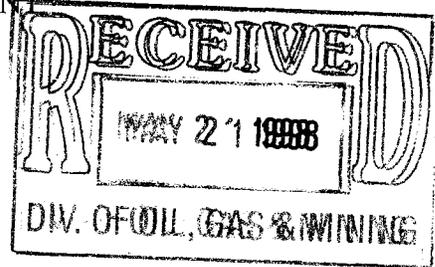




United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155



MAY 19 1998

In Reply Refer To:
3487
U-017354
U-067498
U-47974
U-47975
UTU-70018
UTU-73344(Valley Camp LMU)

CERTIFIED MAIL--Return Receipt Requested

DECISION

White Oak Mining & Construction Co., Inc. :
c/o Denise A. Dragoo, Esq. :
Van Cott, Bagley, Cornwall & McCarthy :
P.O. Box 45340 :
Salt Lake City, Utah 84145-0340 :

Valley Camp Logical
Mining Unit: UTU-73344
*Copy Pam
to route*

ACT/007/001 #2

Logical Mining Unit Application Rejected Coal Leases Terminated Due To Lack of Diligent Development

On November 6, 1991, Valley Camp of Utah, Inc. (Valley Camp) filed an application for a logical mining unit (LMU) which contained Federal coal leases U-017354, U-067498, U-47974, and U-47975 in their entirety, and U-020305 in part. Effective June 30, 1993, the portion of lease U-020305 within the LMU application was segregated into a new lease, UTU-70018. Valley Camp was the lessee on coal leases U-017354, U-067498, U-47974, and U-47975, and the sublessee on UTU-70018. The LMU application also contained substantial fee acreage.

White Oak Mining & Construction Co., Inc. (White Oak) filed assignments of record title and a transfer of sublease for the aforementioned leases on October 13, 1993. The assignments of U-067498, U-47974, and U-47975 were approved effective March 1, 1995. The assignment of U-017354 and the transfer of the sublease of UTU-70018 were approved effective April 1, 1995. White Oak also assumed the Valley Camp LMU application at that time.

Enclosed Map 1 deals with the lands in the original application. Map 2 deals with additional lands to the LMU submitted by White Oak in an update document dated September 5, 1997.

In accordance with 43 CFR 3480.0-5(a)(19) and 43 CFR 3487.1(f)(1), for an LMU application to be approved, the applicant must have effective control over all lands in the application and the lands must be contiguous.

Map 1 delineates the effective control of the lands in the original application. White Oak claims surface access across all lands in the application. Its lack of control of the subsurface coal held by Canyon Fuel Company L.L.C., and the unleased Federal coal renders the lands in the application not contiguous.

Map 2 includes lands submitted in a September 5, 1997, "update" of the application. Many of these lands are contained in Federal coal leases included in the Skyline LMU, which is operated by Canyon Fuel Company L.L.C. Some of the lands are not contiguous to lands in the original application. The surface lands which form a bridge between the east block and west block of Federal leases sit above unleased Federal coal, therefore nullifying White Oak's claim of effective control.

White Oak claims that the letter of July 27, 1989, from Coastal States Energy Company (predecessor to Canyon Fuel Company L.L.C.) to Valley Camp grants White Oak subsurface rights to the Canyon Fuel Company L.L.C. coal resource. Although BLM views the letter as a settlement of a different portion of the LMU boundary, by letter dated April 13, 1998, BLM allowed White Oak 30 days in which to provide a letter signed by an authorized officer of Canyon Fuel Company L.L.C. confirming that the letter agreement of July 27, 1989, granted Valley Camp and its successor in interest, White Oak, effective control of the coal resource in the pertinent lands. Postal records show the deadline for receiving the letter of confirmation as May 18, 1998. The letter was not timely provided. The application is therefore rejected.

The lands determined not to be contiguous in the LMU application contain Federal coal leases U-47974 and U-47975. No production has occurred on these leases and they now revert to their individual lease terms and conditions.

Coal leases U-47974 and U-47975 were issued effective December 1, 1981, pursuant and subject to the terms and conditions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. § 181-263, and to all regulations of the Department of the Interior.

Section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207 (1988) provides in part, "Any lease which is not producing in commercial quantities at the end of ten years shall be terminated." Utah Power & Light Co., 117 IBLA 271 (1991).

Section 3 of the lease terms requires diligent development and the regulations at 43 CFR 3452.3(a) state, "Any lease issued or readjusted after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements." Diligent development is defined at 43 CFR 3480.0-5 (12) and (13) as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." Commercial quantities are defined as "1 percent of the recoverable coal reserves," 43 CFR 3480.5(a)(6).

Coal leases U-47974 and U-47975 were required to meet diligent development requirements by December 1, 1991. Inasmuch as these requirements were not met, leases U-47974 and U-47975 are hereby terminated pursuant to authority of law effective December 1, 1991.

Refunds of rental paid after the expiration of the diligent development period are to be applied for directly from the Minerals Management Service, Royalty Management Program, Solid Minerals Staff, MS 3111, P.O. Box 25165, Denver, Colorado 80225.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success of the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted,
and
- (4) Whether the public interest favors granting the stay.

/S/ Linda S. Colville

~~for~~ G. William Lamb
State Director

Enclosures

Form 1842-1
Original Application
Update of September 5, 1997
Kaiser-Canyon Fuel Company L.L.C. (formerly Coastal States Energy Co.) Sales Agreement
Quit Claim Deed (Coastal-Kanawha Hocking)
Letter of July 27, 1989
Letter of April 13, 1998
Map 1
Map 2

cc: Larry Jones (w/encl)
White Oak Mining & Construction Co., Inc.
Scofield Route
Helper, Utah 84526

Valley Camp of Utah, Inc. (wo/encl)
c/o Stoel Rives LLP
Attn: John S. Kirkham, Esq.
One Utah Center
201 S. Main Street, Suite 1100
Salt Lake City, Utah 84111-4904

WO-320 (wo/encl)
Price Coal Office (wo/encl)
Manti-LaSal National Forest (wo/encl)
U.S. Forest Service, Ogden (wo/encl)
MMS, Solid Minerals Staff (wo/encl)
Field Solicitor (wo/encl)
Lowell Braxton, Director, UDOGM (wo/encl)