

THERMAL ENERGY CO.

IBLA 93-105

Decided May 24, 1996

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting preference right coal lease application NMNM 11670.

Set aside and remanded.

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

A determination made by a USGS official that coal is present in commercial quantities is not binding on the USGS, the Bureau of Land Management, or the Secretary of Interior under 43 CFR Part 3430. An applicant for a preference right coal lease does not by virtue of a USGS finding as to commercial quantities acquire a vested right to a lease on any terms.

2. Coal Leases and Permits: Applications—Coal Leases and Permits: Leases

Under 30 U.S.C. § 201(b) (1970) and 43 CFR 3430.1-1, an applicant for a preference right coal lease must demonstrate it made a discovery of commercial quantities of coal on the lands involved within the term of the permit. Neither the statute nor the regulation prevents consideration of evidence concerning commercial quantities that was obtained after the permit expired.

APPEARANCES: Brandt Andersson, Esq., San Francisco, California, for Thermal Energy Co.; Paul E. Frye, Esq., Albuquerque, New Mexico, for the Navajo Nation; Arthur Arguedas, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Thermal Energy Company (Thermal) has appealed the November 5, 1992, decision of the State Director, New Mexico State Office, Bureau of Land

Management (BLM), rejecting preference right coal lease application (PRLA) NMNM 11670. 1/

BLM's decision states that both BLM and the U.S. Geological Survey (USGS) "have made repeated, unsuccessful requests over the years for Thermal to provide coal quality analyses obtained within the terms of the prospecting permit." BLM concluded that Thermal "fails to meet the requirements of 43 CFR 3430.2-1 \* \* \* to submit information on the quality of the coal resources discovered within the terms of the prospecting permit. [2] Therefore, the applicant has failed to show that coal exists in commercial quantities on the applied for lands as defined in 43 CFR 3430.5-1(a)(1)."

In early December 1992, hoping to avoid the time and expense of an appeal of BLM's November 5 decision, Thermal's counsel submitted additional coal quality data that resulted from drilling done in 1985 by the New Mexico Bureau of Mines and Mineral Resources on and adjacent to NMNM 11670 and asked BLM to review it. BLM said this information did not alter its decision to reject Thermal's PRLA:

The commercial quantities analysis may only use data that the applicant acquired legally before the term of the prospecting permit expired. \* \* \* We rejected the PRLA because Thermal did not provide any coal quality data from holes they drilled within the PRLA within the term of the prospecting permit, that is, between September 1, 1970, and September 1, 1972 (emphasis in original). [3]

1/ By order dated June 30, 1993, we denied Thermal's motion to consolidate its appeals of the Mar. 23, 1993, BLM decisions rejecting PRLA's NMNM 8128 and NMNM 8130, docketed as IBLA 93-331 and IBLA 93-332, with this appeal. The Navajo Nation's motion for leave to intervene in this appeal was granted, over Thermal's objection, by order dated Nov. 9, 1993. 2/ 43 CFR 3430.2-1 provides:

Initial showing

"All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of:

"(a) Information on the quantity and quality of the coal resources discovered within the boundaries of the prospecting permit area, including an average proximate analysis, sulfur content and BTU content of the coal, and all supporting geological and geophysical data used to develop the required information.

\* \* \* \* \*

"(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each bed to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted."

3/ Letter of Dec. 10, 1992, from Branch Chief, Fluid and Solid Minerals, BLM, to Brandt Andersson, Esq. BLM's letter cited 43 CFR 3430.1-1, which provides:

BLM issued a coal prospecting permit covering approximately 1,118 acres in secs. 7, 17, and 18, T. 21 N., R. 8 W., New Mexico Principal Meridian, San Juan County, New Mexico, to Sharon Allen LaRue effective September 1, 1970, for 2 years under the authority of the Mineral Leasing Act of 1920, 30 U.S.C. § 201(b) (1970), discussed below. The permit was assigned to Thermal effective July 1, 1971. In March 1972, Thermal requested issuance of a preference right coal lease for the area covered by the permit. Thermal stated: "We have drilled 7 exploration holes on NMNM 11670 and we are enclosing copies of the logs showing the depths and thicknesses of the coal seams we discovered. We have determined that the permit contains commercial quantities of coal."

