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MINERAL LEASING ACT OF 1920: ENVIRONMENTAL STANDARDS SET BY DEPARTMENTAL REGULATIONS

MINING LAW—MINERAL LEASING ACT OF 1920

The Secretary of Interior has no discretion to reject coal lease applications of applicants who obtained prospecting permits before the Federal Coal Leasing Amendments Act of 1976. Natural Resources Defense Council, Inc. v. Berklund, 609 F.2d 553 (D.C. Cir. 1979).

Appellants, the National Resources Defense Council (NRDC), and the Environmental Defense Fund (EDF), brought this suit in the United States District Court, District of Columbia,[1] seeking a declaratory judgment that the Secretary of Interior has authority to reject coal mining lease applications on environmental grounds, even after the lease applicants fulfilled the requirements under Section 2 of the Mineral Leasing Act of 1920.[2] Appellants also sought a declaratory judgment setting out the secretary's need to prepare an environmental impact statement (EIS) on any proposed coal mining lease where the issuance would constitute major federal action under the National Environmental Policy Act (NEPA).

Before the District of Columbia Court of Appeals, both parties agreed with the Department of Interior's position that coal leases which have a major impact on the human environment should be accompanied by an EIS.[3] This left the appellate court with only one issue: whether the Secretary of Interior has discretion to reject preference right coal leases[4] on environmental grounds where coal is found in commercial quantities? The court affirmed the district court's decision that the secretary does not have such discretion.

This appeal was limited to 183 potential coal lease applicants who received their prospecting permits under Section 2 of the act prior to

1. Natural Resources Defense Council, Inc. v. Berklund, 458 F. Supp. 925 (D.D.C. 1978).

2. Mineral Leasing Act of 1920, 30 U.S.C.A. §201 (1976) (original version at ch. 85, §2(a)(b), 41 Stat. 438 (1920)) (current version at 30 U.S.C. §201 (1976)) [hereinafter cited only to U.S.C.A.].

3. Natural Resources Defense Council, Inc. v. Berklund, 609 F.2d 553, 555 n.3 (D.C. Cir. 1979).

4. The term "preference right lease" is not mentioned in the statute. It is used by the Department of Interior in its regulations governing lease applications by holders of prospecting permits for coal, phosphate, sodium, sulphur, and potassium. 43 C.F.R. §3520 (1979).

1973.[5] In 1973 the Department of Interior ceased issuing permits for coal exploration, pending the development of a new program that would give "proper regard for the protection of the environment."[6] The issuance of prospecting permits was never resumed. The Federal Coal Leasing Amendments Act of 1976 eliminated prospecting permits and attending lease applications.[7] Consequently, this decision only affects those outstanding prospecting permittees and their potential lease applications under the act.

In reaching its decision the appellate court looked to the act, its historical application and those departmental regulations which worked to redefine its application.

MINERAL LEASING ACT OF 1920

The act established a program to lease mineral rights on federal lands for private mining and marketing.[8] The secretary was given discretionary power to divide any coal lands into leasing tracts, and to issue prospecting permits to qualified applicants.[9] Section 201(B) provided that such permittees "shall be entitled to a lease for all or part of the land on his permit" if they showed the secretary, within two years of receiving the permit, that the land contained coal in commercial quantities.[10]

The United States Geological Survey determined when permit areas contained commercial quantities of coal. Its conclusion was based on three considerations: whether coal existed, whether it could be extracted at a profit, and its characteristics.[11] Environmental concerns were not a necessary consideration in this determination.

DEPARTMENTAL REGULATIONS

The court noted that the Department of Interior introduced environmental requirements into this lease process in regulations promulgated on January 18, 1969.[12] Those regulations required a

5. 609 F.2d at 555 n.1. "[A]s of October 1974, in six western states, at least 496,000 acres containing some 12 billion tons of coal were subject to 183 preference right lease applications." 458 F. Supp. at 931. "As of January 1975, in four western states, there were still some 100,812 acres subject to outstanding prospecting permits, any or all of which could mature into preference right lease applications." 458 F. Supp. at 931 n.12.

6. Order No. 2952, 38 Fed. Reg. 4682 (1973).

7. Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, §4, 90 Stat. 1083, 1085 (affecting the Mineral Leasing Act of 1920, 30 U.S.C. §§181-263 (1976)).

8. 30 U.S.C.A. §§181-263 (1976).

9. 30 U.S.C.A. §201 (1976).

10. 30 U.S.C.A. §201(B) (1976).

11. Natural Resources Defense Council, Inc. v. Berklund, 458 F. Supp. at 929.

12. 43 C.F.R. §23.5(A) (1979).

technical examination to estimate the environmental impact of proposed prospecting and mining efforts, and to provide means to protect nonmineral resources.[13] Before a permittee or lessee can begin prospecting or mining the Department has to approve a detailed exploration or mining plan.[14]

The court further noted that all outstanding lease applications are now subject to a 1976 regulation which redefines "commercial quantities."[15] A permittee applying for a lease must establish, through detailed procedures, the profitability of the proposed mining.[16] He must show that revenues will exceed development and operating costs. These costs include compliance with reclamation and environmental standards.[17] Additionally, a 1977 regulation permits the exchange of applications with environmental shortcomings for 1) bidding rights in subsequent competitive lease sales, 2) modifications of existing leases where appropriate or 3) exchange of other mineral rights of comparable value.[18]

The court concluded that the property rights anticipated by those lease applicants with valid pre-1976 prospecting permits cannot be diminished.[19] Under the terms of Section 201(B) of the act, the Secretary of Interior must grant lease applications once the applicant establishes "commercial quantities" of coal within his permit area. In conjunction with this, the court explicitly noted that environmental safeguards have been instituted into the lease application process through Department of Interior regulations. An applicant must establish commercial quantities as defined in the 1976 regulation. Applicants must also comply with the technical environmental safeguards provided in the January 1969 regulations.

CONCLUSION

This decision upholds the established property rights of the 183 potential lease applicants. The court achieved this by enforcing the specific language of the act, which establishes that the Secretary of Interior has no authority to reject coal lease applications on environmental grounds if the applicant has complied with the appropriate regulations. Although the secretary cannot reject lease applications on environmental grounds, he also cannot authorize a coal mining

13. *Id.*
14. 43 C.F.R. §§23.7, .8 (1979).
15. 43 C.F.R. §3521.1-1(c) (1979).
16. *Id.*
17. *Id.*
18. 43 C.F.R. §3526 (1979).
19. 609 F.2d at 559.

lease until the applicant has specifically complied with the environmental safeguards mandated by the regulations. The Department of Interior has, in effect, incorporated environmental safeguards into the act through its regulations.

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