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Federal Coal Leasing Amendments Act Should Increase Production and Public Benefits from Coal Leasing on Federal Land

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FEDERAL COAL LEASING AMENDMENTS ACT SHOULD INCREASE PRODUCTION AND PUBLIC BENEFITS FROM COAL LEASING ON FEDERAL LAND

With the exception of solar power, coal is America's most abundant and dependable source of energy—particularly in view of our diminishing oil reserves and subsequent reliance on foreign production. Half of the coal reserves in the United States are under federal lands and in the West this proportion rises to 60 percent. However, because of ownership and leasing patterns the government effectively controls 80 percent of known reserves in the Far West.[1] In the states of Montana, North Dakota, Arizona, Utah, Wyoming, New Mexico, and Colorado the Department of Interior has issued 463 leases covering 680,000 acres. The department estimates that there are fifteen billion tons of recoverable coal under these existing leases, which is 25 times the amount of coal produced in the entire U.S. in 1973. Yet nearly 90 percent of these leases, some of which are over 40 years old, have never produced a ton of coal. In its 54 years of existence the Federal leasing program has accounted for less than 1 percent of the nation's coal.[2]

The Federal Coal Leasing Amendments Act of 1975,[3] passed over President Ford's veto by Congress on August 4, 1976, amends the Mineral Lands Leasing Act of 1920[4] to provide more rigorous guidelines for coal mining operations, especially in the Western United States, by eliminating speculative holding of Federal coal leases and insuring that leases will be developed on a timely basis and in a manner which is of benefit to the public. To accomplish these objectives the Act provides for several new procedures designed to increase both production of coal on federal lands and government income derived from that production.

One of the most significant provisions of the Leasing Amendments Act is an authorization for the Secretary of Interior to initiate exploration activities in prospective leasing areas to obtain information

1. 122 *Cong. Rec.* 3, H142 (Daily ed. January 21, 1976).
2. Hearings on S. 3528 Before the Subcommittee on Mines and Mining of the Committee on Interior and Insular Affairs of the House of Representatives, 93rd Cong., 2nd Sess., Serial 63, at 151 (July 25; August 13 and 15, 1974).
3. Pub. L. No. 94-377 (August 4, 1976); 90 Stat. 1083, 7 United States Code Congressional and Administrative News (August 25, 1976).
4. 41 Stat. 437; 30 U.S.C. § 181 *et. seq.*

regarding the extent of coal resources located there.[5] This information, collected by the U.S. Geological Survey or contractors under its supervision,[6] is to be made public for utilization in the development of land-use plans, assessments of the value of coal in prospective leases, and in attempting to increase competition among producers by providing data on a given lease area to all potential bidders.[7]

Under the previous law exploration was an exclusive right of one licensee and a preference right lease was guaranteed to a prospector who demonstrated the existence of commercial quantities of coal in an exploratory area.[8] The new Act eliminates the preference right lease and provides instead for non-exclusive exploratory licenses, with a prospecting period of up to two years.[9] All data collected by a licensee is to be furnished to the Secretary of Interior for use in evaluating the prospective lease area. Privately gathered data, however, unlike that collected by the U.S.G.S., is to be kept confidential until the lands in question are leased or until such time as the release of the information will no longer endanger the competitive position of the licensee.[10] Utilizing all available data the Secretary is to set a fair market value for the coal contained in the lease area, and no bid is to be accepted for less than this amount.[11]

All leases are to be issued only after competitive bidding and no leases shall be issued unless the lands involved have been included in a comprehensive land-use plan prepared by the Secretary of Interior in cooperation with state and local officials. A public hearing must be held prior to the adoption of this plan.[12] Separate hearings are also required on the actual leasing of the mining area to consider the effects of the lease on the impacted community including agricultural and other economic activities, environmental considerations, and such community services as hospitals, water supply, housing, and roads. This hearing is also to insure that no operating plan is ap-

5. Pub. L. No. 94-377 § 8A(a) (August 4, 1976); 90 Stat. 1087, 7 United States Code Congressional and Administrative News (Aug. 25, 1976).

6. *Id.* § 8A(b).

7. *Id.* § 8A(d).

8. 30 U.S.C. § 201(b).

9. Pub. L. No. 94-377 § 4(b)(1) (Aug. 4, 1976); 90 Stat. 1085, 7 United States Code Congressional and Administrative News (Aug. 25, 1976).

10. *Id.* § 4(b)(3).

11. *Id.* § 2(1).

