Editor's note: 79 I.D. 571

CLEAR CREEK INN CORPORATION

IBLA 70-57 Decided September 11, 1972

Appeal from decision of Wyoming land office rejecting coal prospecting permit applications W-8894 through W-8901.

Reversed and remanded.

Coal Leases and Permits: Permits

A coal prospecting permit may be allowed where the Geological Survey reports that the lands are underlain by beds of coal which are too deep for economical mining in light of tremendous reserves of coal of comparable quality which are recoverable by less costly surface mining methods in the same vicinity.

Coal Leases and Permits: Permits

Rejection of applications for coal prospecting permits is properly reversed when the applicant presents persuasive and convincing evidence which clearly shows to be erroneous a

determination of the Geological Survey that the lands sought are underlain by several thick beds of economically workable coal deposits and are therefore subject to leasing only.

Coal Leases and Permits: Permits

In determining whether lands are of such character as to subject them to leasing rather than prospecting under permits, the Secretary of the Interior is entitled to rely upon the reasoned opinion of his technical expert, the Geological Survey. Absent a clear showing that the Survey's determination was improperly made, the Secretary will not act to disturb the determination. However, a prospecting permit may be granted where there is no substantial evidence to support Geological Survey's opinion that the workability of coal underlying the land applied for is known. The "workability" of the coal is an economic concept.

Coal Leases and Permits: Permits: Workability

In determining "workability" in a coal prospecting situation the standard to be applied is set forth in the U.S. Geological Survey Manual, section 671.5.2(b), which points to earlier decisions of the Department stating that the workability of any coal will ultimately be determined by two offsetting factors:

(a) its character and heat-giving quality, whence comes its value, and

(b) its accessibility, quantity, thickness, depth and other conditions that affect the cost of this extraction.

Coal Leases and Permits: Generally

Neither statute nor regulation prohibits the granting of coal prospecting permits or leases which are limited to a specific depth, stratum, contour or horizon, and therefore, in view of the broad discretionary nature of the authority vested in the Secretary by the Mineral Leasing Act, the question of allowing such horizontally limited permits or leases is exclusively a policy determination.

APPEARANCES: Kirven and Hill, Attorneys at Law, for the appellant.

OPINION BY MR. STUEBING

Clear Creek Inn Corporation has appealed to the Secretary of the Interior from a decision dated May 1, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a decision of the Wyoming land office, rejecting appellant's several applications for coal prospecting permits filed pursuant to the prospecting provisions of the Mineral Leasing Act, as amended (30 U.S.C. § 201(b) (1970)).

Appellant's applications were filed September 22, 1967, for approximately 4,996 acres of land in Ts. 50, 51, & 52 N., Rs. 77, 78, & 79 W., 6th P.M., Wyoming. The applications were rejected by the land office on January 24, 1968, for the reason that the Geological Survey had reported that the lands included in the applications are underlain by several thick beds of coal capable of exploitation by underground mining methods. Although the Geological Survey reported that it had no information concerning the presence of coal deposits above the 3,700 ft. contour and would not object to issuance of prospecting permits for the open strata above the 3,700 ft. contour, the land office decision did not address itself to this possible alternative. Therefore, it was determined that the applied for lands were subject to the leasing rather than the prospecting provisions of the Mineral Leasing Act.

On appeal to the Director, Bureau of Land Management, appellant took exception to the determination by the Geological Survey, pointing out that despite indications that coal existed, prospecting would still be required to demonstrate workability of the deep-seated deposits because there was insufficient information to show workability of the coal veins as a prudent business venture.

The land office decision was appealed to the Director, Bureau of Land Management, in accordance with the procedure then in effect. The Bureau's Office of Appeals and Hearings then requested a supplemental

report from the Geological Survey. The Survey responded by a memorandum dated April 23, 1969, in which it reported that while it could be inferred that thick beds of coal lie at an elevation considerably below the 3,700 foot contour, the Survey has no knowledge of any coal beds of minable thickness lying above that level on the subject land. The report further noted that the appellant had disclaimed any interest in the deep coal and is only interested in prospecting for any stripable deposits which might be present under shallow cover. The memo went on to say that the Geological Survey would have no objection to the issuance of prospecting permits to the appellant, provided that such permits were limited so as to allow prospecting for coal only at elevations above the 3,700 foot contour level as depicted by the Sheridan, Wyoming; Montana, 1:250,000 scale topographic map prepared by the Army Map Service, Corps of Engineers. The memo then recommended certain stipulations and procedures to be followed in the event that such horizontally limited prospecting permits were allowed.

