

RONALD K. BARR, SR.
PAUL BROWN, SR.

IBLA 81-889

Decided July 20, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting coal prospecting permit application F-60609.

Affirmed.

1. Coal Leases and Permits: Generally -- Coal Leases and Permits: Applications -- Mineral Leasing Act: Generally -- Secretary of the Interior

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976), and 43 CFR 3410 provide for the issuance of coal exploration licenses, for lands subject to leasing.

APPEARANCES: Ronald K. Barr, Sr., and Paul Brown, Sr., pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated July 15, 1981, by the Alaska State Office, Bureau of Land Management (BLM), rejecting appellants' coal prospecting permit application F 60609.

Appellants filed their application on October 18, 1979, describing land within T. 20 N., R. 5 W., Kateel River meridian.

The decision appealed from cites 43 CFR 3430.0-7 which states in pertinent part:

Because section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands, the regulations in this subpart apply only to lease applications which have already been filed. No additional prospecting permits that confer a preference right to a coal lease shall be issued.

The decision also points out that the lands described in the application lie within Kobuk Valley National Park, created by section 201 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2380 (1980). It refers to 43 CFR 3400.2 providing that no coal leases may be issued on Federal lands in the national park system.

In their statement of reasons appellants say essentially that they want to prospect for coal because there is a greater demand for coal and because coal is a more economical fuel than heating oil.

[1] While appellants' statement of reasons explains their intentions it does not purport to show in what respects the decision appealed from is in error. It is well settled that a statement of reasons which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal may be dismissed. Geneva Barry, 54 IBLA 48 (1981). Dismissal, however, is not mandatory and each case will be considered on its own merits.

BLM correctly rejected the application. Appellants' application lacks viability in the first instance because the prospecting permit system was repealed under the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 1085, 30 U.S.C. § 201(b) (1976). Under that section, a new procedure was established whereby the Secretary may issue exploration licenses. These licenses no longer give the person to whom they are issued the preference right to a lease as had the Mineral Leasing Act. Coal leases may now be issued only after competitive bidding. See American Nuclear Corp. v. Andrus, 434 F. Supp. 1035 (D. Wyo. 1977). The exploration licensing procedure is found in 43 CFR part 3410. Under 43 CFR 3410.1-1 exploration licenses may be issued for lands administered by the Secretary that are subject to leasing under section 3400.2. Thus, since the land sought in appellants' permit is within Kobuk Valley National Park, no exploration license could be issued for it. 43 CFR 3410.1-1, 3400.2.

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 affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

