



CAM-COLORADO LLC

173 IBLA 188

Decided December 20, 2007



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CAM-COLORADO LLC

IBLA 2006-254

Decided December 20, 2007

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting applications to modify Federal coal leases. C-0125439, *et al.*

Set aside and remanded.

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

One of the exceptions to the competitive bidding requirement of 30 U.S.C. § 201(a)(1) (2000) appears in 30 U.S.C.A. § 203(a)(2) (2007), which provides that the holder of a coal lease may secure a modification to add up to 960 acres of cornering or adjacent land upon a finding that the modification (A) would be in the interest of the United States; (B) would not displace a competitive interest in the lands; and (C) would not include lands or deposits that can be developed as part of another potential or existing operation.

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

A finding of a “competitive interest” in land or deposits covered by an application for a coal lease modification or a finding that the lands or deposits can be developed as part of another potential or existing operation precludes BLM from exercising its discretionary authority to approve a lease modification under 30 U.S.C.A. § 203(a)(3) (2007), even if the modification might otherwise be in the interest of the United States. Because of this preclusive effect, a competitive interest must be identifiable, substantial and genuine (not merely speculative or casual), and development as part of another potential or

existing operation may not be based on speculative evidence.

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

Because activities under an exploration license are conducted to elicit information upon which to decide whether to pursue leasing of the mineral resource and because such exploration does not necessarily lead to a competitive interest in the land, an application for an exploration license does not constitute a competitive interest *per se* that precludes BLM from exercising its discretionary authority under 30 U.S.C.A. § 203 (2007) to grant a coal lease modification that is otherwise in the interest of the United States.

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

To preclude BLM's ability to exercise its discretion to determine whether to grant a coal lease modification, there must be a finding that such lands or deposits "can be developed" as part of another potential or existing operation. For that finding to have preclusive effect, it must be based on more than speculation that the resource could conceivably be developed; rather it must be supported by evidence that development by another is likely, or at least practicable, in the foreseeable future.

APPEARANCES: James M. King, Esq., and A. Jeremy Atencio, Esq., Denver, Colorado, for appellant; Jennifer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MCDANIEL

CAM-Colorado LLC (CAM) has appealed from a July 19, 2006, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting its applications to modify three Federal coal leases, C-0125439, C-0125515, and C-0125516, covering lands in Garfield County, Colorado. The decision rejected the modification applications because BLM found that Ark Land Company had expressed a competitive interest in the land and that the coal reserves could potentially be developed as part

of another independent operation. For reasons explained below, we find that the evidence provided by BLM is too speculative to support these findings, *see Malcolm N. McKinnon*, 23 IBLA 1, 8 (1975), so we set aside BLM's decision and remand the matter for further consideration.

BACKGROUND

BLM issued the three coal leases in 1968. Together with a parcel of private land, they form the McClane and Munger logical mining unit (LMU) COC 57198. The lessee at that time had an approved mine plan and had made a substantial investment in the mines, but little coal had been produced and sold. To prevent the leases from terminating, BLM approved a suspension of operations and production by decision dated October 28, 1997, on the basis that the lessee sought investors to allow it to build a rail spur to the mines in order to reduce transportation costs. BLM found it unlikely that another mine would be established in the area in the foreseeable future, noting that the LMU reserves could be produced from the McClane mine separately or in combination with the Munger mine, but that other potential portal sites would not provide access to faulted portions of the reserves on and adjacent to the LMU. *Id.*

The suspension ended and production resumed in February 2000, but the mine still lacked rail access and suffered from poor roof conditions and frequent areas of high ash. In a decision dated April 17, 2002, BLM granted the lessee's request for royalty reduction from 8 percent to 5 percent for a period of 3 years, effective January 1, 2000. Therein, at page 2, BLM stated: "The mine is in a 'Catch-22' situation; it needs rail access to attract larger contracts, but it needs larger contracts to finance the rail access." BLM found that without a reduction, the McClane mine would likely close and "bypass 28.3 million tons of leased coal *and cut off access to 50 to 100 million tons of unleased coal to the east.*" *Id.* at 3 (emphasis added).

