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Report to the Chairman, Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, House of Representatives

August 1992

MINERAL RESOURCES

Proposed Revision to Coal Regulations

GAO/RCED-92-189

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-248470

August 4, 1992

The Honorable Nick J. Rahall, II
Chairman, Subcommittee on Mining
and Natural Resources
Committee on Interior and Insular Affairs
House of Representatives

Dear Mr. Chairman:

The Mineral Leasing Act of 1920 (30 U.S.C. 181, et seq.), as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), requires lessees to diligently develop federal coal leases and maintain continued operation of leases once production begins. To meet these requirements, lessees must produce coal in commercial quantities within 10 years and continue production in commercial quantities. The act leaves it to the Department of the Interior to define commercial quantities.

On July 12, 1991, the Department of the Interior's Bureau of Land Management (BLM) published a proposed rule in the Federal Register that would redefine commercial quantities, reducing the required level of coal production from the current 1 percent of recoverable reserves to 0.3 percent. This change would significantly reduce the minimum production level required under BLM regulations to retain a federal coal lease.

This report responds to your November 15, 1991, request that we examine BLM's justification for the proposed change. As agreed with your office, we plan to report separately on how BLM considers the demand for coal and the cumulative environmental impact of mining when deciding whether to lease federal coal deposits and on the role of the Department of Justice in this leasing process.

Results in Brief

BLM cited three reasons for proposing to reduce the minimum level of production required under the agency's regulations to retain a federal coal lease: (1) a 1985 BLM study that recommended payment of a fee as a condition for holding a lease that was not producing coal, (2) difficulties that BLM said some lessees have in meeting the current 1-percent production requirement, and (3) the findings of a task force established to revise the federal coal regulations. However, the 1985 study did not discuss revisions to the definition of commercial quantities. Moreover, neither headquarters nor field offices could name any companies that

were unable to produce enough coal to satisfy the current requirement but that were able to meet the proposed lower requirement. The task force could not provide us with documentation or cite examples to support BLM's proposal. Therefore, BLM's three reasons provide no basis for reducing the minimum production level required to retain a federal coal lease.

We acknowledge, as BLM has pointed out, that a minimum production level does serve some purpose, no matter what level the regulations require. Because of the significant investment needed to mine coal, any requirement that coal be produced from federal leases in amounts that cannot be frivolously mined inherently works to discourage speculative holding of leases and to ensure diligent development and continued operation. Moreover, to remain financially viable, operators would have to produce coal well in excess of either the current or the proposed minimum. Nevertheless, any reduction in the minimum level set by the agency's regulations would make it easier for an operator to spread out or put off production until later in the 10-year period permitted for diligent development. A lower minimum, by reducing an operator's costs, would also make it easier for an operator to retain a lease when depressed market conditions made it uneconomical to produce or sell coal.

Background

Under the Mineral Leasing Act of 1920, the Secretary of the Interior had broad discretionary authority to offer federal coal deposits for lease sale through competitive bidding or other methods. Although the act required that federal coal leases be diligently developed and, once developed, remain in continued operation, it did not specify the time by which diligent development had to be achieved or the production level that constituted diligent development or continued operation. The act also did not provide for specific penalties if lessees did not meet the diligent development and continued operation requirements. It contained only a general provision for the forfeiture of leases if lessees did not comply with the act or with the regulations promulgated under it. However, by the early 1970s, many federal coal leases were not yet producing.

Concerned about the large number of leases that were not producing coal, and the possibility that leases were being held for speculative purposes, the Congress amended the 1920 act by passing FCLAA. These amendments—designed, in part, to encourage diligent development and continued production of coal and to discourage speculative holding of federal coal leases—define the period within which diligent development

must be achieved and specify penalties for not meeting the diligent development and continued operation requirements. Under the diligent development requirement, coal must be produced in commercial quantities[1] within 10 years after the lease is issued or, for leases existing at the time FCLAA was passed, within 10 years after the date the lease becomes subject to the act.[2] If diligent development is not achieved, the lease is terminated. Once diligent development is achieved, the lessee must continue to produce coal in commercial quantities unless the lessee asks to suspend operations. If the Secretary of the Interior determines that suspending the continued operation requirement is in the public interest, the lessee may apply for the right to pay advance royalties[3] to retain the lease.

