting the terms of the Lease, or the opportunity to participate in the rate readjustment process. Rather, the IBLA

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determined that only the lessee of record, Coastal States Energy Company ("Coastal States"), was entitled to notice of, or the opportunity to participate in, the Lease readjustment process.

On May 29, 1992, the parties filed cross-motions for summary judgment. In its Motion for Summary Judgment, Valley Camp alleges, inter alia, that it was in privity of contract with the BLM, and therefore entitled to notice of, and the opportunity to participate in, the rate readjustment process.¹ In contrast, the federal defendants collectively assert in their Motion for Summary Judgment that Valley Camp, as a sublessee of the Lease, was not in privity of contract with the BLM, and even if it were, that Valley Camp was not entitled to notice of, or to participate in, readjustment of the Lease.

On August 6, 1992, after hearing argument on the parties' cross-motions for summary judgment, the court took the matter under advisement. On October 2, 1992, the court issued an Order requesting further briefing concerning the relationship between Coastal States and Valley Camp. Supplemental briefing was filed by the parties, and a second hearing was held on January 6, 1993. The court again took the matter under advisement.

Having since carefully considered the memoranda and arguments of the parties, and for the reasons set forth below, the court

¹Valley Camp also alleges that the BLM failed to investigate the possibility of a lesser royalty rate and failed to wait 60 days before effecting the readjusted rate as required by applicable federal law. These claims are footed on Valley Camp's assertion that it was in privity of contract with the BLM and therefore that it has standing to challenge the readjustment process.

GRANTS defendants' Motion for Summary Judgment and DENIES plaintiff's Motion for Summary Judgment.

II. Factual Background

On March 1, 1962, the United States of America, as lessor, entered into the Lease with Emmett K. Olson ("Olson"), as lessee. The Lease covered 1,439.40 acres of land in Carbon and Emery Counties, Utah. On August 1, 1962, the BLM approved the transfer of Olson's interest in the Lease to Malcolm N. McKinnon ("McKinnon").

On October 29, 1975, Routt County Development Company ("Routt County") acquired an interest under the Lease from McKinnon pursuant to a document entitled "Sublease". The Sublease was approved by the BLM on June 1, 1976. On September 15, 1975, Routt County transferred a portion of its interest under the Lease, known as the O'Connor Block, to Energy Fuels Corporation ("Energy") pursuant to a document entitled "Routt County Sublease". On November 5, 1975, Energy transferred its interest in Routt County Sublease to Valley Camp pursuant to a document entitled "Assignment of Routt County Sublease". On August 3, 1978, Routt County transferred its interest in the Lease to Coastal States, subject to the interest of Valley Camp.

On October 7, 1981, the BLM notified McKinnon, as the lessee of record, that the terms of the Lease, including the royalty rate, would be readjusted effective May 1, 1982. On that same date, the BLM sent a copy of the notice to Valley Camp as a sublessee. On February 22, 1982, the proposed terms of the readjusted lease,

which provided for a royalty rate of eight percent, were provided to McKinnon. On that same date, the BLM sent a copy of the proposed terms to Valley Camp as a sublessee. McKinnon made a timely objection to the readjustment on behalf of itself and the approved transferees under the Lease, including Valley Camp.

On November 10, 1982, the BLM notified McKinnon of the readjusted terms of the Lease, and overruled, in part, and sustained, in part, McKinnon's various objections. The BLM did not send a copy of the readjusted terms to Valley Camp. On December 13, 1982, McKinnon appealed the BLM's decision to the IBLA. The BLM subsequently approved the assignment of McKinnon's interest in the Lease to Coastal States, and the IBLA granted a request to substitute Coastal States as the party-appellant. On March 23, 1983, Coastal States filed a Statement of Reasons in support of the IBLA appeal.

On May 31, 1984, in Coastal States Energy Co., 81 IBLA 171 (1984), the IBLA affirmed in part, set aside in part, and remanded the case to the BLM for further action. On May 28, 1985, the BLM issued a decision implementing the IBLA's decision. Coastal States sought review of the May 31, 1984 decision of the IBLA in this court. In the matter of Coastal Energy Co. v. Hodel, Civil No. 85-C-0665S, this court issued an order on March 2, 1988, remanding the matter to the IBLA, and directing the Board to review the case in light of the unrelated case of Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987). Coastal States also appealed the May 28, 1985 decision of the BLM to the IBLA.