In response to this and other lease applications from Thermal, BLM asked the USGS Regional Mining Engineer to issue a report and recommendations. He wrote Thermal in April 1972 requesting it to submit information concerning coal reserves and concerning the average BTU, ash, sulphur, and moisture of the reserves for each of several coal prospecting permits. Thermal's July 21, 1972, response provided information on coal thickness for six of the drill holes on NMNM 11670 and an estimate of the total tons of reserves, but said no analyses had been run on that permit and "[t]herefore no information is available as to Btu, ash, sulphur or moisture." In response to a September 14, 1972, letter from the USGS Mining Engineer stating he could "find no coal analysis of the cored holes drilled by Thermal Energy," Thermal replied on September 21 that it "did not have an analysis run on any of the holes drilled \* \* \* on coal permits NM 8129 or NMNM 11670 for the reason that we did not cut cores in those particular holes." In his September 26, 1972, report and recommendations to BLM, the USGS Mining Engineer observed:

There were no cored holes on this permit [NMNM 11670] and it is assumed the coal can be mined at 9000 BTU if care is taken in removing partings over 0.8' thick. The writer is basing the quality of the coal as it is presently being mined in the area without the benefit of clea[n]ing plants. \* \* \* The information gained by the exploration in regard to the quality of the coal certainly is lacking to properly evaluate the deposit. The core drilling done only indicates the coal is typed Fruitland coal that is low sulphur, 8500 to 9000 BTU, and high ash and capable of fueling electric generators or gasification plants.

(Report at 15).

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fn. 3 (continued)  
provides:

"An applicant for a preference right lease shall be entitled to a noncompetitive coal lease if the applicant can demonstrate that he discovered commercial quantities of coal on the prospecting permit lands within the term of the prospecting permit, all other requirements having been met."

After amending its regulations in May 1976 (see 41 FR 18845 (May 7, 1976)), BLM issued a June 29, 1976, decision requiring Thermal to submit additional information in support of its PRLA. Thermal filed its initial showing in March 1977. BLM forwarded it to USGS in September 1977. In November 1977 BLM asked USGS whether it felt the initial showing information met the requirements of 43 CFR 3521.1-1. 4/ USGS responded that it did. 5/

In July 1979 BLM amended its regulations again. See 44 FR 42584 (July 19, 1979). In October 1979 BLM asked USGS if NMNM 11670 complied with the new regulations governing initial showings and, if not, what additional evidence was required. USGS' November 1979 response stated that BLM should confirm that no analyses existed for this permit. On February 7, 1980, after a December 1979 meeting with Peabody Coal Company officials concerning deficiencies in seven jointly-held Peabody-Thermal PRLA's, BLM issued a decision requiring additional information from Thermal, including analyses for NMNM 11670. Thermal submitted additional information for these PRLA's on June 10 and October 24, 1980. In March 1981 USGS said Thermal satisfied the initial showing requirements. 6/

BLM amended 43 CFR Part 3430 again in 1982 and 1987. 7/ On June 5, 1987, BLM sent Thermal a notice of intent to request final showings under 43 CFR 3430.4-1. On December 2, 1987, BLM issued a decision requiring

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4/ Under the amended 1976 regulations, the initial showing requirements were contained in 43 CFR 3521.1-1(b) (1976). Under that regulation, "[c]oal quality data submittals shall include, as a minimum, an average proximate analysis and BTU content for coal beds \* \* \*." When BLM asked USGS whether the initial showing information met the requirements of the regulation, BLM stated: "We feel that for the purpose of this determination it would be sufficient if there is at least some information provided on each item required in the regulation" (Nov. 23, 1977, Memorandum from State Director, BLM, Santa Fe, New Mexico, to Area Mining Supervisor, USGS, Albuquerque, New Mexico, entitled "Coal Mining Plans and Preference Right Lease Applications").

5/ Concerning NMNM 11670 and six other Thermal PRLA's USGS stated: "The information submitted regarding the quantity and quality of coal discovered within the permits is adequate for our purpose under the initial showing requirement" (Nov. 29, 1977, Memorandum from USGS Area Mining Supervisor to State Director, BLM, entitled "Coal Mining Plans and Preference Right Lease Applications").

On the copy of this memorandum contained in the record the following note, dated Dec. 8, 1992, appears: "This is only a USGS recommendation on initial showing. It is not the initial showing decision, which has to be made by BLM (emphasis in original)."