CAM acquired the leases in 2004 after the prior lessee filed for bankruptcy. On February 10, 2006, CAM filed three applications seeking to modify each of these leases to include contiguous land to the east.¹ CAM explained that it intended to construct a rail spur from the Union Pacific main railroad line, a wash plant, and a train loadout, contending that coal in the area of the modification "will only be mineable and merchantable if the proposed facilities are constructed," and that it needed "significant additional coal reserves under its control to justify this major

¹ After CAM amended two of the applications, BLM determined that they described 957.55 acres (C-0125439), 959 acres (C-0125515), and 879.31 acres (C-0125516), each of which was below the 960-acre modification maximum established by 30 U.S.C.A. § 203(a)(3) (2007).

project.” By decision dated March 16, 2006, BLM extended the 5 percent reduced royalty rate for 3 additional years for the same reasons stated in its April 2002 decision.

On the same day CAM also filed a coal exploration license application, COC 69631, covering approximately 12,434 acres that included the area subject to the lease modification applications.² When notice of CAM’s applications was published locally, Ark Land Company filed a letter of interest in participating in CAM’s license.³ CAM then withdrew its applications and Ark filed its own application on June 9. *See* 71 Fed. Reg. 49470 (Aug. 23, 2006). Ark’s application encompasses approximately 13,178 acres, including the 2,796 acres that were subject to CAM’s lease modification applications.

APPLICABLE LAW

[1] Under 30 U.S.C. § 201(a)(1) (2000), BLM generally may award coal leases only by competitive bidding. One of the exceptions to the competitive bidding requirement appears in 30 U.S.C.A. § 203 (2007), which, as amended by section 432 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 760 (Aug. 8, 2005), provides that the Secretary may approve modifications of a “. . . coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease” upon a finding that the modifications:

- (A) would be in the best interest of the United States;[⁴]
- (B) would not displace a competitive interest in the lands; and
- (C) would not include lands or deposits that can be developed as part of another potential or existing operation.

² BLM issues coal exploration licenses pursuant to 30 U.S.C. § 201(b) (2000) and 43 C.F.R. Subpart 3410.

³ Applicants for exploration licenses are required to provide an opportunity for other parties to participate on a cost-sharing basis. 43 C.F.R. § 3410.2-1(c).

⁴ Subsection 203(A), which retained language contained in the statute prior to its amendment, gives broad discretion to the Secretary to determine whether the modification would be in the best interest of the United States. *See Black Butte Coal Co.*, 109 IBLA 254, 263 (1989).

This provision virtually duplicates the language concerning these criteria contained in the rule which implemented the statute before it was amended in 2005. *See* 30 U.S.C. § 203 (2000); 43 C.F.R. § 3432.2(a).⁵

BLM'S DECISION

BLM's Colorado State Office referred CAM's applications to the Field Manager of the Grand Junction Field Office to prepare the necessary environmental analysis and other reports in order to determine whether "the applications meet the [] criteria for lease modification," *i.e.*, whether (1) the modification would "serve the interests of the United States," (2) there was no "competitive interest in the lands or deposits," and (3) the coal reserves could not "be developed as part of another potential or existing independent operation." Memorandum from Solid Minerals Staff, Colorado State Office, BLM (Mar. 8, 2006).

In a July 3, 2006, memorandum, the Field Manager recommended that CAM's applications be rejected. She initially found that the modifications serve the interests of the United States, noting that additional reserves are necessary to justify the construction of the rail spur and surface facilities and that development of a large-scale coal mine would help meet increasing energy demand and provide economic benefits to the State, local, and Federal governments. However, she also found that there was a competitive interest in "nearly all the lands within the lease modification area," because Ark had expressed interest in participating in CAM's coal exploration license application and had filed its own application after CAM's application was withdrawn. She also concluded that the coal reserves could be developed as part of another potential independent operation because Dorchester Coal Company, which had held three coal leases during the 1980's "covering much of the lease modification area," as well as adjacent lands to the east and south, had "submitted a detailed proposal for developing the coal reserves using a different location for the portal site and surface facilities than what CAM is proposing." She concluded that "[b]ased on this earlier proposal, it is reasonable to assume that another independent operation in the future could develop the reserves." Based on her recommendation, BLM rejected CAM's applications in its July 19, 2006, decision, finding that Ark had expressed a competitive interest and that the coal reserves could be potentially developed as part of an independent operation.