On July 12, 1991, BLM published a proposed rule in the Federal Register that would revise the existing regulations governing the federal coal management program. Included in this proposed rule, drafted by a task force created in 1986 and made up of officials from BLM headquarters and five field offices, is a change in the definition of commercial quantities reducing the level of coal production required from 1 to 0.3 percent of the recoverable coal reserves on a lease or group of leases. The proposed rule also requests comments on alternatives for demonstrating diligent development. One alternative is a milestone approach, under which completion of specified steps, such as obtaining a federally required mining permit, would be considered evidence of diligent development. In comments submitted to BLM, the mining industry generally supported the proposed reduction, whereas others, such as environmental groups and Interior's Park Service, opposed the change. BLM is reviewing the comments on the proposed rule but does not know when the final regulations will be issued.

BLM's proposal to reduce the minimum production requirement from 1 to 0.3 percent of recoverable coal reserves could influence operators'

[1]Like the Mineral Leasing Act of 1920, FCLAA also left it to Interior to define commercial quantities. Before 1982, Interior defined commercial quantities as production of 2.5 percent of the recoverable coal reserves for leases issued before August 4, 1976, and 1 percent for leases issued on or after August 4, 1976. In July 1982, Interior made this requirement 1 percent for all leases. Diligent development is achieved once an operator cumulatively produces 1 percent of recoverable coal reserves within 10 years. After that, the operator must continue to produce 1 percent of recoverable coal reserves annually.

[2]A lease issued before passage of FCLAA becomes subject to the act if (1) it is modified through the addition of acreage or recoverable coal reserves, (2) it is readjusted through changes in terms and conditions, (3) the lessee elected in writing, before August 30, 1983, to become covered, or (4) the lease is included in a group of leases called a logical mining unit.

[3]A royalty is an amount paid by a lessee on coal production, calculated as a percentage of the coal's value. An advance royalty is a royalty paid on coal not yet produced. When coal is produced, the advance royalty is subtracted from the royalties due from actual production.

decisions regarding their leases. Under a lower minimum production requirement, operators could spread out or put off production until later in the 10-year period for diligent development. Also, a lower minimum would make it easier for operators to retain their leases when market conditions were unfavorable. Although operators could not remain financially viable if, over the long term, they produced only enough coal to meet the minimum required by the regulations, they would still be able to hold onto their leases while waiting for market conditions to improve because their costs would be lower.

1985 Study Does Not Discuss Reducing the Minimum Production Requirement

In its proposed rule, BLM cited its September 1985 study entitled Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)(2)(A) and 7[4] as justification for changing the definition of commercial quantities. However, the study does not examine whether, or why, the 1-percent minimum production requirement should be lowered to 0.3 percent.

Rather, the study examines an option for replacing the 10-year time limit under the diligent development requirement for producing coal in commercial quantities. According to the study, new regulatory requirements since passage of FCLAA and less-than-expected demand for coal called into question the reasonableness of this time limit. Instead of recommending that the time limit be extended or that the required level of coal production be reduced, the study recommended establishing a holding fee. That is, rather than having to produce commercial quantities of coal within 10 years, a lessee could pay a fee to continue holding a lease that was not producing. According to the study, such a holding fee would allow industry the flexibility to determine when to bring a coal lease into production.

The study discussed assessing a holding fee based on assumed annual production of 0.3 percent of recoverable coal reserves, but it did not discuss changing the annual production requirement. Specifically, the study recommended that the holding fee be calculated by applying the royalty rate to an assumed annual production level of 0.3 percent of recoverable coal reserves. After considering several levels, the study recommended this particular one because the cost to mining operators

[4]Section 2(a)(2)(A) specifies that no federal onshore mineral leases may be issued under the Mineral Leasing Act to any entity or its affiliates that holds, and has held for 10 years since passage of FCLAA, a federal coal lease that is not producing in commercial quantities. Section 7 provides for the termination of any lease acquired after passage of the act if the lease does not meet the requirements of diligent development and continued operation. Exceptions to both provisions are allowed for circumstances, such as strikes, that are beyond the control of lessees.

was considered just high enough to encourage diligent development without imposing such a financial burden that operators would simply abandon leases after 10 years. The study concluded, on the basis of market conditions existing at the time, that a holding fee based on an assumed annual production of 0.3 percent would be sufficient to encourage the development of leases while discouraging speculative holding.