6/ The copy of this Mar. 24, 1981, memorandum in the record also bears a handwritten note dated Dec. 8, 1992, stating: "This is a USGS recommendation only, not the BLM initial showing decision (emphasis in original)."

7/ 47 FR 33114, 33143 (July 30, 1982); 52 FR 25794, 25798 (July 8, 1987). The 1987 amendments were the last. The regulations in the current CFR are revised through the 1987 amendments.

Thermal to submit information required for a final showing for NM 11670 under 43 CFR 3430.4-1, including "[t]he quantity and quality of estimated recoverable reserves that reflect current mining technology and economics within the PRLAA including the raw and interpreted data from holes drilled under the terms of valid permits." Thermal filed its response to this decision on May 2, 1988.

On June 15, 1989, BLM issued a notice to Thermal that it intended to reject NM 11670 for failure to show that coal exists in commercial quantities. Among the reasons BLM gave was that "Thermal did not include: (1) PRLA specific reserves and coal quality information; \* \* \* [and] (3) Geologic information, including reserves, logs, and coal quality data \* \* \*" and "did not provide the coal information within the boundaries of NM NM 11670 as required by 43 CFR 3430.2-1(a)." <sup>8/</sup> On October 16, 1989, Thermal submitted a revised final showing. Concerning coal quality, this submission states:

A breakdown of the available coal analysis by PRLA/lease and by coal bed number is shown in Table 3-2. Fourteen core holes have been drilled in the currently defined Gallo Wash CMV [combined mining venture]. The quality data is for coal "as received". Coal quality shows only a small degree of variation across the CMV with every sample site reflecting marketable grade. Analyses reported by Shoemaker (1971) in the Star Lake region (including the Gallo Wash CMV area) average 11.67 percent moisture, 21.24 percent ash, 0.53 percent sulfur, and 9,154 BTU per pound. The analytical results for all of the individual samples reported for the region show a quality range similar to the CMV samples, and could all be considered of marketable grade.

Coal quality information for PRLA NM 11670 is currently not available. However, sampling in the Gallo Wash CMV area and the Bisti-Gallo Wash-Star Lake region indicates that little variation exists in the coal quality over the area and between coal beds (Table 3-2, Initial Showing, Shoemaker (1971). Because of the consistency in quality over the area, PAH [Pincock, Allen & Holt,

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<sup>8/</sup> Thermal requested BLM to withdraw this notice and issue a request for further information under 43 CFR 3430.4-2. On July 19, 1989, BLM denied this request and extended the time for response to the June 15 notice, until Oct. 16, 1989. Thermal appealed the June 15 notice and BLM dismissed the appeal as a protest on Aug. 10, 1989. Thermal appealed the Aug. 10, 1989, decision, and BLM requested a remand so that it could consider Thermal's response to the June 15 notice, submitted on Oct. 16, 1989. We granted BLM's request, set aside its Aug. 10, 1989, decision, and remanded the case files by order dated Jan. 23, 1990 (IBLA 89-647).

Inc., the consultants that prepared Thermal's revised final showing] feels it is reasonable to assume that the quality of coal in PRLA NM 11670 is similar to the marketable quality coal found on the adjacent tracts. 9/

The values given for NM 11670 in Table 3-2, a summary of coal quality in the Gallo Wash combined mining venture (CMV), "are an arithmetical average of the values from NM 8128 and 8130" because "[i]t is a reasonable assumption that the quality would be similar to that in NM 8128 and 8130." Id. at 3.5. 10/

Thermal argues on appeal that the USGS March 1981 memorandum (see note 6), "expressly approved both the quantity and quality of the coal for purposes of the Initial Showing" (Statement of Reasons (SOR) at 7). Thermal acknowledges that the record contains no formal action by BLM approving the initial showing, but says that BLM's action of proceeding to conduct an environmental analysis and request a final showing indicates that BLM accepted the initial showing. Id. Thermal argues that the analyses of the two holes drilled in 1985 by the New Mexico Bureau of Mines confirm the coal underlying NM 11670 is commercial quality coal and that BLM must consider this data. Id. at 13-14.

Thermal argues BLM is under a duty to notify an applicant if its initial showing is incomplete and to require additional information under 43 CFR 3430.2-2; and that, because BLM did not reject Thermal's initial showing, but proceeded to the next steps, it may not "revisit its prior conclusion on the adequacy of the Initial Showing." Id. at 15.