The Bureau's decision of May 1, 1969, affirmed the rejection of appellant's application, finding that appellant had not presented convincing evidence to show that the subject lands are not underlain by workable coal deposits, albeit at some depth. The decision held further that there is no provision in the Mineral Leasing Act or the implementing regulations which allow the issuance of coal prospecting permits for a zone horizontally separate from another zone in the

same land which is known to contain workable deposits of coal which are subject to disposal only under the leasing provisions of the Act.

Upon appeal to this Board, appellant again challenges the validity of the Geological Survey's recommendations and conclusions, arguing, inter alia, that the reports as to existence and workability of deep-seated coal deposits are based upon inference and speculation and not upon professional knowledge. It contends Survey's methods of gathering such limited and scattered information from oil well logs are technically inadequate as compared to the thorough coal testing programs generally accepted by the coal industry. Appellants argue that "workability" and mining feasibility need to be determined by core-drilling, supplemented by rotary-drilling with electric logging designed for coal strata determination. It also asserts charges of discrimination, citing the issuance of coal prospecting permits to Page T. Jenkins in March of 1967 on adjacent lands which appellant claims exhibit the same degree and character of coal.

Since appellant had devoted the major thrust of its appeal to a dispute of the Geological Survey's findings below, that agency was accorded an opportunity to respond to the arguments advanced in appellant's statement of reasons.

By a memorandum of February 18, 1971, the Geological Survey replied in more specific detail supporting its position set forth

in its earlier reports. As for the technical sufficiency of the information gained from a study of electric logs run in oil well tests, the Survey noted that:

> * * * only occasionally do coal prospectors now actually core seams in a particular prospecting program. This coring is done primarily to check against electric logging, which is the principal tool used to identify coal seams. Similar type electric logs have been used for years in oil drill holes for identifying and correlating the various penetrated strata. From these logs one skilled in their interpretation can identify the coal seams, determine their thickness and ascertain whether the coal seams contain inter-bedded rock strata of such thickness as to be detrimental to the workability of the deposit. The logs of the wells show the existence of a number of thick coal seams which can be projected from the known coal beds on the Jenkins-Wold permits into and beyond the Clear Creek Inn area. Although there have been no oil wells drilled in Ts. 51 & 52 N., R 79 W., it can reasonably be inferred from the well-known great lateral extent of this coal zone that coal beds of minable thickness also underlie this area * * *.

In addition, Survey pointed to other "nearby" coal development stating:

> Approximately 25 miles east of the application area outcrops of thick coal beds in this broad structural basin are exposed for more than 70 miles in a north-south direction. The quality of the coal found in the Wasatch and Fort Union formations in the Powder River Basin is generally known or can be reasonably inferred. The Government has successfully leased large blocks of coal in recent years in this basin based only on the knowledge that coal exists in the lands in minable

> quantity. In most cases there was no specific analysis of the underlying coal available, but none was needed to generate substantial competitive interest.

In its limited treatment of the central issue of workability of the coal deposits, Survey noted that

> * * * as to whether the coal underlying the area here involved can be mined, it must be pointed out that today many coal seams thinner than these here involved are being developed by conventional underground mining methods at depths up to and exceeding 1,500 feet.

In a specific response to the charge of discrimination Survey submitted a detailed chronology of all the coal prospecting permit applications and the actions taken thereon in the vicinity of the Clear Creek Inn applications. A brief review of this itemized summary of actions indicates that, although 13 permits were originally issued to Page T. Jenkins and John Wold in June of 1967, subsequent applications by the same permittees were rejected along with Clear Creek Inn Corporation's applications after the Survey had reconsidered available information and classified the lands as subject to leasing only. There was apparently no discrimination involved against the appellants by the issuance of these prior permits. However, the complete facts of these other coal prospecting permits are not before us for consideration. Moreover, to the opposite result, the fact that coal permits were previously issued on adjacent lands

had a direct bearing on the rejection of all subsequent applications in light of the additional test information developed from these permit exploration programs.

It has been this Board's stated position that a charge of official discrimination against an applicant for coal prospecting permits, based upon an allegation that other lands known to be valuable for coal have been awarded to certain other permit applicants in the past, is not a proper basis for issuing coal prospecting permits for lands known to contain workable coal deposits. George Brennan, Jr., 1 IBLA 4 (September 22, 1970). Therefore, in order for appellant to succeed in this instance, it must establish a case on its own merits to rebut the Geological Survey's findings and to show a genuine need for further prospecting of the permit area.