BLM states in the proposed rule that the 0.3-percent production level the study assumed as a basis for assessing the holding fee could also be used to demonstrate that a lease was being diligently developed, and that using the 0.3-percent figure for both purposes would establish a consistent minimum production requirement. However, BLM does not offer any further explanation for why the 0.3-percent figure should be adopted as the minimum production level required to demonstrate diligent development.

BLM Could Not Cite Examples of Lessees Unable to Meet Current Requirement

In its proposed rule, BLM also stated that during the preceding 8 years its field offices had found the existing 1-percent requirement to be excessive for some operators and lessees. However, neither the responsible BLM headquarters officials nor field office officials we spoke with could cite examples of lessees that had been unable to reach the 1-percent production level within the 10-year diligent development period or sustain that level in continued operation. Leases had been terminated because coal had not been produced in commercial quantities during the diligent development period; however, according to BLM officials, none had been terminated because the lessee or operator had achieved some production, but less than 1 percent annually.

Task Force Could Not Provide Support for Proposed Revision

According to the proposed rule, the BLM task force that drafted the revised federal coal regulations had reviewed the current diligent development and continued operation requirements in depth. However, the task force was unable to provide documents pertinent to the review, such as a task force report or minutes of meetings.

According to the task force chairman, the 0.3-percent figure was proposed because some operators were having difficulty sustaining an annual production level of 1 percent once production began. However, he could not provide us with any examples of this situation. Moreover, according to BLM, a coal-mining operation must produce and sell sufficient coal to cover all fixed and variable expenses. BLM estimates that the average annual

production level would have to be about 3 to 5 percent of recoverable reserves. Thus, an operation that is having difficulty sustaining an annual production level of 1 percent cannot be expected to continue operation, regardless of what minimum production level the regulations have established.

Agency Comments and Our Evaluation

On May 21, 1992, we provided Interior with a draft of this letter and requested oral comments within 10 days. BLM officials provided their comments on May 29, 1992. They generally agreed with the information presented and suggested some technical changes, which have been incorporated where appropriate. BLM officials also stated their belief that the existing 1-percent requirement might discourage some companies from bidding on federal coal leases. On June 22, 1992, late in our review process, Interior provided written comments suggesting that BLM's 1985 study provided a basis for reducing the minimum production requirement. We agree that any regulation requiring that coal be produced from federal leases in amounts that cannot be frivolously mined inherently works to discourage speculative holding of leases and to ensure diligent development and continued operation. However, BLM's three reasons for proposing to reduce from 1 to 0.3 percent of recoverable coal reserves the minimum production level required under BLM regulations to retain a federal coal lease provide no basis for the change. Interior's comments and our responses are presented in appendix I.

Scope and Methodology

We interviewed staff from BLM's Division of Solid Minerals in Washington, D.C., and field offices in Casper and Cheyenne, Wyoming—the offices responsible for the largest federal coal production regions in the country. We also interviewed the chairman of the BLM task force established to revise the regulations. We reviewed (1) the July 12, 1991, proposed regulations; (2) comments from industry, federal agencies, environmental groups, and others on the proposed regulations; and (3) BLM's September 1985 study entitled Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)(2)(A) and 7. We conducted our work between December 1991 and March 1992 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after the

date of this letter. At that time, we will send copies to interested parties and make copies available to others on request.

Please contact me at (202) 275-7756 if you or your staff have any questions. Other major contributors to this report are listed in appendix II.

Sincerely yours,

James Duffus III

James Duffus III
Director, Natural Resources
Management Issues

Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 22 1992

Mr. James Duffus, III
Director, Natural Resources
Management Issues
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

We appreciate the opportunity to review your draft letter in response to Congressman Rahall, who requested that the General Accounting Office (GAO) examine the Department of the Interior's (DOI) justification for proposing, on July 12, 1991, a change in the commercial quantities amount for Federal coal leases.

See comment 1.

