

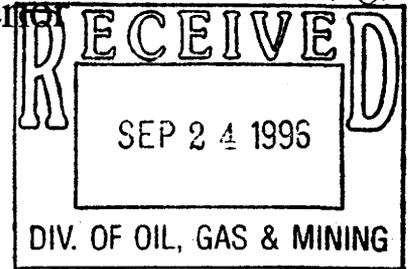
0012



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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



SEP 12 1996

In Reply Refer To
3452
SL-036407
(UT-932)

CERTIFIED MAIL--Return Receipt Requested

DECISION

J. O. Kingston
53 West Angelo
Salt Lake City, Utah 84115

Coal Lease
SL-036407

ACT/015/025 #2
[Signature]

Coal Lease Terminated Pursuant to Authority of Law

Coal lease SL-036407 was issued effective September 10, 1926, 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 providing 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 lease 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 SL-036407 was required to meet diligent development requirements by September 10, 1996. Inasmuch as these requirements were not met, lease SL-036407 is hereby terminated pursuant to authority of law effective September 10, 1996. There is no statutory or regulatory authority to alleviate this requirement.

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 (1 p)

bc: Resource Development Coordinating Committee
WO-320
MMS, Solid Minerals Staff (Attn: Cindy Prien)
Price Coal Office
Moab District Office
Forest Service, Ogden
Forest Service, Manti-LaSal National Forest
Office of the Solicitor, SLC, UT
UT-910

CMERRITT/36407TRM