

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting competitive coal lease applications C-23743 through C-23748.

Affirmed.

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

Where a court decree delineates specific criteria governing the issuance of Federal coal leases by the Department, the rejection of competitive coal lease applications failing to meet such criteria will be sustained on appeal.

APPEARANCES: W. K. Somerville, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

W. K. Somerville and R. D. Somerville have appealed from a decision dated December 6, 1978, by the Colorado State Office, Bureau of Land Management (BLM), rejecting six competitive coal lease applications, C-23743 through C-23748. The decision was based on National Resources Defense Council v. Roysten C. Hughes, et al., 454 F. Supp. 148, (D.D.C. 1978), appeal pending, wherein the Department of the Interior was directed not to issue any coal leases except

(1) when the proposed lease is required to maintain an existing mining operation (a) at the average annual level of production existing as of September 27, 1977, or (b) to provide reserves necessary to meet binding contracts (excluding letters of intent and memoranda of understanding) existing on September 27, 1977, and the extent of the proposed lease is not greater than is required to meet criterion (a) or (b) for eight years in the future. Any lease issued under this paragraph will

provide that annual production from the lease area shall not be greater than the average annual level of production existing as of September 27, 1977, or the amount needed to meet the annual requirements of the contract existing on September 27, 1977; or

(2) when the proposed lease is necessary because (a) mining operations existing on September 27, 1977, are being conducted that could remove the coal deposit as part of an orderly mining sequence; and (b) the site location, or physical characteristics are such that removal of the coal reserves sought to be leased, except in conjunction with ongoing operations, would (i) involve costs demonstrably so high that it would not be sufficiently profitable to develop the deposit in the reasonably foreseeable future or (ii) significantly increase environmental damage. This paragraph would not apply if there is any reasonable alternative by which the existing mine could continue operations and the coal deposit subject to the proposed lease could be mined at a later date without either (i) or (ii) occurring. The extent of the proposed lease cannot be greater than necessary to provide coal for five years in the future at the average annual level of production existing as of September 27, 1977; or

(3) when the Secretary determines to issue the proposed lease under the provisions of Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 in exchange for a federal coal lease in an alluvial floor, except that no lease may be issued under this paragraph in exchange for a federal lease held by an applicant who is not entitled to have its surface mining permit approved under Section 510(b)(5) of that Act; or

(4) when the proposed leases will be used to conduct a project authorized by the Administrator of the Energy Research and Development Administration under Section 908 of the Surface Mining Control and Reclamation Act of 1977, and the technology cannot be adequately demonstrated on existing leases or private coal holdings. Any such lease shall provide for no more than 500,000 tons annual production and the demonstration shall meet all of the requirements of regulations promulgated pursuant to Section 908 * * *.

N.R.D.C. v. Hughes, *supra*, at 151.

Appellants state on appeal that the lands covered are interspersed and mostly surrounded by privately-owned coal lands; that it was intended to unitize or consolidate this coal deposit into a more economically mineable unit; that such consolidation would attract the necessary capital to develop a commercially successful coal mining operation; and that it would be wasteful to bypass 1/ the coal deposits covered by the applications.

[1] Although appellants' arguments may be cogent, they do not fall within the ambit of the court's decree. The Department is therefore bound to reject the application. 2/

Therefore, 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 affirmed.

Frederick Fishman

Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

1/ The record does not show that appellants have an ongoing coal mining operation in the vicinity. Thus, the criteria of the court's amended order are not satisfied.

2/ Even if the applications were otherwise allowable, the Secretary's memorandum of February 16, 1977, provides in part that "Until further notice, there will be no leases issued for coal * * * without my expressed approval." Assuming, arguendo, that the applications satisfied the above criteria, the consent of the Secretary would have to be sought prior to allowance of the applications.