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9/ PRLA's NMNM 8128, NMNM 8130, and NMNM 11670, San Juan and McKinley Counties, New Mexico, Final Showing, dated Oct. 13, 1989, at 3.4, quoted in Thermal's SOR on pages 10-11. Thermal states it does not waive its right to keep information in its initial showing and revised final showing confidential except to the extent of non-proprietary information presented in its SOR (SOR at 23, note 1). See 43 CFR 3430.4-1(g). We assume that we may explain and discuss items in the initial and final showings that are referred to in Thermal's SOR. Thus, the "Gallo Wash CMV," (see BLM Manual § 3430 (Rel. 3-172, Aug. 8, 1987), Glossary of Terms), consists of the three named PRLA's, combined with four New Mexico state coal mining leases held by Thermal, that Thermal intends to surface mine (Oct. 13, 1989, Final Showing at 1.2, 1.12, Table 1-1, and Figure 1-2).

10/ The eastern portion of NMNM 11670, which occupies the W $\frac{1}{2}$ , sec. 17, T. 21 N., R. 8 W., New Mexico Principal Meridian, is contiguous with the northwesternmost portion of NMNM 8128, which occupies the E $\frac{1}{2}$ , sec. 17 (Figure 1-2, Oct. 13, 1989, Final Showing at 1.13). The Final Showing states that "[c]ores of the coal beds were cut in 14 holes on the currently defined Gallo Wash CMV. The holes were selected to give a representative sampling of all beds throughout the prospect area." Id. at 2.6. Table 2-1, Drill Hole Statistics, shows that no core holes were drilled on NM 11670. Id. at 2.5.

Thermal says it relied on BLM's decision and BLM is therefore barred from reopening the issue of coal quality.

Thermal argues it has complied with the requirement of 43 CFR 3430.2-1(a) to provide information about coal quality in NM 11670. Even if it is limited to using information it obtained during the term of the prospecting permit, the coal quality is well established and of sufficient nature to meet commercial standards, Thermal states. Id. at 16.

In essence, the BLM seems to be claiming that Thermal's failure to take a core hole sample from one of the seven exploration holes drilled in the PRLA 20 years ago now disqualifies it from receiving a lease, even though the USGS supervised the exploration and three times has told the BLM that the coal quality data is fine, and even though there is no question whatsoever that the quality of the coal in the PRLA is just like all other coal in the San Juan Basin. This view is untenable. There is not now and there never has been a requirement that coal quality may be determined only by a laboratory sample from the specific PRLA in question. The current regulations require only that the geological and geophysical data used to determine quality be submitted. 43 C.F.R. § 3430.2-1(a)(2). This Thermal has done many times. Thermal admits no core sample was taken from NM 11670 during the term of the permit. None was needed. The quality has been fully and clearly proven from other samples taken from the logical mining unit of which this PRLA is a part. The rules require no more.

(SOR at 17-18).

Thermal maintains that, BLM believes the information it has submitted in its final showing is not complete, 43 CFR 3430.4-2(a) requires BLM to request additional information and to specify the information required. In addition, it asserts that when an applicant clearly fails to meet the commercial quantities test, "a specific procedure must be followed unless NEPA or cost estimate documentation is prepared," and that 43 CFR 3430.5-1(c)(1)(iii) requires BLM to give the applicant 60 days notice to provide additional information why its application should not be rejected. According to Thermal, "[t]he BLM failed to provide the proper documentation or the opportunity for Thermal to cure the alleged deficiency. Without providing one or the other, the decision to reject the application is improper" (SOR at 18).

Finally, Thermal argues that although data gathered during the term of the prospecting permit establishes the quality of the coal in NM 11670, data "gathered directly from NM 11670 in 1985 corroborates the prior information," and Thermal is entitled to use this data. "If any doubt remains, Thermal is both willing and entitled to obtain more data by additional drilling." Id. at 19. In Hiko Bell Mining & Oil Co., 55 IBLA 324 (1981)

(Hiko Bell), the Board held evidence demonstrating the existence of commercial quantities of coal discovered during the term of a prospecting permit may be developed after the term of the permit, Thermal contends. "The Board should rule that the BLM must use the 1985 data and that if coal quality is still disputed, a hearing must be held after Thermal has had a reasonable chance to drill." Id. at 21.