ARGUMENTS ON APPEAL

In its challenge to BLM's finding that the modification areas could be developed as part of another operation, CAM attacks BLM's reliance on the mining proposal submitted in the 1980's by Dorchester Coal Company to support BLM's

⁵ BLM has yet to amend its rule to implement the 2005 amendment.

determination that the areas CAM proposed for lease modification could be developed as part of another operation. CAM notes that Dorchester's successor withdrew the mining proposal, having concluded that the coal could not be developed under market conditions at that time.⁶ Statement of Reasons (SOR) at 3; Motion to Supplement the Record, Ex. B. CAM refers to the fact that the leases held by Dorchester were later terminated for lack of diligent development, *citing Hoyl v. Babbitt*, 129 F.3d 1377, 1381-82 (10th Cir. 1997). SOR at 3. BLM responds that Dorchester's failure to economically develop its proposal in this area in 1988 does not contradict BLM's determination that the reserves could be independently developed later by others. Answer at 3-4.

CAM also raises the findings BLM made in its 1997 decision granting a suspension and its 2002 and 2006 decisions authorizing royalty rate reductions. SOR at 4. In approving a suspension in its October 28, 1997, decision, BLM stated at pages 1-2 that if the leases were "allowed to terminate, it is unlikely that another mine will be established in the area in the foreseeable future."⁷ CAM points out that in granting a royalty reduction in its March 16, 2006, decision, BLM stated that without a reduction, "the McClane Canyon Mine will close in the near future and bypass 27 million tons of leased coal and *cut off good access to 50 to 100 million tons of coal to the east.*" SOR at 4 (emphasis supplied by CAM). CAM notes that a similar conclusion was reached in BLM's prior decision granting royalty relief in April 2002:

BLM has already expressly recognized . . . the "Catch-22" problem that long term viability of the existing mines is dependent upon construction of a rail spur[,] but that construction of the rail spur needs larger reserves under lease to justify the construction. The lease modification sought by CAM would provide sufficient additional reserves, unlikely to otherwise be mined in the foreseeable future, to facilitate capital investment in the rail spur and other surface facilities.

SOR at 4. BLM responds by acknowledging that closure of the McClane Canyon Mine could cut off good access to coal to the east, but that BLM never determined that CAM's access is the *only* access to that coal. Answer at 4.

⁶ Dorchester's lease C-0127832 included secs. 26, 35, and 36, T. 7 S., R. 102 W., Sixth Principal Meridian, Colorado, where CAM has sought modifications for leases C-0125439 and C-0125515. SOR at 3; Motion to Supplement the Record, Ex. A.

⁷ BLM further explained at page 1-2 that future leasing access would "most likely be through new portal sites . . . located in steep, narrow canyons [showing] evidence of extensive burn at the outcrop or landslides[,] would not provide access to faulted portions of the reserves," and would "result in lost coal around current portal sites."

CAM believes that BLM's error as to the potential for an independent operation also undermines its finding that there is a competitive interest in the area where CAM applied for lease modifications. CAM emphasizes that a modification may be approved if it "*would not displace* a competitive interest in the lands or deposits" (emphasis added by CAM), and asserts that the only conceivable viable competitive interest that could be *displaced* must come from an adjoining mine. SOR at 5. CAM further asserts that Ark's application for an exploration license is insufficient to show a genuine competitive interest that would be displaced by CAM's lease modifications, noting that the purpose of an exploration license is to enable private parties to explore deposits to obtain information for evaluating them and that issuance of an exploration license does not preclude BLM from issuing a lease for the area, citing 43 C.F.R. § 3410.3-2. *Id.*

BLM counters that the existence of a competitive interest need not be based only on the existence of an *adjacent* mining operation and that its finding of a competitive interest is supported by Ark's March 29, 2006, letter expressing an interest in participating in CAM's exploration license application; the exploration license application filed by Ark after CAM withdrew its application; a July 6, 2006, meeting with BLM where Ark asserted that its parent, Arch Coal, Inc., was considering the area covered by the exploration license application as a replacement for its West Elk Mine which has only 8 to 10 years of reserves; and a post-decision letter from Ark, dated October 5, 2006, reiterating Ark's interest in the subject coal reserves. Answer at 5.

ANALYSIS

[2] As stated earlier, a lease modification under 30 U.S.C.A. § 203 (2007) is one of the exceptions to the competitive bidding requirement of 30 U.S.C. § 201(a)(1) (2000). We recognize that the policy in favor of competitive leasing would impel construing exceptions narrowly.⁸ In this context of coal leasing, however, a finding of a "competitive interest" in land or deposits covered by an application or a finding that the lands or deposits can be developed as part of another potential or existing operation deprives BLM of its discretionary authority to approve a lease modification, even if the modification might otherwise be in the interest of the United States. Recognizing this preclusive effect, this Board has resisted construing "competitive interest" in an overly broad manner. We held in *Malcolm N. McKinnon*, 23 IBLA 1, 8 (1975), that "in order to create a bar to the allowance of . . . an application [for modification of a coal lease], the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual."

