The Federal Coal Leasing Program

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THE FEDERAL COAL LEASING PROGRAM

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PUBLIC LANDS MINERALS LEASING

A Short Course Sponsored by the
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Reference Sources

I. Publications


II. Legislation


II. Court Cases


I. History and Background

A. The current program evolved from a series of laws directly or indirectly affecting the management of Federal coal resources.

1. Mineral Leasing Act of 1920 (MLA) established a two-tiered program, in which coal would be leased in response to applications from industry. 30 U.S.C. 181 et seq.

a. Where coal of potentially commercial value was known to exist, leases would be issued competitively.

b. In other areas, discovery was encouraged by issuing prospecting permits and, if coal of commercial quantities was discovered, issuing a preference right (noncompetitive) lease to the applicant.

2. National Environmental Policy Act of 1969 (NEPA) requires, inter alia, that decisionmaking on major Federal actions include the consideration of any impacts
significantly affecting the quality of the human environment. 42 U.S.C. 4321-4347.

3. Clean Air Act of 1970 established 28 industrial categories for which fugitive emissions would be included in the prevention of significant deterioration (PSD) permit review. EPA has added two more industries to the list as allowed by the Act, and in 1984 proposed to add surface coal mining. A final decision is pending. 42 U.S.C. 1857 et seq.


a. All leases are to be issued competitively. 30 U.S.C. §201(a)(1).


c. New Federal leases under the 1920 MLA would not be issued to any person or company that held another coal lease.
for ten years or more without producing commercial quantities. 30 U.S.C. §201(a)(2)(A).

d. Lands would not be offered for lease sale unless a comprehensive land use plan or analysis was completed for the land to be offered. 30 U.S.C. §201(a)(3)(A).

e. Lessees must produce commercial quantities of Federal coal within ten years or lose the lease. 30 U.S.C. §207.

f. The minimum royalty rate for surface mined coal would be 12 1/2 percent annually. 30 U.S.C. §207(a).


a. Standards for land use planning were set.

b. Federal-State cooperation was established.
   a. It requires a federal lands review to determine if, based on certain specified criteria, the land is unsuitable for surface mining. 30 U.S.C. §1272(b).
   b. It requires that owners of private surface over surface minable Federal coal, who meet certain qualifications, consent to mining before leases can be issued. 30 U.S.C. §1304.

B. Major milestones in the program have included litigation as well as moratoria and program review.

1. In 1971, the Department ceased issuing leases and prospecting permits, based on a BLM study noting that Federal coal leasing was increasing while production on Federal/
leases declined, leading to the belief that leases were being acquired for speculative purposes.

2. In 1973, the Department formalized the moratorium and ordered the development of a new long term program; leasing to meet "short-term" criteria was allowed in the interim. The new program, Energy Minerals Activity Recommendation System (EMARS II), was described in a final EIS in 1975 and officially adopted in 1976.

3. In 1975, plaintiffs charged in NRDC v. Hughes that, inter alia, the environmental statement prepared on the EMARS program was inadequate. In 1977, the court ordered the deficiency corrected and enjoined the Department from leasing until this was completed, but the Department decided instead to develop a new program and prepare a new EIS. This new program, adopted in 1979, established regional leasing (described in the next section).

4. In 1979, the court found, in NRDC v. Berklund, that although the FCLAA abolished noncompetitive coal leasing, the Department was obligated to a) process the remaining preference right lease applications and issue a noncompetitive lease to those applicants who found commercial quantities of coal, and b) comply with NEPA in processing the PRLAs. 609 F. 2d 553 (D.C.Cir. 1979).

5. In January 1981, the first regional coal lease sale under the new program was held in the Green River - Hams Fork region. Subsequent regional sales were held in Southern Appalachian (1981), Uinta (1981), Powder River (1982) and Fort Union (1983).

6. In February 1981, Secretary Watt ordered a review of all Department programs to eliminate excessive, burdensome, and counterproductive rules and procedures. Revisions to the coal management
regulations, published in 1982, streamlined the procedures but did not change the basic program established in 1979.

7. In 1982, plaintiffs alleged in NRDC v. Burford that the Department's rulemaking of 1982 required a new EIS and that certain procedures for rulemaking were not followed. The court has not issued a ruling on this case. Civil No. 82-2763 (D.D.C.).

8. In 1983, responding to allegations that the Department was not receiving fair market value for coal leases, Congress established the Commission on Fair Market Value Policy for Federal Coal Leasing and a moratorium on regional coal leasing until the Commission reported to Congress. The Commission, headed by Dr. David Linowes, issued its report and recommendations in February 1984.