BLM responds that it "believes that the only issue presented by this appeal is whether Thermal was required to provide coal quality data gathered from within the boundaries of NM 11670 during the term of the prospecting permit" (BLM Answer at 2 (emphasis in original)). Thermal acknowledges that specific coal quality information for NM 11670 is not available, and that it did not take a core sample from the permit area during the term of the permit. In BLM's view, these admissions "compel rejection of NM 11670 by virtue of regulation and by the terms of the BLM handbook and manual." Id. Thermal admits it did not demonstrate a discovery of commercial quantities of coal on permit lands within the term of the permit, as required by 43 CFR 3430.1-1, supra note 3, BLM states.

BLM Manual Handbook H-3430-1 (Rel. 3-173, Aug. 8, 1987), entitled "Processing Coal Preference Right Lease Applications," provides:

Useable Data. Coal and geologic data obtained from the permit area and adjacent lands may be used by the applicant to show the existence of coal in commercial quantities only if:

- a. It was acquired prior to the expiration of the prospecting permit.
- b. It was acquired in accordance with all applicable laws, regulations, and permit terms and conditions.

(Handbook, Chapter VI, Final Showing Analysis, at VI-1). BLM also refers to BLM Manual § 3430.71A (Rel. 3-172, Aug. 8, 1987). This section provides in part that "[t]he final showing analysis may only use data that the applicant acquired legally before the term of the prospecting permit expired."

BLM argues that "in Hiko Bell a core analysis had been performed on a hole that had been drilled on the PRLA, during the course of the prospecting permit" (Answer at 4 (emphasis in original)). "Because Thermal did not perform quality analyses on coal taken from within the boundaries of NM 11670 during the term of the prospecting permit, NM 11670 is different from \* \* the Hiko Bell PRLA." Id. at 5.

BLM argues that it is not estopped from making a decision on the existence of commercial quantities of coal in NM 11670 because it had never made such a decision. Id. at 5-6.

[1] BLM Manual § 3430.31 (Rel. 3-172, Aug. 8, 1987) states that past practice in evaluating initial showing data was that "the Geological Survey recommended to the Bureau whether the applicant had discovered coal \* \* \*. The authorized officer was and still is the decisionmaker, however, and either accepts or rejects the initial showing." For a final showing analysis, the Handbook states that the file

may contain a memorandum(s) from the USGS Area Mining Supervisor to the BLM State Director indicating that an applicant has discovered coal in commercial quantities. Without a decision by the BLM's authorized officer, these "decisions" of the Area Mining Supervisor should be considered as advisory only.

(BLM Handbook, Chapter VI, at VI-1). These statements explain the comments in the record mentioned in footnotes 5 and 6, supra. In Utah International, Inc. v. Andrus, 488 F. Supp. 962, 967 (D. Utah 1979), the court held that "a determination made by a local USGS official as to the presence of coal in commercial quantities is not binding on the USGS, the BLM, or the Secretary of Interior under circumstances of this case," and that the plaintiff did not, "by virtue of the USGS finding as to commercial quantities, acquire a vested right to a lease on any terms." See also Eugene Stevens, 126 IBLA 357, 360 (1993). Thermal's argument that BLM may not revisit its prior conclusion on the adequacy of the initial showing and is barred from reopening the issue of coal quality (SOR at 15), cannot prevail. BLM made no conclusion on the adequacy of Thermal's coal quality data before its November 5, 1992, decision, and Thermal's reliance on USGS recommendations about its adequacy is in error.

[2] Before its repeal by section 4 of the Federal Coal Leasing Act Amendments of 1976, P.L. 94-377, 90 Stat. 1085, section 2 of the Mineral Leasing Act of 1920, 30 U.S.C. § 201(b) (1970), provided:

Where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any unclaimed, undeveloped area, the Secretary of the Interior may issue, to applicants qualified under this chapter, prospecting permits for a term of two years \* \* \* and if within said period of two years thereafter the permittee shows to the Secretary that the land contains coal in commercial quantities, the permittee shall be entitled to a lease under this chapter for all or part of the land in his permit.

This language was part of the Mineral Leasing Act as enacted in 1920. Chapter 85, § 2, 41 Stat. 438. In the preamble to the May 1976 regulations defining "commercial quantities" under section 201(b), the Department commented that "the Mineral Leasing Act clearly limits the time to collect information on the physical property of the coal deposit to the term of the prospecting permit." 41 FR 18845-46 (May 7, 1976). In addition to the language quoted in BLM's Answer above, the BLM Handbook advises that "drilling data obtained within the permit area after the permit expired

may not be used in determining whether or not the preference right lease applicant has demonstrated the presence of coal in commercial quantities" (Handbook, Chapter I, Prospecting Permit Issues, at I-2).