⁸ CAM points out that if BLM were to grant the modifications without competitive bidding, CAM must still pay fair market value for them, citing 43 C.F.R. § 3432.2(c). SOR at 6.

Similarly, a BLM finding that the lands or deposits can be developed by another operation must be based on more than speculative evidence, *i.e.*, on a substantial and genuine potential for development.

BLM found in this case that granting CAM's lease application would displace a competitive interest and would include lands or deposits that can be developed as part of another potential or existing operation, thereby depriving BLM of its discretionary authority to grant CAM's lease modification applications. Answer at 6. Thus, the issues in this appeal are: (1) whether Ark's exploration license application is sufficiently strong evidence of a competitive interest to support BLM's determination that it is precluded from exercising its discretionary authority with respect to CAM's applications for lease modification, and (2) whether the fact that Dorchester filed a mining plan that was later withdrawn provides sufficient evidence to support a finding that the deposits can be developed as part of a potential or existing operation which would deprive BLM of its discretionary authority.

Competitive Interest

We have held that expressing an interest in "[b]idding for a lease is not the only method of manifesting a competitive interest in coal deposits or lands." *Western Slope Carbon, Inc.* 5 IBLA 311, 314 (1972). In that case, there was a clear competitive interest in developing coal deposits in the same lands. A competitive interest has been found if there is sufficient evidence of interest in the lands and deposits by other entities. *John Steen*, 166 IBLA 187 (2005) (competitive interest shown by the competitive sale of minerals from nearby deposits); *J. Michael Corak*, 149 IBLA 381, 383-84 (1999) (competitive interest shown in overlapping noncompetitive geothermal lease applications); *cf. Mary Lee Dereske*, 162 IBLA 303, 334-36 (2004) (noncompetitive sale of minerals affirmed where expense of access for other bidders would make it impracticable to obtain competition). In *United States Gypsum Co. (On Reconsideration)*, 115 IBLA 297 (1990), the Board affirmed the rejection of a noncompetitive "fringe acreage" lease application⁹ because another company expressed an interest in bidding competitively for the parcel. In general, the finding of a competitive interest in these cases was based on evidence of an interest in acquiring a right to *develop* a particular resource, not merely a right to *explore* for that resource.

[3] Ark's filing of an application for an exploration license is not the same as expressing an interest in leasing and developing a resource. Activities under an exploration license do not necessarily lead to a competitive interest in the land.

⁹ Under 43 C.F.R. Subpart 3510, BLM may lease land for certain other minerals noncompetitively by modifying existing leases to include fringe areas in the absence of a competitive interest.

E.g., *Canyon Fuel Co., LLC*, 162 IBLA 235, 237 (2004) (BLM offered the lands covered by the exploration license for lease, but no bids or applications for a lease were subsequently received). Thus, an application for an exploration license cannot be held to constitute a competitive interest *per se*.¹⁰ Our conclusion is fortified by the following provision in the regulations pertaining to exploration licenses: “Nothing in this subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in an area containing exploration licenses or applications for exploration licenses.” 43 C.F.R. § 3410.2-1(b). This provision enables BLM to determine whether an exploration licensee has sufficient interest in acquiring and developing the resource which is, to quote *McKinnon*, “substantial and genuine, and not merely speculative or casual.” 23 IBLA at 8.

Holding that an application for an exploration license *per se* constitutes a competitive interest so as to preclude a lease modification would create a precedent that could have anti-competitive effects. In *McKinnon*, the Board identified a public interest in enabling the applicant for a modification to produce coal that would compete with that from other producers in the area. CAM asserts that it needs more reserves to justify the creation of facilities that would make the coal it currently leases marketable. Were we to affirm BLM in this case, one producer could impede, or at least delay, a competitor’s entry into the market merely by filing an application for an exploration license. Thus, recognizing an application for an exploration license as a “competitive interest,” without other evidence to substantiate that the interest is “substantial and genuine and not merely speculative or casual,” could actually thwart competition, contrary to the Board’s rationale when it construed “competitive interest” in *McKinnon*.