On May 2, 1986, Valley Camp received a royalty deficiency notice from the Mineral Management Service concerning the readjustment based on an eight percent royalty rate. Following the deficiency notice, Valley Camp filed a petition to intervene in Coastal States' second appeal to the IBLA on the ground that Valley Camp would be adversely affected by the BLM's implementation of the Lease readjustment. The IBLA denied Valley Camp's petition for the reason that "there were no distinct arguments advanced by Valley Camp concerning the [L]ease separate from those presented by Coastal States to show that Valley Camp had suffered any adverse affect from the BLM decision." In response to Coastal States' appeal of the BLM's May 28, 1985 decision, the IBLA issued a decision on October 18, 1988, Coastal States Energy Co., 105 IBLA 64 (1988), which followed the Order of this court and reversed, in part, the May 28, 1985 decision.

On October 17, 1988, the Department of the Interior and the State of Utah, and Coastal States, as the lessee of record, entered into a Memorandum of Understanding in which Coastal States agreed to pay a royalty rate of eight percent under the Lease, and to terminate the administrative proceedings which involved the royalty rate issue. This settlement was reaffirmed by Coastal States in an April 18, 1990 letter to the BLM. On August 27, 1990, the BLM informed Coastal States that pursuant to the 1988 Memorandum of Understanding, all the terms of the readjusted Lease were considered established and effective May 1, 1982.

On August 28, 1990, in response to a March 19, 1990 letter of protest filed by Valley Camp, the BLM ruled that Valley Camp was not entitled to receive notice of, or to participate in, the Lease readjustment because it was a sublessee and not a lessee of record. The BLM further concluded that because the royalty rate had been resolved between the lessee of record, Coastal States, and the BLM, no further review of the Lease was required.

Valley Camp appealed the BLM's decision to the IBLA claiming that the readjusted lease terms negotiated between Coastal States and the BLM were not applicable to Valley Camp because the BLM could not establish a royalty rate for Valley Camp's lands without notice to Valley Camp, and without making a royalty determination in accordance with the applicable regulations. On August 5, 1991, in Coastal States Energy Co., 120 IBLA 201 (1991), the IBLA held that Valley Camp, as a sublessee of the Lease, was not in privity of contract with the BLM with respect to the notice and participation requirements, and therefore was not entitled to notice of, or to participate in, the Lease readjustment process. On December 9, 1991, Valley Camp filed this action seeking judicial review of the August 5, 1991 decision of the IBLA.

III. Discussion

A. Standard of Review

Section 706 of the APA sets forth the standard of review appropriate for a court reviewing an administrative agency's action. The APA provides that an agency action must be set aside if the action was "arbitrary, capricious, an abuse of discretion,

or otherwise not in accordance with law" or if the action failed to meet constitutional, statutory, or procedural requirements. 5 U.S.C. § 706(2)(A), (B), (C), (D) (1988). Under the APA standard of review, the agency's decision is entitled to a presumption of regularity. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415 (1971). The presumption, however, does not shield the agency's action from "a thorough, probing, in-depth review." Id.

B. Privity of Contract and Notice and Participation Rights

Valley Camp asserts that it was in privity of contract with the BLM pursuant to express federal regulation, and therefore that it was entitled to formal notice of, and the opportunity to participate in, the rate readjustment process. Valley Camp's privity of contract theory is derived from section 3506.2-3(b) of Title 43 of the Code of Federal Regulations (the "CFR"). Section 3506.2-3(b) states in pertinent part:

The transferor of a permit of lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary.

43 C.F.R. § 3506.2-3(b) (1982). Accordingly, Valley Camp argues that because section 3506.2-3(b) creates a direct relationship between the BLM and an approved sublessee transferee, the regulation necessarily creates privity of contract between the BLM

and Valley Camp. Thus, based on their alleged privity of contract under section 3506.2-3(b), Valley Camp argues that it was, in turn, in privity of contract with the BLM for purposes of notice and participation in the rate readjustment process.