However, notwithstanding the 1976 preamble comment and the 1987 BLM Manual and Handbook guidance, we have held that although a discovery of commercial quantities of coal must be made within the term of an exploration permit, proof that the deposit contains commercial quantities may be sought after the permit expires. In Hiko Bell, *supra*, the information submitted with the lease application led USGS to recommend granting a lease in 1969. After the May 1976 amendment of the regulations, USGS advised BLM that a new initial showing submission was necessary. BLM found the new submission deficient, in part, because the information was "insufficient to determine the quantity and quality of the coal within the permit area" and required Hiko Bell to correct the deficiencies. 55 IBLA at 326. Hiko Bell's response explained that only one hole had been drilled in the permit area because that was all that was required at the time, that it did not have access to the core analysis of the hole (because it had acquired rights to the permit after the hole had been drilled), and that BLM had denied it permission to drill another hole to obtain the data. When USGS said the new initial showing was inadequate to demonstrate the quality and quantity of the coal, BLM rejected the lease application. 55 IBLA at 327.

On appeal, Hiko Bell submitted information tending to refute the USGS recommendation, including an independent evaluation of its coal reserves. We set aside BLM's decision and remanded the case for further consideration, stating:

The problem in this case is evidentiary. By denying the requests for further drilling BLM and Survey have seemingly held that appellant may only demonstrate the validity of a discovery made during the term of a prospecting permit by evidence obtained during the term of the permit, even though appellant is now being held to more stringent requirements of proof than existed during the term of its prospecting permit and even though under the regulations in effect in 1969 Survey concluded that commercial quantities of coal had been discovered.

55 IBLA at 328-29. We found Hiko Bell's situation analogous to that of the mining claimant in United States v. Foresyth, 15 IBLA 43 (1974), who had been denied an opportunity to drill for evidence to confirm a discovery made before the land had been withdrawn. "[W]e believe that appellant should have been allowed to do test drilling for the limited purpose of obtaining the evidence necessary to prove its alleged discovery of commercial quantities." 55 IBLA at 331. See also United States v. Mavros, 122 IBLA 297, 310-11 (1992).

We are not persuaded by BLM's effort to parry the thrust of Hiko Bell. Although in that case a core hole had been drilled within the boundaries of the permit during the permit term, the data were not available to Hiko Bell. The point of our decision was that Hiko Bell should be allowed to

provide evidence obtained after the exploration permit expired that would aid in evaluating whether the coal discovered during the permit term exists in commercial quantities. This decision is consistent with the terms of 30 U.S.C. § 201(b) (1970) and 43 CFR 3430.1-1. Under the terms of both, an applicant must demonstrate it made a discovery of commercial quantities of coal on the lands involved within the term of the prospecting permit. Neither the statute nor the regulation prevents consideration of evidence concerning commercial quantities that was obtained after the permit expired. BLM should disregard the contrary provisions of the BLM Manual (see Atlantic Richfield Co., 121 IBLA 373, 380, 98 I.D. 429, 432-33 (1991); Milton D. Feinberg (On Reconsideration), 40 IBLA 222, 227-28, 86 I.D. 234, 237 (1979)) and accept and evaluate the data obtained by the New Mexico Bureau of Mines from its 1985 drilling on NMNM 11670. Hiko Bell, *supra*. 11/

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's November 5, 1992, decision is set aside and the case files are remanded to BLM so that it may include the 1985 New Mexico Bureau of Mines data in its analysis of Thermal's revised final showing.

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Will A. Irwin  
Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

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11/ We note that § 3430.71A of the BLM Manual, quoted in part in BLM's Answer, also provides:

"The analysis must use geologic data acquired from within the PRLA boundary to confirm discovery, that is, the existence of coal within the PRLA. The analysis must use only measured and indicated reserves. Geologic data outside the boundaries of the PRLA may be used by the applicant and by the [RCT (Regional Coal Team)] to confirm the continuity of coal beds, to refine reserve estimates on the PRLA lands, and to assist in showing commercial quantities on the PRLA tract."