9. At the same time, Congress ordered the Office of Technology Assessment to assess
the program's ability to ensure the development of coal leases in an environmentally compatible manner. This report became available in May 1984.

10. In August 1984, Secretary Clark instructed the BLM to prepare a supplement to the 1979 program EIS. The draft of this supplement was released in February 1985; the final is expected to be available in September 1985.

11. Also in 1984, Secretary Clark imposed a moratorium on all regional coal leasing activities until the Department completed its review of the program, including several proposed modifications made by the Department in response to reports by the Linowes Commission and OTA.

II. Description of the Regional Leasing Program

A. The Federal coal reserves are organized into twelve coal production regions. Regional coal leasing is conducted in the five regions and one subregion that contain most of the Federal coal reserves and receive the most active
industry interest. (These regions are shown in the attached map.)

1. Regions may become active or inactive based on the recommendations of the BLM State Directors and the Governors in the States involved.

2. In each active region, a regional coal team (RCT) guides the planning activity process and advises the Secretary, through the BLM Director, on regional leasing level and sale decisions.
   
a. Members are the Governors (or their representatives) and the BLM State Directors in each State in the region. The RCT is chaired by the BLM State Director in the State most affected by the proposed leasing.
   
b. Ex officio members come from other Federal agencies affected by coal leasing, State agencies, and affected Indian tribes.
   
c. Members of all the regional coal teams are also members of the
Federal-State Coal Advisory Board, that meets annually to review the program from the national perspective.

d. Maximum public participation throughout the regional leasing process is encouraged.

B. The regional coal leasing planning process is sequential and progresses from a broad consideration of a large land area to a more site-specific focus on individual tracts. (The process is summarized in an attached flowchart.)

1. Land use planning must be completed first, including four coal "screens" to sift out land that should not be considered further in the coal leasing planning process.

a. Lands containing no potentially developable coal deposits are eliminated from further consideration.

b. Lands found unsuitable using 20 specific criteria are eliminated from further consideration.

c. Lands containing other resource values higher than those of coal
development are eliminated through multiple-use tradeoffs.

d. Surface owners over Federal coal that would be mined by other than underground methods are consulted so that land can be eliminated if the owners oppose surface mining.

2. Activity planning follows if the RCT determines that it is justified based on market analyses and resource evaluations.

a. Based on responses to BLM's call for expressions of interest, tracts are delineated and site-specific impacts analyzed in tract profiles. Data gaps or weaknesses are identified so that if needed, more data can be gathered for analysis.

b. The RCT considers factors such as market analysis, available resource data, land use planning decisions, and State, local and public concerns, and recommends to the Secretary a regional leasing level range, which
is used to define the proposed action in the regional EIS. The Secretary establishes this leasing level after consultation with the Governor(s) of the affected State(s) and the Attorney General.

c. The RCT ranks the tracts for their desirability for leasing, using environmental, socioeconomic, and coal resource values identified in the tract profiles, selects individual tracts for further analysis, and identifies alternatives for the regional EIS, which the BLM lead State Director prepares.

d. Following the completion of the EIS, the RCT makes a sale schedule recommendation, based on market analyses of individual tracts, environmental considerations, State and public concerns, and other relevant factors in specific regions.
e. The Secretary consults with the Governor(s) of the State(s) affected, any affected Indian tribes, and the Department of Justice; if a tract is under the jurisdiction of a surface management agency outside the Interior Department, the Secretary must obtain consent to lease from that agency.

3. If the Secretary makes a decision to offer tracts for lease sale and, if so, which ones, when, and under what procedures, BLM prepares for the sale.
   a. The State Director calls for comments on fair market value and maximum economic recovery for each tract selected for lease offering.
   b. The State Director publishes a notice of sale and prepares a detailed statement and a presale appraisal on each tract to be offered.
   c. Following the sale, an evaluation of the high bid is conducted to
determine if the bid represents fair market value. If it does, the bidder is referred to the Department of Justice to determine whether issuance of that lease would be consistent with antitrust laws.

C. Other leasing constitutes a very small part of the total Federal leasing effort.

1. Because the extent of leasing outside an active coal production region does not justify the effort that regional leasing requires, coal leasing is carried out in response to individual applications from industry.

2. Emergency leasing needs within coal production regions are met on a lease-by-application basis using specific criteria for the emergency.

   a. The coal would be bypassed if the applicant does not mine it, and it would be uneconomic to mine separately at a later time.
b. The applicant needs the Federal coal in order to meet contract obligations or avoid a mine shut-down, and the need could not have been foreseen early enough to be included in the regional leasing effort.

c. The applicant plans to mine the coal within three years, and the lease would not include more than an eight-year supply at the applicant's production rate at the time of the application.