In the alternative, Valley Camp asserts that it was in privity of contract with the BLM as "assignee" under the Lease. As an assignee, Valley Camp alleges that it is entitled to the rights and privileges of their assignor, Coastal States, the lessee of record, and therefore they were entitled to notice of, and an opportunity to participate in, the Lease readjustment process. Valley Camp's assignee theory is derived from Heiner v. S.J. Groves & Sons Co., 790 P.2d 107 (Utah Ct. App. 1990), in which the court holds that a transfer of either the whole, or a portion of, the leasehold, for the whole term of the lease, where the subsequent lessee assumed all the rights and obligations of the original lessee, is as a matter of law an assignment and not a sublease. Id. at 112-115. Neither the original lessee's right to reentry upon default of the terms of the lease, nor the retainment of an overriding royalty interest, will convert an assignment into a sublease. Id.

Having carefully reviewed the applicable regulatory scheme in place at the time the Lease was readjusted, the court finds that, even assuming the Valley Camp was in privity of contract with the BLM at the time the Lease was readjusted, that Valley Camp was not entitled to notice of, or the opportunity to participate in, the rate readjustment process. At the time the Lease was readjusted, federal regulation specifically stated that only the lessee of

record was entitled to notice of, and the opportunity to participate in, the readjustment process. Specifically, section 3451.1(c)(1) of Title 43 of the CFR stated in pertinent part, "[t]he authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year period thereafter, notify the lessee of any lease which becomes subject to readjustment" 43 C.F.R. § 3451.1(a)(1) (1981) (emphasis added). Similarly, section 3451.2(a) stated, "the authorized officer will, within the time specified in the notice that the lease shall be readjusted, notify the lessee by decision of the readjusted lease terms." 43 C.F.R. § 3451.2(a) (1981) (emphasis added). Finally, section 3451.2(d) stated, "[t]he lessee may appeal the decision of the authorized officer" 43 C.F.R. § 3451.2(d) (1981) (emphasis added).

Nowhere in the applicable regulatory scheme does it state that approved transferees are entitled to notice of, or an opportunity to participate in, the readjustment process. Nor do the regulations state that assignees are entitled to notice or participation in the Lease readjustment process. Rather, Title 43 of the CFR expressly limited notice and participation rights to lessees of record. Accordingly, even assuming that Valley Camp and the BLM were in privity of contract with respect to either section 3506.2-3(b) of Title 43 of the CFR or under a common law theory of assignment, the court finds no authority that such a finding necessarily entitled Valley Camp to notice of, or an opportunity to participate in, the readjustment process.

At most, section 3506.2-3(b) alerted all approved transferees that they "would be responsible for the performance" of all lease obligations. In contrast, sections 3451.1 and 3451.2 expressly limit notification and participation rights to the lessee of record. The court finds nothing in the regulatory scheme which purports to equate "lessee" as set forth in sections 3451.1 and 3451.2 with "approved transferee" under section 3506.2-3(b). Thus, the court finds that an alleged privity of contract relationship established between an approved transferee and the BLM under section 3506.2-3(b) is not sufficient to establish that an approved transferee is also entitled to notice of readjustment proceedings as a lessee of record under sections 3451.1 and 3451.2.

Similarly, the court finds no authority under the applicable regulations which purport to equate assignees with lessees of record under a common law theory of assignment. Title 43 of the CFR has not been silent as to whom notice is to be given, but rather, specifically limits all notice requirements to "lessees". At no time in these proceedings has Valley Camp disputed that, first McKinnon, and later Coastal States, were the named lessees of record. It is undisputed that Valley Camp is not, and has never been, the Lease's lessee of record.

When faced with a problem of regulatory construction, this court shows great deference to the interpretation given the regulation by the officers or agency charged with its administration. "Particularly is this respect due when the administrative practice at stake involves a contemporaneous

construction of a statute by the men [and women] charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" Power Reactor Dev. Co. v. International Union of Elec' Radio and Mach. Workers, 367 U.S. 396, 408 (1961) (quoting Norwegian Nitrogen Prods. Co. v. United States, 288 U.S. 294, 315 (1933)). To uphold the interpretation of the regulation by the IBLA "we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." Unemployment Compensation Comm'n of Alaska v. Aragon, 329 U.S. 143, 153 (1946).

