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Development of the 1979 Federal Coal Management Program

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OUTLINE

DEVELOPMENT OF THE 1979
FEDERAL COAL MANAGEMENT PROGRAM

BY

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FEDERAL LANDS, LAWS AND
POLICIES AND THE DEVELOPMENT
OF NATURAL RESOURCES

THE UNIVERSITY OF COLORADO SCHOOL OF LAW

DEVELOPMENT OF THE 1979

FEDERAL COAL MANAGEMENT PROGRAM

by Leo M. Krulitz

General Counsel, Cummins Engine Company
Solicitor, The Department of the Interior 1977-79

I. Coal Resources Controlled by the Federal Government.

(a) Estimated U.S. Coal Resources. U.S. has an estimated 1.7 trillion tons of coal. About 440 billion tons are mineable under current conditions, one-half in the West.

The Federal government owns 60% of the Western coal; controls indirectly another 20%. (p.2,1, Final Environmental Impact Statement - Federal Coal Management Program, April, 1979).

(b) Relationship of Coal Reserves to Energy Requirements of the Nation.

II. Leasing Programs for Federal Coal Prior to 1979.

(a) Unrestrained Leasing Through 1970. Up to 1970, 780,000 acres covering 18 billion tons of coal had been leased under The Mineral Leasing Act of 1920, 30 U.S.C. § 181, et. seq. In 1970, 7.8 million tons were produced from leased lands compared to a potential of 250 million tons per year. In addition, holders of Exploration Permits had filed Preference Rights Lease Applications covering an additional 470,000 acres and an estimated 10 billion tons of coal. The Mineral Leasing Act required leases to be issued to a permittee if the permittees found "coal in commercial quantities." 30 U.S.C. § 201, NRDC v. Berkland, 454 F. Supp. 925 (D.D.C., 1978).

(b) Leasing Moratorium Imposed. Leasing stopped informally in 1971. In 1973, DOI imposed a formal moratorium on leasing with certain, limited exceptions.

(c) EMARS Program Proposed in 1974. Program and supporting Environmental Impact Statements were not legally supportable.

(d) Changes in the Law. After 1970, Congress enacted several statutes making major changes in DOI's authority to manage the nation's coal resources.

(i) Federal Coal Leasing Amendments Act of 1976, P.L. 94-377, 90 Stat. 1083 (1976) ("FCLAA") abolished non-competitive, preference right leasing.

(ii) Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2743 ("FLPMA"), required public lands to be managed on a multiple-use basis.

(iii) Surface Mining Control and Reclamation Act of 1977, 90 Stat. 445, ("SMCRA"), restricted lands which could be mined and provided for surface owner consent.

(e) Some Preference Rights Lease Applications Invalid. Prospecting permits in areas covered by mining claims invalid. Solicitors Opinion, 84 I.D. 442 (1977).

III. NRDC v. Hughes, 437 F. Supp. 981 (D.D.C., 1977), amended 454 F. Supp. 148 (D.D.C., 1978).

(a) Effect of the Lawsuit. EIS on EMARS program held inadequate; DOI enjoined from leasing with very minor exceptions.

(b) Settlement of the Lawsuit. Settlement of lawsuit, while controversial, allowed limited resumption of leasing and permitted development of new Federal Coal Leasing Program.

(c) Claims of Utah Power & Light. Reasons why Utah Power & Light not included in settlement.

IV. NRDC V. Berklund, 454 F. Supp. 925 (D.D.C., 1978).

(a) No Settlement. Reasons why this case was not settled.

(b) Unanswered Questions.

V. Development of the 1979 Coal Leasing Program.

- (a) Objectives. The objectives of the new Federal Coal Leasing Program.
- (b) Public Involvement. Various ways the public had input into the development of the new program.
- (c) Key Issues Considered by the Secretary.
 - (i) Should more coal be leased, and if so, where and how much?
 - (ii) How could DOI comply with the surface owner provisions of SMCRA and still prevent the owner from realizing a portion of the value of the Federal Coal through sale of the consent to a coal company?
 - (iii) What lands should be classified as unsuitable for mining under SMCRA and when?
 - (iv) Should the end use of the coal be taken into consideration before deciding to issue a lease?
 - (v) Should BLM's current land use plans be used in determining lands suitable for leasing?
 - (vi) How should the "maximum economic recovery" required by FCLAA be calculated?
 - (vii) How should coal industry interest in specific tracts of land be taken into account in the leasing process?
 - (viii) Other issues.

VI. Status of Implementation of 1979 Federal Coal Leasing Program.