A brief review of the salient facts shows the lands included in appellant's permit applications, filed in September of 1967, are located within the Powder River area of northeastern Wyoming. Approximately 25 miles east of this area are found thick outcrops of coal known as part of the Wasatch-Fort Union formations which are currently being strip mined. To the south, directly adjacent to one area of lands in questions, are the permit lands of Page T. Jenkins and John S. Wold. Although Jenkins and Wold had received their prospecting permits in June and July of 1967, both had conducted extensive testing

on their permit lands prior to the filing of the Clear Creek Inn applications. 1/ The Survey subsequently recommended rejection of the Clear Creek applications based on information drawn from several oil well drill logs in the permit area.

When served with a copy of the Geological Survey memorandum, appellant requested and was granted an opportunity to submit additional comments in rebuttal. By a letter of April 9, 1971, appellants submitted a critique of the Geological Survey position, prepared by its own expert, the Paul Weir Company, of Chicago, Illinois. 2/

The Weir report maintains that the presence and workability of coal deposits cannot be ascertained without definitive information regarding continuity of coal currents and thickness, coal bed roof and floor characteristics, information regarding sterile laminations within the coal bed, and characteristics bearing on quality, such as ash and moisture content. It maintains that a program of comprehensive drilling is required to establish this data to a degree necessary to support a satisfactory conclusion.

1/ Geological Survey submitted a copy of an article from COAL AGE magazine, September 1967, titled "Project Thunderbird. . . A nuclear trigger for coal gasification", which discussed the coal testing program conducted by Wold and Jenkins.

2/ A brochure submitted by appellant on the operations of the Paul Weir Company indicates that it specializes in mining engineering, geology and economics for underground and surface mining.

We are of the opinion that the Geological Survey is not required to assemble such precise and definitive data, or to undertake comprehensive drilling programs, or to engage in other methods of extensive exploratory investigation in order to satisfy the requirement imposed upon it by statute for the purpose of making its recommendation as to whether prospecting permits or competitive leases are appropriate in a given area. The Survey is entitled to base its determination on the information available. See discussion, infra.

However, the Weir report is useful in its analysis of the data relied upon by the Survey, stating:

> With respect to projections of the currents of thick coal beds from known outcrops north and south of Gillette (Wyoming) towards the west, the charts of electric logs of oil wells shown on figures 1 and 2, attached to the [Geological Survey] memorandum, dated February 18, 1971, do not show projections from such outcrops and, in addition, do not indicate that the thick beds present in the southeastern group of oil wells also occurred towards the northwest where the tracts under consideration are located.

The Weir Company report is at variance with the Geological Survey's conclusion as to workability of coal seams at depths up to and exceeding 1,500 feet. Weir specifically states:

> Except in the anthracite fields, we know of only a few instances within the United States where unusually high quality coals are being mined at

> depths near or below 1,500 feet, in southwestern Virginia and Oklahoma, and these areas were comprehensively drilled before mining operations were undertaken.

Appellant, pointing to this opinion, then emphasizes that Wyoming coals are generally of a subbituminous nature and not "unusually high quality", which it contends adds further support for its need for a prospecting permit to determine the quality of the coal involved.

The Survey's memo of February 18, 1971, contained the following statement:

> Records of the Geological Survey reveal that from April through June, 1969, 14 drill holes were completed on lands embraced in the 13 previously issued permits. Results of the drilling confirmed the existence of workable coal, based on analysis of core samples obtained. * * *

Because this statement expressed a conclusion on a pivotal issue, this Board requested the Survey to provide more specific data regarding the locations of the drill holes, the depths at which coal was encountered, the kind and quality of coal, the method of correlation by which a projection of such deposits into the subject lands may be inferred, the information disclosed by the core holes relative to extraneous geological conditions referable to the excavation of shafts, roof conditions, subterranean waters and other

developmental factors, and an expression of the Survey's opinion of both the presence and the workability of coal on the lands applied for with particular regard for the guidelines set forth in the Geological Survey Manual at section 671.1.5.2(b).

