

SHELL OIL CO.

IBLA 79-474

Decided April 10, 1980

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting competitive coal lease application W-59483.

Set aside and remanded.

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

Where BLM has rejected an application for a competitive coal lease in accordance with a court injunction and thereafter said injunction expires, BLM shall reconsider appellant's application and apply thereto newly promulgated regulations set forth at 43 CFR Part 3400.

APPEARANCES: C. E. Nadeau, Esq., Thomas G. Johnson, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Shell Oil Company (Shell) appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 21, 1979, rejecting its application for competitive coal lease W-59483. BLM based its rejection upon an injunction, originally issued on September 27, 1977, and subsequently amended on June 14, 1978, enjoining this Department from taking any steps whatsoever to issue any coal leases except, inter alia:

(1) [W]hen 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; * * * 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 size, 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.

Natural Resources Defense Council, Inc. v. Hughes, 437 F.Supp. 981 (1977), amended, 454 F. Supp. 148 (1978).

Thereafter, actions were taken by this Department, culminating in the publication of new regulations regarding coal management on the public lands, 43 CFR Part 3400, 44 FR 42608 (July 19, 1979), effective August 6, 1979, 44 FR 45946 (Aug. 6, 1979). 1/ The above quoted injunction expired upon adoption of this new program. Coal Fuels-Wilde, 43 IBLA 170 (1979).

The rejection of application W-59483 can no longer be supported by the rationale set forth in BLM's decision of May 21, 1979. 2/ Accordingly, the case is remanded to BLM for further consideration of the application. In so doing, BLM shall apply the newly published regulations, 43 CFR Part 3400, cited above. Hannifin v. Morton, 444 F.2d 200, 202-3 (10th Cir. 1971); Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963); Estate of Malcolm N. McKinnon, 31 IBLA 290 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977); Walt's Racing Association, 18 IBLA 359, 364 (1975).

1/ Corrections to these regulations appear at 44 FR 56339 (Oct. 1, 1979).

2/ A prior decision by BLM, dated August 3, 1977, was set aside by this Board in Shell Oil Co., 35 IBLA 195 (1978). Therein, appellant's efforts to lease parcel W-59483, situated in S 1/2 S 1/2 sec. 29, and N 1/2 N 1/2, sec. 32, T. 52 N., R. 72 W., sixth principal meridian, Campbell County, Wyoming, are set forth in some detail.

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 set aside and the case remanded for further action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