Applying these concepts to the instant administrative process, the court finds that, as consistently interpreted by the BLM, only the named lessee of record is entitled to notice of, and the opportunity to participate in, the Lease readjustment process. Approved transferees, be they sublessees or assignees, are not entitled to those privileges. The court finds nothing in the BLM's construction of sections 3451.1 and 3451.2 that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The court further finds that the BLM's actions meet all constitutional, statutory, and procedural requirements. The BLM could reasonably conclude that sections 3451.1 and 3451.2 apply only to named lessees of record and do not pertain to approved transferees or assignees. The court sees nothing in such a view to require its substituting a different construction from that made

by the BLM, the agency entrusted with the responsibility of administering the applicable regulations. Accordingly, the court will not extend the scope of sections 3451.1 and 3451.2 by finding that Valley Camp, as either an approved transferee or an assignee, is the Lease's lessee of record.

C. Lease Segregation Under Section 3506.2-5(a)

Valley Camp also contends that upon the approval of the Routt County Sublease to Valley Camp, the BLM was required to issue a new lease covering the Valley Camp leasehold interest, and that under such a lease, Valley Camp would have been in privity of contract with the BLM. In support of its contention, plaintiff cites 43 C.F.R. § 3506.2-5(a) (1975). Section 3506.2-5(a) required the BLM to issue a new lease upon approval of a transfer of a portion of leased lands. While it is normally the BLM's practice to deal with separate mining operations arising within a single lease by segregating the lease into logical mining units, the court finds no authority that such action would entitle Valley Camp to notice and participation in the Lease adjustment process. Even assuming a new lease was issued, McKinnon and Coastal States would have remained the named lessees of record. Accordingly, only McKinnon and Coastal States would be entitled to notice and participation rights under sections 3451.1 and 3451.2.

Further, the court notes that Valley Camp never made any effort, prior to the initiation of the lease readjustment process to segregate the lease. In fact, Valley Camp's failure to seek segregation of the lease prior to the initiation of the lease

readjustment process is consistent with Valley Camp's approach to the entire readjustment process. Not only did Valley Camp delay in seeking segregation of the lease, but it was more than six years into the Lease readjustment process before Valley Camp sought to intervene in those proceedings. Prior to that time, Valley Camp was apparently content to rely on the efforts of the lessees of record, the McKinnon Estate and Coastal States, to protect its interests in the readjustment process.

D. Standing to Challenge the Rate Readjustment Process

Valley Camp contends that because of competing mine operations, the Lease is partitioned into distinct segments, and any royalty rate determined to be applicable to Coastal States' operations will not take into consideration different conditions encountered in Valley Camp's operations. Accordingly, Valley Camp contends that inasmuch as the BLM is obligated to review conditions at the mine prior to making its determination as to whether a lower royalty rate is warranted, in the absence of such a review, the readjusted royalty rates are not binding on Valley Camp. See Coastal States Energy Co. v. Hodel, 816 F.2d 502, 507 (10th Cir. 1987); Kanawha & Hocking Coke & Coal Co., 112 IBLA 365, 367 (1990) ("The determination of whether conditions warrant a royalty of less than 8 percent in a specific instance must be based on the facts and circumstances of the particular lease.").

The federal defendants do not dispute Valley Camp's claim that the BLM is required to review conditions prior to making its determination as to whether a lower royalty rate is warranted. In

the present case, however, Valley Camp is not the lessee of record, and therefore does not have standing to request a review of the record as to conditions considered by the BLM in establishing the 8 percent royalty rate. This is particularly true in the present case where the lessee of record, Coastal States, has previously entered into a Memorandum of Understanding with the United States agreeing to an eight percent royalty rate for the entire Lease.

Valley Camp's Motion for Summary Judgment is denied. The federal defendants' Motion for Summary Judgment is granted. The August 5, 1991 decision of the IBLA is affirmed. Let judgment be entered accordingly.

IT IS SO ORDERED.

Dated this 1 day of February, 1993.

BY THE COURT:



BRUCE S. JENKINS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

United States District Court
for the
District of Utah
February 1, 1993

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:91-cv-01264

True and correct copies of the attached were mailed by the clerk to the following:

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