



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office

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DIV. OF OIL, GAS & MINING

IN REPLY REFER TO:

3452

U-0148779

(UT-924)

SEP 3 2003

CERTIFIED MAIL—Return Receipt Requested

DECISION

Blackhawk Coal Company	:	Coal Lease
700 Morrison Road	:	U-0148779
Gahanna, Ohio 432306642	:	

Jacobs
9/007/038

Coal Lease Terminated Pursuant to Authority of Law

Coal lease U-0148779 was issued effective August 1, 1966, 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.

The coal lease was readjusted effective August 1, 1986, under the provisions of the Federal Coal Leasing Amendments Act of 1976 (FCLAA). At that time it became subject to the diligent development provisions of FCLAA. This established a diligent due date of August 1, 1996.

The Blackhawk Logical Mining Unit (LMU) was approved effective April 30, 1992, with a diligence due date of November 21, 2000. The diligence due date was extended 3 years to November 21, 2003, by 3 year *force majeure* suspension in effect from July 31, 2000 to July 31, 2003. Among the Federal leases included in the LMU was U-0148779. At that time, the prospective terms and conditions of the LMU (including diligent development) superseded but did not replace the terms and conditions of the individual lease.

On April 28, 2003, the operator (Plateau Mining Corporation) and lessee (Blackhawk Coal Company) of the LMU submitted to this office a request for dissolution of the LMU. This request was accepted, effective April 28, 2003, by notice dated August 7, 2003. At that time (April 28, 2003), Federal coal lease U-0148779 reverted to its individual lease terms and conditions.

Section 6 of 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 (a)(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-0148779 was required to meet diligent development requirements by August 1, 1996. Inasmuch as these requirements were not met, lease U-0148779 is hereby terminated pursuant to authority of law effective August 1, 1996. There is no statutory or regulatory authority to alleviate this requirement. Refund of annual rental payments due August 1, 1996, and later, should be requested from the Minerals Management Service, Minerals Revenue Management, Solid Minerals Staff, MS 390B2, P.O. Box 25165, Denver, CO 80225.

Although the lease terminated August 1, 1996, responsibilities under the lease terms do not terminate. Such responsibilities include the certification by the operator and lessee as to what hazardous waste is left on the lease site, whether on the surface or underground. Until such certification is received, the period of liability for the \$5,000 lease bond shall not be terminated.

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 on 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/ Kent Hoffman

for **Sally Wisely**
State Director

Enclosure

1. Form 1842-1 (1 p)

cc: WO-320
Resource Development Coordinating Committee
Mr. Lowell Braxton, Director, UDOGM, P.O. Box 145801, SLC, UT 84114-5801
SITLA, (Attn: John Blake), 675 E. 500 South, Suite 500, SLC, UT 84102
MMS, Solid Minerals Staff (Attn: Patrick Mulcahy)
Price Coal Office (Attn: Steve Falk)
Office of the Field Solicitor (Attn: John Steiger)
RAG American Coal Holdings, Inc., (Attn: C. Corwin Bromley), 391 Inverness Parkway,
Suite 333, Englewood, CO 80112-9804
RAG American Coal Holdings, Inc., (Attn: Greg A. Walker), 999 Corporate Blvd.,
Linthicum Heights, MD 21090
Plateau Mining Corporation, P.O. Box 30, Helper, Utah 84526