

0021

*circulate Pam, March 1999
R419*

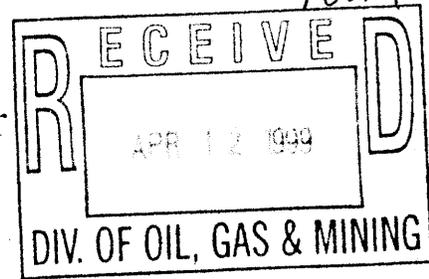
Pam



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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



In Reply Refer To:

- 3452
- SL-069291
- U-014217
- U-0126947
- U-0126948
- UTU-73517 (South Block LMU)
- UTU-77859
- UTU-77860
- UTU-77861
- (UT-932)

APR 8 1999

CERTIFIED MAIL--Return Receipt Requested

*ACT/007/013 #2
Copy Pam
(2-sided)*

DECISION

Intermountain Power Agency	:	Coal Leases
Department of Water and Power	:	SL-069291, U-014217,
City of Los Angeles	:	U-0126947, U-0126948,
111 North Hope Street, Room 1107	:	UTU-77859, UTU-77860,
Los Angeles, CA 90012	:	UTU-77861, UTU-73517

- Withdrawal of the South Block Logical Mining Unit Application Accepted
- Appeal of Decision of June 2, 1998, Dismissed
- Coal Lease U-0126948 Terminated Pursuant to Authority of Law
- Coal Lease SL-069291 Segregated Into UTU-77859
- Coal Lease U-014217 Segregated Into UTU-77860
- Coal Lease U-0126947 Segregated Into UTU-77861
- Coal Lease UTU-77861 Terminated Pursuant To Authority of Law

On June 2, 1998, this office rejected the South Block Logical Mining Unit (LMU) application submitted by Intermountain Power Agency (IPA) on November 13, 1993. A notice of appeal of that decision was filed in this office on July 7, 1998, by IPA's counsel. Subsequently, on March 8, 1999, IPA filed, in this office, a withdrawal of the South Block Logical Mining Unit application. In response to a joint motion filed by counsel for IPA and counsel for the Bureau of Land Management, the Interior Board of Land Appeals (IBLA) dismissed the appeal by order dated March 16, 1999. This results in the decision of June 2, 1998, being in full force and effect.

The withdrawal/rejection of the LMU has the following affects on the leases which comprised the LMU.

Coal lease U-0126948 is hereby terminated effective February 1, 1994, pursuant to authority of law.

In accordance with 43 CFR 3487.1(f)(3), portions of the leases within the South Block LMU application are hereby segregated, as follows, effective January 1, 1994 (the effective date of the North Block LMU).

SL-069291 (Lands Retained)
T. 16 S., R. 14 E., SLM, UT
Sec. 24, E2SW;
Sec. 25, NW;
Sec. 26, SENE.

280.00 acres
In North Block LMU

U-014217 (Lands Retained)
T. 16 S., R. 14 E., SLM, UT
Sec. 25, SWNE.

40.00 acres
In North Block LMU

U-0126947 (Lands Retained)
T. 16 S., R. 14 E., SLM, UT
Sec. 13, E2;
Sec. 24, E2;
Sec. 25, N2NE, SENE.

T. 16 S., R. 15 E., SLM, UT
Sec. 19, lots 3,4, SESW;
Sec. 30, lots 1,2, E2NW, SWNE.

1,059.81 acres
In North Block LMU

UTU-77859 (New Segregated Lease)
T. 16 S., R. 14 E., SLM, UT
Sec. 25, SW;
Sec. 26, E2SE;
Sec. 35, E2NE.

320.00 acres
Diligence Due Date: April 1, 2000

UTU-77860 (New Segregated Lease)
T. 16 S., R. 14 E., SLM, UT
Sec. 25, SE;

T. 16 S., R. 15 E., SLM, UT
Sec. 30, lots 3,4;
Sec. 31, lots 1-3, SENW, NESW.

415.84 acres
Diligence Due Date: January 17, 2005

UTU-77861 (New Segregated Lease)
T. 16 S., R. 15 E., SLM, UT
Sec. 29, SWSW;
Sec. 30, E2SW, SESE, W2SE;
Sec. 31, lot 4, E2, NENW, SESW.

T. 17 S., R. 15 E., SLM, UT
Sec. 5, lots 3,4;
Sec. 6, lots 1-4.

932.34 acres
Diligence Due Date: February 1, 1994

Since the lands in lease UTU-77861 did not achieve diligent development by February 1, 1994, Federal coal lease UTU-77861 is hereby terminated pursuant to the authority of law effective February 1, 1994.