The Survey responded by a memorandum dated May 19, 1972, accompanied by a map showing the relative locations of the 14 drill holes to the permit areas applied for. The drill holes were sited on the Jenkins-Wold permits which are adjacent to the southeast of the two separate areas sought by appellant, so that while the nearest drill hole (No. 10) is within a half-mile of the southernmost tract, it is approximately 13 miles from the nearest boundary of the northernmost tract, and 17 miles from that tract's farthest boundary. The most remote drill hole (No. 14) is 13 miles from the nearest boundary of the nearest tract sought by appellant and 25 miles from the nearest boundary of the northernmost tract applied for.

The memo reports that the drilling program described encountered five seams of coal at depths of from 1,000 to 2,300 feet. The seams vary in thickness from about 10 feet to more than 100 feet. The coal is classified as subbituminous C, having an average heating value of about 9,400 BTU. The method of correlation is explained in the memo, which also reports that the coal seams lie between normal sandstone and shale beds and that there is no reason to anticipate that

the mining of these beds would encounter any problems other than those generally expected to be found in the deep mining of coal in any other area of the west.

Under the Mineral Leasing Act the leasing of coal lands is discretionary with the Secretary of the Interior. Section 2(b) of the Act, supra, authorizes the issuance of prospecting permits only where prospecting or exploratory work is necessary to determine the existence of workability of coal deposits in any unclaimed, undeveloped area. It has long been accepted that it is for the Secretary or his delegate to determine whether, from the information which he has at the time he considers an application for prospecting permit, prospecting or exploratory work is necessary to determine the existence or workability of coal deposits. D. E. Jenkins, 55 I.D. 13 (1934). Of course, we recognize that the Geological Survey in conducting its field examinations and collection of other data is acting as the Secretary's expert and is providing technical advice so that a proper determination can be made in these matters. In addition, the Director of the Geological Survey has been expressly entrusted by Congress with the "classification of the public lands and examination of the geological structure, mineral resources, and products of the national domain". Act of March 3, 1879, 20 Stat. 377, 394; 43 U.S.C. § 31 (1970). Therefore, when the Geological Survey has concluded from all the available geological data that further

exploration is, or is not, needed to determine the existence or workability of coal deposits in a particular area, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Roland C. Townsend, A-30142, A-30250 (September 14, 1965); Carl Nyman, 59 I.D. 238 (1946).

This accepted procedure has been followed consistently, placing a burden on the applicant to present a convincing and persuasive argument to rebut the conclusions of the Geological Survey. Absent a clear showing that the Survey's determination was improperly made, the Secretary will not act to disturb a mineral classification or determination made by the Geological Survey, Cf. Lillie Mae Yates, A-26271 (February 8, 1952).

In this case appellants have presented an argument supported by expert opinion to the effect that the existence and/or workability of the deep-seated coal deposits involved in this case are questionable and uncertain. We find that even considering the subsequent information of further exploration work conducted on the adjacent permit lands of Jenkins and Wold, the evidence is such that the workability of the coal deposits underlying the land is still in question. Therefore, even though the Secretary has a right to rely on the report of the Geological Survey without further question, he

may examine the merits of the respective positions where the applicant has presented an apparently convincing rebuttal of the Survey's conclusions.

In this instance we are faced with a difference of opposing expert opinions in their divergent interpretations of the same basic technical information of record. In evaluating these opposite views, however, the crux of the case centers on the determination as to what standard is to be applied in judging "workability" in a coal prospecting situation. The U.S. Geological Survey Manual, section 671.5.2(b), specifically sets forth guidelines for this standard as set by that agency which point to earlier decisions of the Department stating that the workability of any coal will ultimately be determined by two offsetting factors. (a) Its character and heat-giving quality, whence comes its value, and (b) its accessibility, quantity, thickness, depth and other conditions that affect the cost of this extraction. The Survey manual cites Emil Usibelli, A. Ben Shallit, A-26277 (October 2, 1951), in which the Department specifically defined the term "workability", stating:

> It must be considered coal if its value as determined by its character and heat-giving quality, exceeds the cost of extraction, either as judged by actual experience at the point where it is found or as judged by actual experience on similar coals similarly situated elsewhere. There are no absolute limits to any of the factors. The mining of one-inch of coal that may involve the mining of three feet of rock is

> physically possible but would not pay. Most unworkable coal beds lack one or more of three things -- quality, thickness, accessibility -- that is, they are too poor, too thin, or too deep.

From the foregoing it is apparent that the economics of the extraction process are critical to the determination of the workability of the coal. It is not enough to ascertain that coal is present and that mining it is "physically possible". If it is too thin, too poor or too deep to mine it cannot be considered workable. To be workable its value must at least appear to exceed the cost of its extraction.