By virtue of the way the question was asked of GAO, the GAO draft letter does not address many issues associated with commercial quantities. The Bureau of Land Management (BLM) published the proposed rules requesting public comment on an appropriate amount for commercial quantities. We suggested 0.3 percent as one option, based on a BLM study that recommended 0.3 percent as a holding fee. The BLM believed that a holding fee would be analogous to commercial quantities for advance royalty purposes.

Our specific comments follow.

See comment 2.

1. The GAO draft letter should more closely reflect the language of the Mineral Leasing Act (MLA). At page 1, paragraph 1, line 3, GAO states that the MLA as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) "requires lessees to 'diligently develop' federal coal leases and maintain 'continued operation' of leases once production begins."

   The MLA states that: "Each lease shall be subject to diligent development and continued operation of the mine or mines, ..."

See comment 2.

2. At page 1, paragraph 2, last sentence, GAO states that: "This change would significantly reduce the amount of coal production required to maintain a federal coal lease." This sentence implies that all that would be necessary to "maintain" a Federal coal lease would be to produce coal at the regulatory commercial quantities amount.

This statement does not fully consider the economic and engineering aspects of coal mining operations. In order for a coal mine to "maintain" itself, it must produce and sell sufficient coal to cover all of its fixed and variable costs. The level of production is determined by the size of the sales contracts, not simply to maintain a minimal level of production for regulatory purposes. The BLM estimates an average production level amount would be in the 3.0 percent to 5.0 percent range of the total recoverable coal reserves. This is far in excess of any minimal regulatory commercial quantities amount. As stated in the preamble to the proposed rulemaking:

> "The Bureau of Land Management believes that the amount of production that discourages speculation (commercial quantities for advance royalty in lieu of continued operation of 0.3 percent of recoverable coal reserves) also demonstrates that a lessee is diligently developing the lease (commercial quantities for diligent development of 0.3 percent of recoverable coal reserves)." See 56 FR 32014.

Additionally, in the DOI's 1982 preamble and regulations relating to commercial quantities, the following was stated:

> "The DOI believes that production of 1 percent as implemented in the 1979 rules for leases issued after August 4, 1976, indicates a significant undertaking on the part of an operator/lessee that is accomplished only after significant financial expenditure for the development of the property." See 47 FR 33157.

Thus, the purpose of defining any commercial quantities amount is not, to "maintain a federal coal lease." Rather, it is to merely set a regulatory minimum amount that cannot be frivolously mined. The commercial production of any amount of coal requires a significant investment of planning, capital, and engineering that would demonstrate that the lease is not being held for speculative purposes, the clear statutory intent of the FCLAA.

See comment 2.

3. At page 2, paragraph 1 under the BACKGROUND section, the GAO uses the phrase "Mineral Lands Leasing Act of 1920" to mean the MLA prior to the enactment of the FCLAA.

However, in the first sentence of the draft letter this same phrase is clearly used to indicate the MLA as it currently reads, including the 1976 amendments. This usage at page 2, paragraph 1 under the BACKGROUND section should be clarified.

See comment 2.

4. At page 2, paragraph 1 under the BACKGROUND section, the GAO states that the language of the original, 1920 version of the MLA did not specify the "penalties that could be imposed if lessees did not meet the requirements."

Section 31 of the 1920 version of the MLA contained several sections relating to enforcement procedures, including lease forfeiture and cancellation. See 30 U.S.C. 188.

See comment 2.

5. At page 3, paragraph 2 under the BACKGROUND section, the GAO draft letter states: "...the lessee must continue to produce coal in commercial quantities unless the Secretary of the Interior determines that suspending the continued operation requirement is in the public interest." (Emphasis added.)

The regulations require that the lessee must first apply for the privilege of paying advance royalty, and that the BLM authorized officer must approve such a request:

> "Advance royalty may only be accepted in lieu of continued operation upon application to and approval by the authorized officer." See 43 CFR 3483.4(a) (1991).

See comment 2.

6. At page 3, paragraph 2 under the BACKGROUND section, the GAO draft letter states: "If such a determination is made (that the payment of advance royalty is in the public interest), the lessee must pay advance royalties.[3]" (Emphasis added)

Any lessee always has the option of lease relinquishment.

See comment 2.

7. Footnote 1 on page 3 should be corrected. The footnote states that: "Interior originally defined commercial quantities as the annual production of 2.5 percent of the recoverable coal reserves. In July 1982, Interior reduced this requirement to 1 percent."