Although a partial relinquishment of U-0126947 and a full relinquishment of U-0126948 were filed in this office on March 8, 1999, it is the finding of this office that the terms of the decision of June 2, 1998, take precedence over the relinquishments filed March 8, 1999.

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 3153, P.O. Box 25165, Denver, CO 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

Acting State Director

Enclosure

1. Form 1842-1
2. Decision of June 2, 1998

cc: IPA, 480 East 6400 South, Suite 200, Murray, UT 84107 (w/encl)
Bennett E. Bayer, Attorney at Law, 106 Vine Street, # 505, Lexington, KY 40507 (w/encl)
WO-320 (w/encl)
Price Coal Office (Attn: Steve Falk) (w/encl)
MMS, Solid Minerals Staff (w/encl)
Field Solicitor (w/encl)
Lowell Braxton, Director, UDOGM (w/encl)



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

In Reply Refer To:

3487

SL-069291

U-014217

U-0126947

U-0126948

UTU-73517 (South Block LMU)

JUN 2 1993

CERTIFIED MAIL--Return Receipt Requested

DECISION

Intermountain Power Agency	:	Coal Leases
c/o Los Angeles Department of Water	:	SL-069291, U-014217,
and Power, Room 1107	:	U-0126947, U-0126948,
P.O. Box 111	:	UTU-73517 (South Block LMU)
Los Angeles, CA 90051	:	

South Block Logical Mining Unit Application Rejected
Coal Lease U-0126948 Terminated Pursuant To Law

On November 23, 1993, Intermountain Power Agency filed the South Block Logical Mining Unit (LMU) application in this office. The LMU application consisted of Federal coal lease U-0126948 in its entirety; Federal coal leases SL-069291, U-014217, and U-0126947 in part; and 600 acres of State land.

The final rules for LMU approval criteria were published in the Federal Register on August 20, 1997. Once the rules became effective 30 days after being published in the Federal Register, they govern all subsequent decisions by the Bureau of Land Management (BLM) concerning approval of LMU applications regardless of whether the applications are pending on the effective date of the rule or submitted after that date. The fact that an LMU application may have been submitted prior to the change in the regulation does not entitle the applicant to have BLM act on the application on the basis of rules no longer in effect. See Hunter v. Morton, 529 F. 2d 645, 649 (10th Cir. 1976); Hannafin v. Morton, 444 F. 2d 200, 203 (10th Cir. 1971).

The final rules state: a lease that has not produced commercial quantities of coal during the first 8 years of its diligent development period can be included in an LMU only if at the time the LMU application is submitted:

1. A portion of the LMU under consideration is included in a SMCRA permit approved under 30 U.S.C. 1256; or,

2. A portion of the LMU under consideration is included in an administratively complete application for a SMCRA permit. (62 FR 44371)

No portion of the South Block LMU application is included in a SMCRA permit, or an administratively complete application for a SMCRA permit. Therefore, the South Block LMU application is hereby rejected.

Since the LMU application is rejected, the Federal coal leases in the application now revert to their individual lease terms and conditions. No production has occurred on any of the leases, and all the leases are subject to diligent development. Lease SL-069291 is required to meet diligent development by April 1, 2000. Lease U-014217 is required to meet diligent development by January 17, 2005. Lease U-0126947 was required to meet diligent development by February 1, 1994. In accordance with 43 CFR 3487.1(f)(3), the portion of land in lease U-0126947 that was included in the South Block LMU will be segregated out of that lease, given a new lease number, then terminated for lack of diligent development by a future decision. The remaining lands in lease U-0126947 are held by inclusion in the pending North Block LMU.

Coal lease U-0126948 was issued effective December 1, 1963. It was readjusted effective February 1, 1984, pursuant and subject to the terms and conditions of the Mineral Leasing Act of February 20, 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 4 of the readjusted 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." For leases issued prior to August 4, 1976, the diligent development period is a 10-year period, beginning on the effective date of the first readjustment after August 4, 1976, 43 CFR 3480.0-5 (13). Commercial quantities are defined as "1 percent of the recoverable coal reserves," 43 CFR 3480.0-5(a)(6).

Coal lease U-0126948 was required to meet diligent development requirements by February 1, 1994. Inasmuch as these requirements were not met, lease U-0126948 is hereby terminated pursuant to authority of law effective February 1, 1994.

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/ G. William Lamb

G. William Lamb
State Director

Enclosure

Form 1842-1

cc: Intermountain Power Agency
480 East 6400 South, Suite 200
Murray, UT 84107

Bennett E. Bayer
Attorney at Law
106 West Vine Street, Suite 505
Lexington, KY 40507

WO-320
Price Coal Office (Attn: Steve Falk)
MMS, Solid Minerals Staff
Field Solicitor
Lowell Braxton, Director, UDOGM