The Usibelli definition affords the basis for the resolution of this appeal when viewed in the light of the conclusion stated in the Survey's memorandum of May 19, 1972, as follows:

> It can reasonably be inferred that the lands involved in Clear Creek Inn's application are underlain by a number of coal beds of minable quality and quantity. It must be pointed out that today many coal seams thinner than those found here are being exploited by conventional underground mining methods at depths up to and exceeding 1500 feet. However, we do not contend or imply that the coal seams underlying these lands can be economically mined today because of the tremendous reserves of coal of comparable quality found in this area which is amenable to recovery by much less costly surface mining methods. [3/]

3/ Member Goss believes that this statement is critical to the case.

In applying the Geological Survey's traditional standards for determining workability of such mineral deposits, the Department has consistently recognized and accepted evidence of adjacent workable coal deposits and of geologic and other surrounding and external conditions to provide the basis for a determination based on a geologic inference. It has not always been required that actual disclosure of coal on the lands in controversy be established in order to prove either its presence or workability. The Department has long recognized and accepted such criteria as proximity to operating mines, location of land in known coal fields, and the character of coal beds in adjacent lands in its adjudication of applications for coal prospecting permits. Sinclair Mines, Inc., A-27160 (August 18, 1955); George Brennan, Jr., supra; see also Don C. Roberts, 41 L.D. 639 (1913); Morris Kline, A-27651 (October 29, 1958) -- for competency of evidence of operating mines in the nearby area; John Smalley, A-27034 (August 15, 1947) -- bed of commercial coal on adjacent land. It has also been held that it is not necessary that such detailed information be available concerning coal deposits that the determination can be made with some degree of assurance that a mining operation will be an economic success. Claude P. Heiner, 70 I.D. 149 (1963); Colorado-Ute Electric Assn., Inc., A-29964 (February 20, 1964).

The Department, when considering phosphate prospecting permit applications, has likewise rejected applications where the Geological Survey had determined, on the basis of evidence of existing workable

deposits on adjacent lands and geologic and other surrounding and external conditions, that the lands applied for contain workable deposits. 4/ Atlas Corporation, 74 I.D. 76 (1967); Elizabeth B. Archer, A-30795 (November 17, 1967); American Nuclear Corporation, A-30808 (March 5, 1968). The Department has taken the position when dealing with both phosphate and coal that information need not specifically describe the deposits in the lands applied for, where detailed information is available regarding the existence of a workable deposit based on adjacent lands.

It is our view that a reasonable interpretation of the information of record would not admit an extension of the Survey's conclusion as to workability from the test information developed on the adjacent lands or from the information known from the strip mining area 25 miles to the east. It is quite evident from our review of the case law that the Department has always been willing to extend a workability determination by extrapolation where detailed information was available as to coal development on adjacent lands or where coal leases or operating mines existed within reasonably close proximity to the application area. Under the circumstances presented by the instant case, however, we cannot say that the information Survey has gathered is such as to foreclose further consideration of the issue of workability of the deposits.

4/ The language of section 9 of the Mineral Leasing Act governing phosphate prospecting permits is identical with that governing the issuance of coal prospecting permits in section 2 of the Act.

On the basis of the data available, the presence of coal beds, their thickness, grade and depth may reasonably be inferred, at least on the southernmost of the two large tracts covered by appellant's applications. The evidence of coal underlying the northern tract is not as strong, and there is a better basis for holding that its presence is in doubt. But even if we assume that no doubt exists that the same beds of coal underlie both areas, the mere presence of coal is not enough to bring the lands within the competitive leasing provision of the Act. The "workability" of the coal must also be reasonably well established. As noted above, the workability of coal is an economic concept. This is entirely logical when it is remembered that the determination is made to serve an economic purpose. The statute and regulations do not anticipate that competitive interest would be inspired by the presence of coal where the cost of its extraction would obviously exceed its value because it was "too poor, too thin or too deep." Notwithstanding the knowledge (actual or inferential) that such uneconomic deposits are present, it is still appropriate to permit prospecting, the object being to find deposits which <u>are</u> susceptible to economic development.