3. In accordance with NRDC v. Berklund, the Department is processing PRLAs in five western coal states. If the applicant proves discovery of commercial quantities of coal, a lease is issued. The special lease stipulations that may be required to protect other resource values are analyzed in an EIS and included in the final commercial quantities determination.
III. Conclusions

A. The Department's review of the program includes the supplement to the 1979 program environmental impact statement and several revisions in the procedures for fair market value, environmental protection, and public involvement.

1. The draft supplement was available for public review and comment during a 90-day comment period this spring.

2. The proposed revisions have been available for public comment separately and as part of the draft supplement to the EIS.

B. The final supplement to the EIS is expected to be available in September 1985; the Secretary's program decision is expected by late October 1985. Included in that decision would be the form of the program and, if he chooses the existing program, the form of the revisions.
LAND USE PLANNING

NOTICE OF INTENT TO PREPARE LAND USE PLAN
CALL FOR RESOURCE INFORMATION (1)
IDENTIFY ISSUES
DEVELOP PLANNING CRITERIA TO RESOLVE ISSUES
COLLECT INVENTORY DATA
APPLY COAL SCREENS (2)

DETERMINE COAL DEVELOPMENT POTENTIAL
APPLY UNSUITABILITY CRITERIA (3)
DETERMINE MULTIPLE USE TRADEOFFS
CONSULT SURFACE OWNERS

RESULT: IDENTIFICATION OF LANDS AS ACCEPTABLE FOR FURTHER CONSIDERATION FOR LEASING

RESULT: SELECTION OF TRACTS TO BE OFFERED FOR COAL LEASE SALE

ACTIVITY PLANNING

PREPARE LONG-RANGE MARKET ANALYSIS, LAND-USE SUMMARY (5)
RCT MEETS TO REVIEW MARKET ANALYSIS, LUP SUMMARY (6)
ISSUE CALL FOR EXPRESSIONS OF LEASING INTEREST (7)

DELINEATE TRACTS (8)

PREPARE REGIONAL MARKET ANALYSIS (9)
RCT MAKES LEASING LEVEL RECOMMENDATIONS
SECRETARY CONSULTS WITH SEC. OF ENERGY, STATE GOVERNOR, ATTORNEY GENERAL, SURFACE OWNERS

SEC. OF THE INTERIOR ESTABLISHES LEASING LEVEL (10)
RCT RANKS TRACTS, SELCRS EIS ALTERNATIVES* (11)

PREPARE EIS* (11)
PREPARE CURRENT MARKET AND TRACT MARKETABILITY ANALYSIS
RCT MAKES FINAL SALE RECOMMENDATIONS (12)
SECRETARY CONSULTS WITH SECRETARY OF THE INTERIOR, GOVERNORS, SURFACE OWNERS, INDIAN TRIBES

RESULT: COAL LEASES ISSUED IN ACCORDANCE WITH FCLAA, SMCRA, AND OTHER COAL-RELATED STATUTES AND REGULATIONS.

LEASE SALE PROCEDURES

PREPARE PRESALE TRACT APPRAISAL ESTIMATES
SOLICIT PUBLIC COMMENT ON FMV AND MER

RCT REVIEWS CURRENT MARKET AND TRACT MARKETABILITY ANALYSIS (13)
PUBLISH SALE NOTICE
VERIFY SURFACE OWNER CONSENTS

HOLD LEASE SALE (14)
CONVENE SALE PANEL (15)
CONDUCT POSTSALE EVALUATION (16)
ANNOUNCE BIDS ON SINGLE TRACTS (17)
SALE PANEL RECOMMENDS BID ACCEPTANCE/REJECTION
BLM STATE DIRECTOR ACCEPTS/REJECTS BIDS
DEPARTMENT OF JUSTICE CONDUCTS ANTI TRUST REVIEW
BLM STATE DIRECTOR ISSUES LEASES

RESULT: SELECTION OF TRACTS TO BE OFFERED FOR COAL LEASE SALE

SECRETARY ANNOUNCES LEASE SALE SCHEDULE (16)

SURFACE MANAGEMENT AGENCIES, GOVERNORS, INDIAN TRIBES, ATTORNEY GENERAL

Proposed Coal Leasing Program Flow Chart

* Points at which data adequacy is reviewed

RCT - Regional Coal Team