¹⁰ BLM asserts that sufficient indicia of Ark’s competitive interest in the lands at issue is reflected not only in its intent to participate with CAM under the exploration license it earlier applied for and Ark’s own exploration license application for those lands, but also in its meeting with BLM Field Office personnel on July 6, 2006, as evidenced by Ark’s Oct. 5, 2006, correspondence to BLM. Answer at 4. However, the Field Office recommendation, which informed the State Director’s decision, identified only Ark’s interest in exploration, and, more importantly, there is no contemporaneous evidence in this record that Ark’s representations at that meeting were considered by the State Director in making his decision. While we could consider Ark’s post-decision letter and the meeting to which BLM refers under our *de novo* review authority to divine Ark’s interest, we elect not to do so in this case. We do not find that Ark clearly had a “substantial and genuine” interest in acquiring the right to develop this resource. Ark may have that intent, but the level or nature of its intent are issues to be determined by those who have an opportunity to engage Ark on that issue, a process best served by remanding this matter for the reasons discussed below.

Ark has an interest in the 13,000+ acres embraced by its application for an exploration license. An exploration licensee seeks to elicit information upon which to make an informed decision regarding whether to pursue leasing and development of the explored area. Thus, it is as yet unclear whether Ark's interest has matured into a "substantial and genuine" interest in acquiring the right to develop the lands at issue, whether it simply seeks information that may be of value to others,¹¹ or whether, as feared by CAM, this constitutes an effort by Ark to delay or preclude CAM's entry into the market under its earlier-filed applications for lease modification. Accordingly, we conclude that the evidence of Ark's interest BLM relied on in making its decision is too speculative to support BLM's finding that Ark had a competitive interest in the lands at issue so as to preclude BLM from exercising its discretionary authority in evaluating CAM's lease modification applications. As yet, this record contains insufficient evidence to show a *genuine* or *substantial* competitive interest in *developing* the deposits that would be displaced by CAM's modifications.

Development As Another Operation

As we noted earlier, BLM approved a suspension of operations and production for the leases in the October 28, 1997, decision at pages 1-2. It found it unlikely that, if the leases were terminated, another mine would "be established in the area in the foreseeable future." The present record provides no basis on which to reconcile that finding with BLM's finding here that CAM's lease modification areas can now be developed as part of another potential or existing operation. Instead of explaining how circumstances have changed since its 1997 findings, BLM reaches back to an earlier proposal by Dorchester to support its finding that these lands can be mined as part of another operation.¹² On appeal, CAM asks how BLM's finding can be supported by an earlier project that evaporated. While BLM asserts that Dorchester's plan was withdrawn because of market conditions, BLM does not explain how market conditions have since changed.

Because Dorchester's plan and the failure to implement it lie at the heart of the argument on this issue, we look more closely at the history of the Dorchester leases.¹³ CAM points out that the leases held by Dorchester were terminated for lack of

¹¹ In *Canyon Fuel Co.*, 162 IBLA at 241-42, we recognized an explorer's competitive interest in "keep[ing] this data confidential and use[ing] it in, or sell[ing] it for use in, a competitive lease sale," citing 44 Fed. Reg. 42584, 42588 (July 19, 1979), but no competitive bids were received after exploration ended.

¹² The relationship of CAM's proposed modifications to the Dorchester leases is explained in n.6 *supra*.

¹³ Although the leases covered by the Dorchester plan had been held by different persons or entities during their life, we refer to them here as the Dorchester leases.

diligent development, citing *Hoyle v. Babbitt*, 129 F.3d at 1381-82.¹⁴ The circumstances leading to that termination are set forth in three decisions by this Board, which led to the Court's decision in *Hoyle v. Babbitt: Alfred G. Hoyle*, 123 IBLA 169, 99 I.D. 87 (1992) (*Hoyle I*), *reaffirmed as modified*, 123 IBLA 194A, 100 I.D. 34 (1993) (*Hoyle II*) (affirming denial of suspension), and *Alfred G. Hoyle*, 127 IBLA 297 (1993) (*Hoyle III*) (affirming termination of leases).