Prior to the 1982 rulemaking, Federal coal leases had a commercial quantities requirement of 2.5 percent of recoverable coal reserves for Federal coal leases issued prior to August 4, 1976, and a commercial quantities requirement of 1.0 percent of recoverable coal reserves for Federal coal leases issued on or after August 4, 1976.

The 1982 rulemaking set a uniform requirement of 1.0 percent of recoverable coal reserves for all Federal coal leases, regardless of their issue date. This change to a uniform 1.0 percent was promulgated at the suggestion of the DOI's Solicitor's Office. See 47 FR 33157 for further discussion of this change.

See comment 3.

The GAO alludes to a lowering of Federal royalties caused by a lowering of the commercial quantities amount in 1982. However, since the 1982 rulemaking, as noted in the Federal Coal Management Report for Fiscal Year 1990, Table 7, at page 28, Federal royalties increased from $61,063,000 per year in 1982 to $203,630,000 per year in 1990, an increase of more than 330 percent.

See comment 2.

8. Footnote 2 on page 3 should be corrected. The footnote states that there are two ways that a pre-FCLAA lease could become subject to MLA diligence provisions: modification to add reserves or acres or through readjustment.

In fact, there are four ways for a lease issued before August 4, 1976, to become subject to the MLA diligence provisions:

1. By readjustment after August 4, 1976 (43 CFR 3483.1(b)) (1991);

2. By modification to add either recoverable coal reserves or acres (43 CFR 3432(a)) (1991);

3. By lessee election in writing prior to August 30, 1983 (43 CFR 3483.1(b)(1)) (1991); or,

4. By inclusion in a logical mining unit (LMU) (43 CFR 3483.1(c)) (1991).

Now on p. 3.
See comment 2.

9. Footnote 3 on page 4 should be corrected. The GAO states that: "A royalty is an amount paid by a lessee on coal production, usually calculated as a percentage of the coal's value." The footnote is in general reference to production royalty; however, it is specifically keyed to a sentence that uses the term "advance royalties." Further, later in this same footnote GAO uses the term "advance royalties." See specific comment number 6, above, and the first line on page 4 of the GAO draft letter.

The term "usually calculated" could be misconstrued. The 43 CFR Group 4300 (1991) regulations set the procedures for determining both production royalty and advance royalty. Production royalty is calculated in accordance with 43 CFR 3473.3-2 (1991). Advance royalty is always calculated in accordance with the current (1991) regulations at 43 CFR 3483.4(c) and 43 CFR 3485.2.

The use of the phrase "usually calculated" implies a lack of regulatory clarity that is not present.

Now on pp. 4-6.
See comment 4.

10. Page 5 through page 6 of the draft GAO letter suggests that there was no basis in the BLM's 1985 study, entitled Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)(2)(A) and 7, for reducing the commercial quantities amount from 1 percent to 0.3 percent. In the preamble to the proposed rulemaking, the BLM stated that:

> "The study recommended that payment of a holding fee (e.g., advance royalty), based on an assumed annual production of 0.3 percent of recoverable coal reserves, was sufficient to discourage speculative holding of Federal coal leases. . . .the Bureau of Land Management believes that a holding fee, based on 0.3 percent of the recoverable coal reserves, is still a reasonable incentive for timely development. . . .It is consistent with Congressional intent, set out in FCLAA to encourage maximum economic recovery of coal reserves from existing leases and to discourage the speculative holding of such leases, to allow such operators/lessees to continue production at the maximum level or volume under available coal-sales contracts rather than continuing to require them to produce an unrealistic amount of coal. See 56 FR 32014.

Rather than having to produce commercial quantities of coal within 10 years, we believe that there is no essential difference between: 1) a lessee paying a fee to continue to hold a lease that was not producing and 2) the lessee paying advance royalty in lieu of continued operation.

In our view, the payment of advance royalty in lieu of continued operation is directly related to the requirement to either produce or hold a nonproducing lease.

> "The condition of continued operation may be satisfied either by annual production of commercial quantities, by the payment of advance royalty as provided at § 3484.2-3 of this title, or by a combination of both." See 43 CFR 3484.2-1(d) (1991).

