

Tulsa Law Review

Volume 13
Issue 4 *National Energy Forum 1978:*
Government- Helping or Hurting?

1978

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Gary J. Wicks

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Recommended Citation

Gary J. Wicks, *Coal Leasing Program: Department of the Interior*, 13 *Tulsa L. J.* 664 (2013).

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COAL LEASING PROGRAM: DEPARTMENT OF THE INTERIOR

Gary J. Wicks*

I. INTRODUCTION

I hope that in this brief discussion today I can give you enough of the history, the intent, the problems and the solutions we are working with in the Department of Interior coal program to enable you to answer the question of whether the government is, in the long term, helping or hurting coal production.

First, let me describe our intent. President Carter has made clear his commitment to an energy program¹ which increases the production and utilization of coal and decreases importation of foreign oil. Federal coal should and will play an important role in meeting that commitment. The Department of Interior shares both that objective and much of the responsibility for making federal coal available to meet the production needs of this country. However, the distance between intent and achievement is sometimes long, and it would be misleading to minimize the complexities and difficulties that have plagued the federal coal leasing program.

To begin with, this Administration inherited a program that was not working. In 1945, there were 80,000 acres of federal coal under lease, and coal production was about ten million tons per year. In 1965, the number of acres under lease had risen to 400,000, but production had dropped to six million tons per year. Over the next five years,

* Deputy Assistant Secretary for Land & Water Resources. United States Department of Interior, Washington, D.C.; B.A., University of Montana, 1967.

1. EXECUTIVE OFFICE OF THE PRESIDENT, ENERGY POLICY AND PLANNING, THE NATIONAL ENERGY PLAN (1977). For criticism of plan see, Report to the Congress by the Comptroller General of the United States, U.S. COAL DEVELOPMENT: PROMISES, UNCERTAINTIES, (1977); COUNCIL ON ENERGY RESOURCES, THE UNIVERSITY OF TEXAS AT AUSTIN, NATIONAL ENERGY POLICY: AN INTERIM OVERVIEW (1977).

lands under lease doubled to 800,000 acres, but production increased only slightly. Recognizing the divergent trends in leasing and production, the Secretary of Interior directed the Bureau of Land Management to halt the issuance of coal leases and prospecting permits in 1971. This action was replaced in 1973 by a policy of limited leasing under short-term criteria designed to provide needed reserves to continue existing mine operations and supply existing markets. In 1976, the limited leasing policy was replaced, and a new leasing program, the Energy Minerals Activity Recommendation System² (EMARS), was adopted by Secretary Kleppe, and a programmatic on coal, first published in 1975, was modified to cover the EMARS program.

On September 27, 1977, Judge Pratt³ ruled that the government's environmental impact statement on its coal leasing program had not accurately described the program, had not really discussed the impacts of the program, and had not seriously considered alternatives which might have achieved the coal production goals without causing the degree of damage which concerned the governors, the Congress, tribal leaders, farmers, and others in the coal producing areas. The resulting court order has, for the most part, stopped all action that would lead to renewed coal leasing, except under strict conditions set by the court. The Federal Coal Leasing Program, for all intents and purposes, has been brought to a halt.

The second problem we faced was one of management. The Department had not set the necessary priority for the coal program so that policy and implementation would be carried out at all levels, especially in the field, and the organizational framework, staff and responsibility, equal to the task of effectively implementing a major program, did not exist.

Third, the regional environmental statements which were to evaluate the cumulative impacts of mining plans, new competitive leasing, preference right lease applications, and associated right-of-way applications, were falling behind schedule. This was leading, in some cases, to statements which could not stand up under the court challenges that were likely to follow.

2. The Energy Minerals Activity Recommendation System was developed by the Bureau of Land Management and is designed to co-ordinate the activities of several federal agencies involved in coal leasing with state agencies. The manner in which EMARS functions is to gather resource information, combine policy considerations and public input, and make recommendations regarding coal leasing to the Secretary of the Interior.

3. *Kerr-McGee v. Kleppe*, — F. Supp. — (D.D.C. 1976), *appeal docketed*, No. 76-0608 (D.C. Cir. 1976).

Fourth, the conflict over how coal development should proceed had led to some necessary and substantial changes in the statutory authority under which leasing and other coal programs were to occur. Congress passed a number of laws which were correctly aimed at increasing production, but at the same time mandating more effective land use planning, public participation in decision-making, and environmental controls, in order to gain acceptance of this nation's shift to coal. The most important of these laws were: the Federal Coal Leasing Amendments Act of 1975,⁴ which made many significant changes in the coal program; the Federal Land Policy Management Act of 1976,⁵ which charges the Bureau of Land Management with comprehensive land use planning before leasing of coal; the Surface Mining Control and Reclamation Act of 1977,⁶ which also contains mining and reclamation requirements; and the Department of Energy Organization Act,⁷ which requires extensive coordination with the new Department of Energy. This last act states that some of the leasing functions previously carried out by the Department of Interior have become the responsibility of the Department of Energy.⁸

These new laws will change relationships between interest groups, and the way the coal program moves forward in the Department of Interior, and will require appropriate funding and personnel for effective implementation. Transitions are always difficult times, even when the objective of the change is a sounder economy, a better opportunity for different interests to be heard, and a more responsive and responsible government role in the nation's development of a workable energy policy.

While the difficulties and issues I have mentioned represent a problem in developing a coal production program that is consistent with the national goals, it is equally true that the resolution of these issues and difficulties represents an identifiable opportunity to take a significant step forward.

The President spoke to these issues in his environmental message last year when he said,

The newly enacted Coal Leasing Amendments in the Federal Land Management and Policy Act provide the Secretary of Interior with the necessary authority to carry out environmen-

4. Pub. L. No. 94-377, § 2, 90 Stat. 1083 (amending 30 U.S.C. § 181 (1970)).

5. Pub. L. No. 94-579, § 102, 90 Stat. 2743 (to be codified as 43 U.S.C. § 1701).

6. Pub. L. No. 95-87, § 101, 91 Stat. 445 (to be codified as 30 U.S.C. § 1201).

7. Pub. L. No. 95-91, § 2, 91 Stat. 565 (to be codified as 42 U.S.C. § 7101).

8. *Id.* §§ 302-03, 91 Stat. 578-80 (to be codified as 42 U.S.C. §§ 7152-3).

tally sound, comprehensive planning for the public lands. His duty now is to implement an affirmative program for managing coal lands and associated resources in a manner that fully protects the public interest and respects the rights of private surface owners.⁹

Following this message, the President, by memorandum, instructed the Secretary of Interior to manage the coal leasing program to assure that it responds to reasonable production goals by leasing only those areas where mining is environmentally acceptable and compatible with other land uses.

In response to the President's directive, and the obvious problems with the coal program, the Department has taken the following steps. First of all, a Coal Review Group has been set up in the office of the Assistant Secretary for Land and Water to develop a workable, environmentally sound, and, hopefully, legally defensible program that will respond with some certainty to the country's need for coal production. The review group will:

1. Evaluate the outstanding federal leaseholds to assess their production potential, environmental suitability, and ability to meet projected coal demands;
2. Establish production goals in cooperation with the Department of Energy to determine leasing objectives;
3. Develop environmental, social and economic standards for determining the suitability and non-suitability of federal lands for leasing;
4. Evaluate the environmental and economic impact of proceeding with leasing alternatives and levels;
5. Assess the effect of diligence requirements on existing leases and the long-term coal needs; and
6. Implement organizational and personnel changes to insure expeditious program results.

The programmatic environmental statement necessary to describe the results of this review and the Department's leasing program, which the Department agreed to and which was ordered by the court, has been started and is due for completion by April of 1979. If major new leasing is necessary to meet production goals, we will be ready to im-

9. *Message from the President of the United States: Preservation of the Wilderness, Wildlife, Natural and Historical Resources; Effects of Pollution, Toxic Chemicals and Damage Caused by Demand for Energy*, H.R. Doc. No. 95-160, 95th Cong., 1st Sess. (1977), reprinted in (1977) U.S. CODE CONG. & AD. NEWS 885.

plement that program by the mid-1980s. An announcement of the scope, staffing, and objectives of this office will be made in the near future.

The second step which has been taken has been to reach an agreement to settle the *N.R.D.C. v. Hughes*¹⁰ case, which has been with the Department since October of 1975. Like most agreements, it does not give all interests everything they wanted, but it does represent a compromise which we think is beneficial to the coal program. The agreement, which is still subject to court approval, would allow us to lease enough coal to meet emergency needs while completing a new programmatic environmental statement and getting the leasing injunction lifted as soon as possible. We would be able to lease enough coal to keep western mines from closing, allow operators to fill existing contracts, and prevent the loss of federal coal. Generally, the agreement would allow us to alleviate short-term hardships and economic dislocations while the long-range work continues. The agreement would also allow the Secretary to issue so-called "bypass leases" for situations in which federal coal reserves not mined as a part of an existing operation and would otherwise never be mined for economic or environmental reasons. The agreement specifies that such leases can only be issued for operations which were in existence as of September 27, the date of Judge Kraft's decision.

The Department estimates that this provision involves sixteen leases to fourteen coal operations, and an estimated forty to sixty million tons of coal. No bypass leasing is presently allowed under the court order. Leases to avert mine closing or to meet existing contracts were allowed under the court order, so long as the reserves in the new lease did not exceed three times the annual production or the contract level, whichever is higher. The agreement reached contains the same conditions, but would allow leasing of reserves up to eight times the annual production rate. The provision would clear the way for the Department to issue leases to an estimated twelve companies, involving a total of from two to four million tons of coal production annually. The Department would also be allowed, following completion of normal procedures, to issue leases to seven applicants who have clearly demonstrated a hardship. Total annual production of the seven mines is estimated at eleven million tons, and the Department may also seek a court review of new hardship cases if they arise.

10. *Natural Resources Defense Council v. Hughes*, 437 F. Supp. 981 (D.D.C. 1977).

In total, if all the leases now contemplated in the agreement were issued, we are looking at an increase in production of federal coal from thirteen to seventeen million tons per year in the near future.

The third thing that we have done is reorganize the coal management of the Bureau of Land Management and give it one of the highest priorities in the Department. The Secretary has directed that an Office of Coal Management, within the Bureau of Land Management, be established to oversee all tasks required to implement the coal program. This office should give the coal program the visibility, the responsibility, and the resources necessary to pull together all coal-related activities of the Bureau, and provide coordinated and effective implementation of Department coal policy in the field and in Washington.

We are also working on methods by which coal activities in our other bureaus in the Department will be given the same priority and organizational responsibility, and formal mechanisms for coordinating Department of Energy and Department of Interior shared responsibilities will be adopted in the very near future.

The fourth step, which is now one of the major responsibilities of the coal program office, has been to develop realistic schedules for the ongoing regional environmental statements, and to insure that those schedules are adhered to. There are currently 527 federal coal leases in existence. The Geological Survey estimates that these may contain seventeen billion tons of coal reserves recoverable under current technology. I don't think that all of these reserves are mineable, because of economic, environmental, and new diligent development requirements. Many of the leases are small, isolated tracts, and will not be economic units unless combined with other tracts, either federal or private. Many of the lease tracts contain beds of coal which are technologically recoverable, but may not be economically recoverable because of new legislative and regulatory requirements for reclamation. More of the leased reserves may not be mined because of the problems relating to community development, endangered species, archeological ruins, unique features, alluvial valley floors,¹¹ etc.

11. As defined in the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, § 701, 91 Stat. 516 (to be codified as 30 U.S.C. § 1291),

(1) "alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Nevertheless, the court order, and I think this is an important distinction, did not affect these existing leases and the mining plans which would initiate production on many of them are contained in the regional environmental impact statements. Completion of these environmental statements would allow the Department to consider and act on mining plans that would increase the annual production from federal lands in the west by as much as twenty-five million tons in 1980, and a hundred million tons by 1985. It is expected that another sixty mining plans will be submitted and considered before that date. Completion of the environmental statements on schedule, and of a quality that minimizes legal vulnerability, is the quickest way of insuring an immediate increase in production from federal lands. The changes that have been made in the environmental statements and the management controls which are being implemented should allow the Department to meet that goal.

Fifth, the regulations implementing the changed and new statutes are being prepared, and taking the Organic Act as an example, the Department has a fairly rigorous schedule to get regulations implementing much of the Act in place this year. Of course regulations are always subject to legal challenge, and we are obviously running into some problems there.

The foregoing things I have mentioned are certainly not intended to suggest that we are as far down the road to a workable long-range coal program as we would like to be. The issues and time schedules before us will be as difficult, or more so, than those we have already dealt with, if the Department is to respond positively to the law, to the courts, to state and local governments, to energy companies, and to our environmental concerns, in the development of a complicated and important national program.

Our intent, as I mentioned in the beginning, is to bring a high level of certainty about how we intend to proceed to a program that has been characterized by chaos. Within the following months, I am confident that we will demonstrate that government not only should, but can, be a prime mover, a help not an obstacle, in meeting this nation's energy and coal production demands.