Dorchester was issued leases in 1981 for lands now sought by CAM based upon preference right lease applications (PRLAs)¹⁵ submitted in 1970 by its predecessor-in-interest, who had entered into an agreement to combine them as an LMU for development as an expansion to the Fruita Mine (located on fee lands). During the pendency of the PRLAs or thereafter, the coal to be mined on fee lands at the Fruita Mine began burning. After failing to control those fires in 1982 and 1983, Dorchester submitted separate mine permit applications for each of its leases in 1983 and 1984 (eschewing creation and development of a combined LMU), but withdrew them in 1988 because those independent operations were "not feasible under current market conditions." *Hoyle I*, 123 IBLA 174, 176, and 177. Hoyle acquired the Dorchester leases and then applied for a suspension due to the fires. *Id.* at 179. In affirming BLM's denial of that suspension, we determined that "[t]here is no indication that, even if the suspension were granted, the coal would be mined, as [neither] Hoyle [nor Dorchester] commenced operations or developed a market for the coal." *Hoyle II*, 123 IBLA at 194F, 194K ("no market for the coal in these leases

¹⁴ Under 30 U.S.C. § 207(a) (2000), a "lease which is not producing in commercial quantities at the end of ten years shall be terminated." Subsection 207(b) establishes that every lease "shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee."

¹⁵ Before its repeal by section 4 of the Federal Coal Leasing Act Amendments of 1976 (FCLAA), Pub. L. No. 94-377, 90 Stat. 1085, section 2 of the Mineral Leasing Act of 1920, 30 U.S.C. § 201(b) (1970), authorized the Secretary to issue 2-year prospecting permits and provided that the permittee would be entitled to a noncompetitive preference right lease if he could show that the land contained coal in commercial quantities. FCLAA eliminated the issuance of coal prospecting permits and preference right leases, providing instead for issuance of exploration licenses which expressly gave the holder no right to a lease. *Atlantic Richfield Co.*, 112 IBLA 115, 117 (1989). Holders of existing prospecting permits could apply for preference right leases. *Ark Land Company*, 168 IBLA 235 (2006).

Prospecting permits and preference right leases are still issued for other minerals. *E.g.*, 30 U.S.C. § 211 (2000) (phosphate); 30 U.S.C. §§ 261-262 (2000) (sodium); 30 U.S.C. §§ 271-272 (2000) (sulfur); 30 U.S.C. §§ 281-282 (2000) (potassium).

has ever been demonstrated”), 194L-M (“[t]he record strongly suggests that, from its inception, the failure to develop this lease has been the result of a failure to find a market for the coal”), 194P (“absence of a proven market and lease operations showed that it was unlikely that the lease would be developed [by Hoyl or Dorchester]”).

[4] To preclude BLM’s ability to exercise its discretion to determine whether to grant a coal lease modification, there must be a finding that such lands or deposits “can be developed” as part of another potential or existing operation. 30 U.S.C.A. § 203(a)(2)(C)(2007); *see discussion supra*. Consistent with *McKinnon*, for a finding to have that effect it must be based on more than speculation that the resource could conceivably be developed, it must be supported by evidence that development by another is likely, or at least practicable, in the foreseeable future. No such evidence was identified or provided by BLM; the only support for its finding in this case is the following: “Based on [Dorchester’s] earlier proposal, it is reasonable to assume that another independent operation in the future could develop the reserves.” Recommendation to Reject Lease Modification Application, Grand Junction Field Office, July 3, 2006, at 2. As identified above, however, Dorchester withdrew its mining plans because they were no longer feasible due to market conditions in 1988. Absent evidence that market conditions have since changed, we are left with Dorchester’s determination that its plans to develop these leases were not feasible and the subsequent termination of these leases due to Hoyl’s failure to develop them and find a market for its coal. Accordingly and under the circumstances presented here, we find that BLM’s reliance on a withdrawn, nearly 25-year old mining plan for leases which were later terminated is insufficient, standing alone, to support a finding that these lands and their resources can now be, or in the foreseeable future will be, developed by another operation.

Conclusion

It is important to note that when BLM is precluded from granting lease modifications without competitive bidding under 30 U.S.C.A. § 203 (2007), an applicant has no entitlement to coal lease modification because that provision gives BLM discretion to approve or deny the modification. *See Black Butte Coal Co.*, 109 IBLA at 263; *Gulf Oil Corporation*, 32 IBLA 13 (1977). In this case, we hold only that the evidence on the issues of competitive interest and whether the lease modifications include lands or deposits that can be developed as part of another potential or existing operation, which is relied upon by BLM in making its decision, is

too speculative to support that decision. Thus, BLM must exercise its discretion on remand and determine, *inter alia*, whether it is in the interest of the United States to grant the lease modifications requested by CAM, given the totality of the circumstances.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

_____/s/_____
R. Bryan McDaniel
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge