

DIVIDE COAL MINING COMPANY

IBLA 75-13

Decided December 31, 1974

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting coal lease application M-19419.

Set aside and remanded.

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

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for such consideration.

APPEARANCES: John L. Pratt, Esq., of Ask & Pratt, Roundup, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On August 23, 1971, Divide Coal Mining Company (appellant) filed application M-19419 for a coal lease pursuant to section 2 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(a) (1970), on the N 1/2 NW 1/4 section 24, T. 6 N., R. 26 E., Montana. In September 1973, after receiving the Geological Survey's report and recommendation for leasing the tract, the Bureau of Land Management (BLM) notified appellant that Departmental policy required rejection of the application unless it demonstrated "existing and immediate" short-term need for the coal on the lands.

The BLM received no reply. The BLM then issued a decision on June 11, 1974, rejecting the coal lease application for appellant's failure to demonstrate that it met the criteria of need. Appellant's

failure to respond is not to be condoned. However, since the case is merely being remanded for further consideration, we shall review the matter as though no such failure occurred.

[1] In its statement of reasons for appeal, appellant detailed its method of operation, its need for the land applied for in order to run an efficient operation on existing leases nearby, and the need of the town of Roundup, Montana, for coal from this supply. Appellant argues that on these facts it was improper for the Department to deny its coal lease application.

In order to establish a uniform coal leasing policy, on February 17, 1973, Secretarial Order No. 2952, 38 FR 4682 (1973) was promulgated. It declared a moratorium on the issuance of coal land prospecting permits under the relevant provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970). In order to further effect that policy the Department established, under a separate memorandum approved by the Secretary on that date, and upon which the decision below is apparently predicated, criteria for issuing short-term leases to meet existing and immediate needs for federal coal resources. 1/

1/ The short-term criteria in essence were approved by the Secretary on February 13, 1973, and are set out in BLM Instruction Memorandum No. 73-231, dated June 6, 1973, extended to December 31, 1974, which was issued pursuant to Secretarial Order No. 2952, 38 FR 4682 (1973), as follows:

- "1. When coal is needed now to maintain an existing mining operation; or
- "2. When coal is needed as a reserve for production in the near future; and
- "3. When the land to be mined will, in all cases, be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; and
- "4. When an environmental impact statement, covering the proposed lease, has been prepared when required under the National Environmental Policy Act."

These criteria are to applied in conformity with the Department's stated goals:

- "1. To assure maximum environmental protection;
- "2. To provide for orderly and timely resource development; and
- "3. To assure a fair market value return for resources leased." Id.

The memorandum's guidelines delineate what is meant by need in order to maintain an existing mining operation, or need as a reserve for production within three years. A showing that the land applied for is needed in order to form an economic mine unit with an existing or soon-to-be-developed operation meets these criteria. In its statement of reasons, appellant states that its operation on other leased lands in section 24, because of the exhaustion of underground deposits, can only continue economically by strip mining carried on in conjunction with the lands applied for.

The information in appellant's statement of reasons appears to satisfy the criteria of need on which the BLM based its decision rejecting the application. While the BLM decision properly applied the criteria of need to the record before it, the record as supplemented on appeal no longer supports such a finding. Because appellant appears to meet the standards of the criteria, the decision is set aside and the case is remanded for evaluation of the application in light of the assertions contained in the statement of reasons for appeal to this Board.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to the Montana State Office for further appropriate consideration.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