While the presence of coal in the subject lands may be known inferentially, the Geological Survey readily acknowledges that it cannot be economically mined. The evidence of both sides supports a finding that the grade is too poor to be mined at the assumed depth. It is classed as subbitumiuous, an inferior grade which

ranks just above lignite in types of coal. A Dictionary of Mining, Mineral, and Related Terms, Bureau of Mines (1968). This agrees with the Weir report, which states that except in the anthracite fields, the firm knows of only a few instances within the United States (in southwestern Virginia and Oklahoma) where coal is being mined at depths near or below 1,500 feet, and there the coal is of unusually high quality and the area involved were comprehensively drilled before mining operations were undertaken. Moreover, appellant disavows all interest in attempting to mine this coal at the depths indicated by the Survey. There are no proved operating coal mines in the immediate vicinity or within reasonably close proximity to the lands applied for.

We conclude from the foregoing that there is no substantial evidence to support the view that the workability of the underlying coal is known.

The Survey points out that knowledge of the occurrence of coal in the Wasatch and Fort Union formations has been the basis for past leasing in the area, and that even though there was no specific analysis of the underground coal available in most instances, "none was needed to generate substantial competitive interest".

The existence of substantial competitive interest is not the criterion which determines whether coal leases may be offered at

competitive bidding. It is understandable that two or more competitors might be interested in bidding for the right to seek to produce coal from lands where coal is known to occur rather than attempt to secure a prospecting permit, even though they have no knowledge that workable coal deposits exist. This is analogous to our oil and gas leasing program where, despite intense competitive interest, "wildcat" lands are leased noncompetitively, and competitive leasing is limited to those lands which are within the known geologic structure of a producing oil or gas field.

Accordingly, we conclude that the law does not require competitive coal leasing in this instance and that the issuance of prospecting permits pursuant to appellant's applications is not barred, all else being regular. Collaterally, we might observe that neither is the issuance of such permits mandatory. The Secretary, or his delegate, may exercise discretion in this regard. He may decline to issue the permit for any reason consistent with the public interest. For example, if it may be foreseen that additional information concerning these deposits may be developed through other studies or activities, he may elect to reject these applications in the anticipation that the public interest will better be served if action leading to disposition of the resource is deferred. Similarly, the applications might be rejected for reasons unrelated to the extent of the knowledge of the presence of workable coal, such as environmental considerations or

impending disposal under another provision of law. See Elgin A. McKenna, Executrix, Estate of P. A. McKenna, 74 I.D. 133 (1967).

The remaining unresolved issue concerns the alternative proposed by the Geological Survey, i.e., the granting of prospecting permits limited to the area between the 3,700 foot contour and the surface. As noted in the decision below, neither the statute nor the regulations provide for horizontal limitation. Conversely, we cannot interpret the law or regulations as prohibiting the granting of permits and leases limited to specific horizons. We are aware that while the practice is most uncommon in the Department, a few instances of horizontally limited leasing have been approved in the past. Authority to limit oil and gas leases to certain horizons, strata or depths has been recognized in the Mineral Leasing Act where unit or cooperative agreements are involved. See Solicitor's Opinion, M-36776 (May 7, 1969). Similarly, the Department has held that the Secretary is authorized to approve an assignment of a limited horizontal zone of an oil and gas lease issued under the Outer Continental Shelf Lands Act, and that approval of such an assignment creates a separate and independent lease of the assigned portion. Continental Oil Company, et al., 74 I.D. 229 (1967). The most recent example of horizontal leasing is in the limited sodium leases issued in the Piceance Basin area of Colorado. The uniqueness of each of the cited examples is recognized.

Finding that the law neither specifically provides for nor proscribes issuance of a horizontal prospecting permits or leases, and in view of the broad discretionary nature of the authority vested in the Secretary by the Mineral Leasing Act, 5/ the question of granting a horizontal prospecting permit appears to be exclusively a policy determination. See Solicitor's Opinion, 65 I.D. 305 (1958).

In weighing the question, the following might be considered: the horizontal division of lease or permit areas could (1) influence the value of the unleased portion for later competitive leasing, (2) create surface use conflicts between multiple lessees, (3) require extensive operational coordination between lessees for safety, (4) increase the administrative burden for accounting, record maintenance, inspections, etc. On the other hand, this form of leasing, where appropriate, might afford the most expedient and efficient means of extracting the resource, yield a greater revenue, and better serve the interests of conservation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is reversed and the applications

5/ Boesche v. Udall, 373 U.S. 472 (1963).

are remanded to the Bureau of Land Management for further adjudication consistent herewith.

Edward W. Stuebing
Member

We concur:

Joseph W. Goss
Member

Martin Ritvo
Member