> "The authorized officer may accept payment of advance royalty only in lieu of continued operation. Failure to maintain continued operation on a lease, or to pay advance royalty in lieu thereof, will subject the lease to cancellation." See 43 CFR 3484.2-3(a) (1991).

As stated in the 1991 preamble:

> "The Bureau of Land Management believes that the amount of production that discourages speculation (commercial quantities for advance royalty in lieu of continued

operation of 0.3 percent of recoverable coal reserves) also demonstrates that a lessee is diligently developing the lease (commercial quantities for diligent development of 0.3 percent of recoverable coal reserves). That is, the 0.3 percent should be the minimum production level against which to measure diligent development and continued operation. . . .It is consistent with Congressional intent, set out in FCLAA to encourage maximum economic recovery of coal reserves from existing leases and to discourage the speculative holding of such leases, to allow such operators/lessees to continue production at the maximum level or volume under available coal-sales contracts rather than continuing to require them to produce an unrealistic amount of coal. . . .Since all three of the uses of the term "commercial quantities" (including the lease-duration language of Section 7(a) of MLA), as set out in the regulations, are intended to discourage speculation and encourage timely development of Federal coal leases, 0.3 percent of recoverable coal reserves is an appropriate minimum production standard for all lessees. Similarly, advance royalty, which is monetarily equivalent to the minimum production requirement of continued operation, would be amended to reflect this change in the amount for continued operation." See 56 FR 32014.

Now on p. 4.
See comment 2.

11. Footnote 4 on page 5 should be corrected. The footnote states: "Section 2(a)(2)(A) specifies that no federal onshore mineral lease may be issued to any entity. . .." (Emphasis added)

The lessee qualifications of Section 2(a)(2)(A) apply only to onshore mineral leases under the MLA, and specifically exclude other onshore leases including nationwide geothermal leases, and oil and gas leasing in the Naval Petroleum Reserve since they are issued under legislative authority other than the MLA.

Sincerely,

FOR Richard Holden
David C. O'Neal
Assistant Secretary, Land and Minerals Management

The following are GAO's comments on the Department of the Interior's letter dated June 22, 1992.

GAO's Comments

1. Interior commented that, by virtue of the way the question was asked of GAO, our draft did not address many issues associated with commercial quantities. We agree that the definition of commercial quantities raises several issues relevant to the federal coal leasing program. For example, BLM noted in its oral comments that the minimum level of production required to meet the commercial quantities requirement might discourage some companies from bidding on federal coal leases. On the other hand, FCLAA's commercial quantities requirement was intended to discourage speculative holding of federal coal leases and encourage diligent development and continued operation. Notwithstanding the broader implications of commercial quantities, we believe that the question, as asked, focuses on a key issue—BLM's basis for proposing to significantly reduce the minimum production level required under the agency's regulations to retain a federal coal lease.

2. Clarifications have been made to the text of this report.

3. Interior commented that GAO alluded to lower federal royalties caused by lowering the amount constituting commercial quantities in 1982. We did not state or allude to any change in federal royalties resulting from the 1982 change in the definition of commercial quantities.

4. Interior suggested that BLM's 1985 study provided a basis for reducing the minimum production requirement from 1 to 0.3 percent. We disagree, however, that requiring production of 0.3 percent of the recoverable coal reserves is analogous to paying a fee on an assumed level of production. The costs of a holding fee to an operator or lessee and the costs of actually producing coal are fundamentally different. Under BLM's fee concept, the company need not incur any production costs—it need only pay an amount based on an assumed level of production. By contrast, as Interior points out in its comments, the commercial production of any amount of coal requires a significant investment in planning, capital, and engineering, and for a mining company to remain in operation, it must produce and sell sufficient coal to cover all of its fixed and variable costs. Neither Interior nor BLM provided any support to demonstrate that the costs of a holding fee and the costs of producing coal would be of similar magnitude or have a similar impact on an operation. We agree, however, that any regulation requiring that coal be produced from federal leases in amounts that cannot

be frivolously mined inherently works to discourage speculative holding of leases and to ensure diligent development and continued operation. However, the three reasons BLM cited for proposing to reduce from 1 to 0.3 percent of recoverable coal reserves the minimum production level required under the agency's regulations to retain a federal coal lease provide no basis for the change.

Major Contributors to This Report

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