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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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IN REPLY REFER TO:
3452
SL-048442-050115
(UT-924)

NOV 2 5 2003

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DECISION

Blackhawk Coal Company	:	Coal Lease
700 Morrison Road	:	SL-048442-050115
Gahanna, Ohio 432306642	:	

Coal Lease Terminated Pursuant to Authority of Law

Coal lease SL-048442-050115 was issued effective November 21, 1930, 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 November 21, 1990, 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 diligence due date of November 21, 2000. The diligence due date was extended to November 21, 2003, by a 3 year *force majeure* suspension in effect from July 31, 2000 to July 31, 2003.

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 to November 21, 2003, by the previously mentioned suspension. Among the Federal leases included in the LMU was SL-048442-050115. At that time, the prospective terms and conditions of the LMU (including diligent development) superseded but did not replace the terms and conditions of the individual lease.

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DIV. OF OIL, GAS & MINING

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 SL-048442-050115 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 SL-048442-050115 was required to meet the diligent development requirement by November 21, 2003. This requirement was not met. Therefore, lease SL-048442-050115 terminated pursuant to authority of law effective November 21, 2003. There is no statutory or regulatory authority to alleviate this requirement. If the rental payment due November 21, 2003, was made, a refund 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 November 21, 2003, 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 $23,000 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.