12. *Id.* § 3(A)(i). Additionally, if a lease would permit surface mining within the boundaries of a National Forest, the Secretary of Interior is required to submit the proposal to the Governor of the affected state for a sixty day evaluation period, and if the Governor objects to the plan an additional six month period is to be provided during which time the Governor may submit to the Secretary a statement of reasons as to why the lease should not be issued. *See* § 3(2)(B).

proved that does not provide for maximum economic recovery of coal within the tract. The maximum economic recovery criteria, including evaluation of the advantages of recovery by deep mining and surface mining methods, is designed to guarantee that as much marginal coal as is economically feasible will be produced.[13]

To facilitate maximum recovery, the Act gives the Secretary the prerogative of consolidating individual leases into a logical mining unit (LMU), not to exceed 25,000 acres, after a public hearing if one is requested by any person whose interest may be adversely affected.[14] The LMU is a concept originally developed by the Department of Interior, which recognized that multiplicity of land holdings could result in waste of resources where tracts were too small for economical mining or land ownership patterns would sever an uneconomic portion of a seam. A logical mining unit is defined in the Act as:

> . . . an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal resources and other resources. A logical mining unit may consist of one or more federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.[15]

The Act also contains a provision to increase royalty payments. The Mineral Leasing Act of 1920 set minimum royalty and rental payments at 5 cents per ton and 25 cents per acre for the first year, 50 cents per acre per year for the second through fifth years, and one dollar per acre per year thereafter.[16] Although this rate has been increased by Interior Department regulations, in the past 54 years the Federal government has collected only $23,373,920 in royalties on a total of 189,099,653 tons of coal. This is an average royalty of only 12.5 cents per ton. Considering that bituminous coal values at the mine were about $18.75 per ton in 1975, such a royalty was absurdly low.[17] The new Act sets royalties at a minimum of 12½ per cent of the value of the coal with the Secretary of Interior having the discretion to set a lower rate for coal produced by underground mining. Royalties and rentals are also subject to readjustment at the

13. *Id.* § 3(C).
14. *Id.* § 5(d).
15. *Id.* § 5(d)(1).
16. L22 *Cong. Rec.* 96, S9982 (Daily ed. June 21, 1976).
17. 30 U.S.C. § 207.

end of the lease's 20 year primary term and at 10 year intervals thereafter.[18]

In addition to increasing royalties, the law increases the producing state's portion of the royalty by 12.5 percent, from 37.5 per cent to 50 per cent.[19] The Mineral Leasing Act of 1920 requires the states to earmark their share of royalties solely for roads and schools.[20] However, because the enormous social impact which coal mining brings to an area is not so limited, the additional 12.5 per cent which is being returned to the states is mandated for use in planning, construction and maintenance of public facilities generally, with priority given to those areas most impacted by development of the coal resources.[21]

Under the new law speculative holding of leases would be difficult due to provisions requiring diligent development and continued operation of mines on a lease. Timely development would be assured by a requirement that the lessee submit an operation and reclamation plan within three years of the issuance of the lease,[22] produce commercial quantities of coal within ten years,[23] and mine the reserves of the entire lease, or LMU, within 40 years.[24]

The Secretary is required to offer a "reasonable" number of reserved leasing tracts on a preferential basis to public bodies, Federal agencies, rural electrical cooperatives, and non-profit corporations in order to prevent concentration of Federal leases in the private sector and to assist in public power generation.[25] The Act also provides that no person or corporation may control more than 46,080 acres of federal leases in any one state, or over 100,000 acres nation-wide. The definition of an entity to which this acreage limitation applies was broadened to prevent circumvention by the formation of holding companies or other devices of corporate organization.[26]

In addition, the Secretary of Interior is required to consult with the Attorney General before drafting rules and regulations, or issuing, renewing, or readjusting leases, to prevent situations from developing which would tend to contravene the antitrust laws. This

18. Pub. L. No. 94-377 § 7(a) (Aug. 4, 1976); 90 Stat. 1087, 7 United States Code Congressional and Administrative News (Aug. 25, 1976).
19. *Id.* § 9(a).
20. 30 U.S.C. § 191.
21. Pub. L. No. 94-377 § 9(a) (Aug. 4, 1976); 90 Stat. 1089, 7 United States Code Congressional and Administrative News (Aug. 25, 1976).
22. *Id.* § 7(c).
23. *Id.* § 7(a).
24. *Id.* § 5(d)(2).
25. *Id.* § 2(1).
26. *Id.* § 11(1).

provision would allow the Attorney General to intervene in a public hearing when, in the judgment of the Justice Department, individual corporations were gaining a position in the coal industry which would allow them to thwart competition.[27]

The Act further seeks to foster competition by requiring that 50 per cent of all acreage leased in any one year be under a system of deferred bonus bidding.[28] This system is designed to allow smaller companies to compete in the bidding for coal lands by reducing the front end capital required of lessees.[29]

These and several other alterations in the coal leasing process illustrate the fact that the Congress is moving in a positive direction to protect the public's interest in this area. After a long period of neglect, publicly owned resources are beginning to be evaluated for purposes other than give-away programs.

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27. *Id.* § 15(I)(1).

28. The deferred bonus payment allows lessees to pay their bonus bid in installments as coal is actually produced, instead of in a lump sum at the time of bidding.

29. Pub. L. No. 94-377 § 2(1) (Aug. 4, 1976); 90 Stat. 1083, 7 United States Code Congressional and Administrative News (Aug. 25, 1976).